ALJ/LRB/sid

Mailed 8/5/99

Decision 99-08-007 August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application For Authority Under Section 851 For Koch Pipeline Company, L. P. To Sell Crude Oil Pipelines And Related Assets, Located in Kern County, To EOTT Energy Pipeline Limited Partnership For EOTT Energy Pipeline Limited Partnership to Acquire Control of These Assets.	Application 99-03-043 (Filed March 23, 1999)

OPINION

Summary

Through this application, Koch Pipeline Company, L.P. (Koch) seeks authority pursuant to Pub. Util. Code § 851[1] to sell its Elk Hills crude oil pipeline and related assets to EOTT Energy Pipeline Limited Partnership (EOTT). EOTT also seeks authority, assertedly pursuant to § 854, to acquire control of this pipeline and related assets, to operate these facilities as a public utility common carrier, and to assume Koch's filed tariffs governing these facilities. Because the Purchase and Sale Agreement closed on December 1, 1998, almost four months before this application was filed, Koch and EOTT (Joint Applicants) seek this authority *nunc pro tunc*. Joint Applicants also seek a limited protective order for its Purchase and Sale Agreement. Service was made on potentially affected parties and no protests have been received.

We retroactively grant approval of Koch's sale of the Elk Hills Pipeline and related assets to EOTT and of EOTT's operation of this facility and assumption of

[1] All statutory citations unless otherwise stated are to the Public Utilities Code.

Koch's filed tariffs, pursuant to § 851. We determine that approval of the pipeline acquisition is not necessary pursuant to § 854. Because Joint Applicants violated § 851 by failing to seek preapproval of this transaction, we impose a fine of $8,000.00. We also grant the motion for limited protective order. Our retroactive approval of this transaction should not be considered precedent because it is limited to the facts set forth herein. This proceeding is closed.

Procedural History

Koch filed its initial application and request for *nunc pro tunc* authority to sell certain pipelines and related assets to EOTT, and for EOTT to acquire those assets, together with a motion for limited protective order, on March 23, 1999. On April 19, 1999, after a ruling by the Administrative Law Judge (ALJ), Koch and EOTT filed an amended application and amended motion for protective order. The amended application, which was served on interested parties, added a request that EOTT be permitted to assume Koch's filed tariffs, joined EOTT as an applicant, and provided additional information regarding the transaction. We affirm the ALJ's ruling.

Parties and Description of Transaction

Koch is a Delaware limited partnership with a principal place of business in Wichita, Kansas. It provides gathering and transportation of crude oil by pipeline in Kern County. It seeks to sell its "Elk Hills Pipeline" which provides service between Elk Hills, 18G Lease and Derby Acres, on the one hand and Koch Oil Company Ten Section Tank Farm on the other hand, together with appurtenant facilities and associated rights-of-way. Koch operates the Elk Hills Pipeline as a public utility common carrier pursuant to filed tariffs.

Joint Applicants state that, on September 21, 1998, Koch and an affiliate, Koch Oil Company, a division of Koch Industries, Inc., entered into a Purchase

and Sale Agreement (Agreement) with EOTT Energy Partners, L.P. (EEG, L.P.) and EOTT Energy Operating Limited Partnership (EEOLP), Delaware limited partnerships, for the purchase and sale of crude oil gathering and transportation assets and oil purchase contracts, including 3,900 miles of active crude oil pipelines, crude oil transport trucks, meter stations, vehicles, storage tanks, and lease purchase contracts from production in eleven (11) central and western states. The total estimated purchase price of the assets is $223 million, including $184 million in cash, 2 million in Common Units, and 2 million in Subordinated Units. California assets included in the Agreement consist of crude oil pipelines, fixtures, appurtenances, rights-of-way and easements located in Kern County, together with related permits and licenses. Joint Applicants state that only one California pipeline (with related assets) subject to the sale requires prior authorization for transfer—the Elk Hills Pipeline—as described above.

EEG L.P. and EEOLP assigned the rights to purchase the pipeline system at issue to EOTT, a Limited Partnership with a principal place of business in Houston, Texas. EOTT is a part of a group of limited partnerships affiliated with EOTT Energy Partners, L.P., all of which were created through a business reorganization of EOTT Energy Corporation, which remains the general partner of the various affiliated limited partnerships, including EOTT. EOTT Energy Corporation is an indirect wholly owned subsidiary of Enron Corporation. Enron Corporation provided substantial financial support for this Agreement.

Joint Applicants state that EOTT, its general partner, affiliated and associated companies, and their predecessors, have been engaged in petroleum-related services since 1946, as a major national and international marketer of crude oil and a domestic marketer of refined products on the West Coast. The EOTT companies also gather and transport crude oil throughout the United

States, utilizing over 275 trucks, more than 5,000 miles of pipeline, and over 10 million barrels of storage. Joint Applicants state that the transaction is in the public interest because EOTT has the technical capabilities and expertise to operate this pipeline and related facilities in a reliable, safe, and efficient manner, pointing out that it historically has operated its crude oil facilities and pipelines in such a reliable, safe, and efficient manner. Joint Applicants also state that EOTT's acquisition of this pipeline, together with the other out-of-state facilities, will complement EOTT's crude oil gathering and transporting business resulting in substantial economies of scale and improving EOTT's ability to serve its customers throughout North America.

Joint Applicants represent that EOTT intends to operate the Elk Hills Pipeline and related assets in the same manner in which Koch has operated them. Currently, only one shipper uses the Elk Hills Pipeline — EEOLP, the affiliate who assigned its purchase rights under the Agreement to EOTT. EOTT seeks to assume Koch's filed tariffs and to continue to operate the pipeline as a public utility common carrier.

With the sale of the Elk Hills Pipeline, Koch will no longer operate as a public utility common carrier in California.

Discussion

Section 851 requires Commission authorization before a public utility may "sell . . . [assets] necessary or useful in the performance of its duties to the public. . . ."

The purpose behind 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 transfer, as the public interest may require." (*San Jose Water Co.* (1916) 10 CRC 56, 63; *Hinkley Valley Water Co.*

(1993) 50 CPUC2d 327, 328.) Further, § 851 is designed "to prevent the impairment of the public service of a utility by the transfer of its property into the hands of agencies or persons incapable of performing an adequate service at reasonable rates or upon terms which will bring about the same undesirable result." (*So. Cal. Mountain Water Co.* (1912) 1 CRC 520, 524.) We have held that the relevant inquiry is whether the proposed transaction is "adverse to the public interest." (*Universal Marine Corporation* (1984) 14 CPUC2d 644, 646. *See, also, Southern California Edison Company*, Decision (D.) 99-03-016, slip op. at p. 14.)

Koch is a public utility pursuant to § 216(a)[2] since the public has the right to transport crude oil through its Elk Hills Pipeline, pursuant to filed tariffs. (*See, e.g., San Diego Pipeline Co. & So. Pac. Pipelines, Inc.* (1971) 71 CPUC 832, 853.) Further, in transporting oil as a public utility, Koch assumed the obligations of a common carrier pursuant to § 211 (*Id.*) although it was not required to obtain a certificate of public convenience and necessity pursuant to § 1001, et. seq.[3] Accordingly, the Elk Hills Pipeline and related assets are necessary to the performance of its duties to the public and require Commission authorization for the asset sale pursuant § 851.

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[2] While § 216 refers to pipeline corporations, § 228 includes persons within the definition of pipeline corporation. Koch is a limited partnership, an entity treated as a person.

[3] In a recent case, *Arco Products Company, Mobil Oil Corporation, and Texaco Refining and Marketing, Inc., v. SFPP, LP*, the Commission held that a pipeline company was a common carrier based upon Commission precedent, cited *supra*, but noted that, as a matter of historical usage and custom, it has used the term "common carrier" with respect to pipeline companies synonymously with "public utility." (D. 98-08-033, slip op. at p. 12.)

Joint Applicants also seek approval for "[a]uthority under section 854 for EOTT Energy Pipeline Limited Partnership to acquire control of these assets." However, Joint Applicants do not need approval to acquire control of the Elk Hills Pipeline and related assets pursuant to § 854. Section 854 requires Commission authorization before a person or corporation may "merge, acquire, or control. . . any public utility organized and doing business in this state. . . ." Here, there is no evidence that EOTT will acquire or control the selling public utility, Koch; on the contrary, the evidence shows that EOTT is simply purchasing a limited asset—the Elk Hills Pipeline.[4] Therefore, EOTT's acquisition of the Elk Hills Pipeline is reviewed as a part of the request for approval for the sale pursuant to § 851. (*See, e.g., So. Cal. Mountain Water Co.* (1916) 1 CRC 520, 525.)

Request For Nunc Pro Tunc Relief

This application was filed on March 23, 1999, seeking approval of the Agreement transferring control of the Elk Hills Pipeline and related facilities from Koch to EOTT that was finalized, without Commission approval, on December 1, 1998. Accordingly, the sale of this pipeline and related assets, by the express language of § 851, is void[5] and the operational authority for this pipeline and related assets should be returned to Koch.

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[4] Joint Applicants also have averred that, although Koch will acquire Common Units and Subordinated Units in EOTT as part of the purchase price, the amount acquired is not sufficient to direct EOTT's operations, and, as such, does not constitute a merger or transfer of control.

[5] Section 851 provides that "[e]very such sale. . . made other than in accordance with the order of this commission authorizing it is void."

Nevertheless, Joint Applicants request that we *retroactively* authorize this pipeline sale, fashioning their application as one for authorization *nunc pro tunc.* Joint Applicants contend that, while such relief is not favored, it can be provided when, as here, the sale will not adversely affect the public and is non-controversial, citing *Page America Communications of California, Inc.*, D.94-05-030, abstracted at 54 CPUC2d 467 (*Page America*), and *Com Systems Network Services, Inc.*, D.94-06-001, abstracted at 54 CPUC2d 698 (*Com Systems*).

We are troubled by the request for *nunc pro tunc* relief. The purpose behind § 851 is to ensure that the Commission has the ability to review and seek appropriate revisions and conditions to a transfer of a public utility *prior* to the finalizations of the transaction. As the Commission has eloquently stated:

> Public utility property is unlike the property of a private sector company where the owner may dispose of his property or convert it to other uses, generally at the sole discretion of the private owner. The State grants the owner of public utility property exclusive territory and protection from competition. But in return, once dedicated to public utility service, although it continues under private ownership, that property is impressed with a public use, and thereafter may be sold or transferred only with the prior consent of the Public Utilities Commission. (*Jacumba Water Company*, D.86-10-013, abstracted at 22 CPUC2d 43.)

Joint Applicants correctly state that the Commission has granted retroactive approval of § 851 and § 854 applications in the past. However, because such approval is contrary to statute and explicit Commission policy, it has done so only in limited and exceptional circumstances. For example, as reflected in the *Page America* and *Com Systems* decisions cited by Joint Applicants, the Commission has granted such relief in the telecommunications area pursuant to a special Commission policy for the expedited handling of noncontested

applications of nondominant interexchange carriers to transfer assets or control under §§ 851-855. These cases are not pertinent to this application since, by their express findings, they were issued by the Executive Director pursuant to delegated authority and reflect this special Commission policy.

The Commission has also approved transfers of utility property made without obtaining prior approval in extreme, limited circumstances where there was a strong public interest in maintaining the operation of the utility. However, it has done so by *exempting* the utility from the § 851 preapproval requirement pursuant to § 853(b).[6] (*See, e.g., Jacumba Water Co.* (D.86-10-013, abstracted at 22 CPUC2d 43; *Hinkley Valley Water Co.* (1993) 50 CPUC2d 327; *West Water Company,* D.97-12-072.) These cases do not grant *nunc pro tunc* relief of the transfer of utility property, but find, under the extreme particular circumstances therein, that § 851 should not apply. (*See, also, Pacific Gas and Electric Company* (D.99-02-062, slip op. at p. 8 ("[t]his seldom-used procedure is invoked in extraordinary cases."))

In the instant application there has been no request for a § 853(b) exemption, and, indeed, none is warranted. Joint Applicants give no reason for their failure to seek approval before the transaction was completed except to say that the application was not filed "through inadvertence."[7]

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[6] § 853(b) provides, in part, that "[t]he 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 . . . from this article if it finds that the application thereof . . . is not necessary in the public interest. . . ."

[7] Joint Applicants point out that Koch filed an advice letter on February 10, 1998 seeking to cancel movement on two pipelines and to add a receipt point along another, which was granted by Resolution O-0023 issued on April 23, 1998.

However, as noted in *Pacific Gas and Electric Company, supra,* the Commission has "on occasion granted Section 851 approval to transfers nunc pro tunc, i.e., with the same effect as if done earlier, where the failure to obtain approval has been deemed inadvertent and where our examination of the transfer revealed no prejudice to ratepayers." (Slip op. at p. 8 (*citations omitted.*)) In that case, the Commission granted § 851 approval for 106 single-customer agreements for sale of utility equipment entered into by PG&E between 1989 and 1996 *nunc pro tunc* because the failure to obtain prior approval for the transfers was inadvertent, the transactions were properly recorded, and after-tax gains were applied to reduce rate base, benefiting the ratepayers.

This application is similar to the *Pacific Gas and Electric* case only insofar as the failure to obtain prior approval for the transfer appears to be inadvertent. However, there are other factors which make this case appropriate for *nunc pro tunc* relief. This is one short pipeline, presumably of relatively small value, being transferred as a part of a multi-million dollar, multi-asset, multi-state agreement. The amended application, pursuant to the ALJ's ruling, was served on all known affected parties, including shippers in the jurisdiction through which the pipeline travels, and no protests have been filed. While there is scant evidence specifically regarding the sale of the Elk Hills Pipeline or its purchase by EOTT, Joint Applicants have made a reasonable case that the transaction is in the public interest. While the only current shipper affected by the sale and purchase is an affiliate of EOTT, EOTT has indicated that it will continue to operate the pipeline as a public utility common carrier. Through this application, EOTT also seeks to assume Koch's tariff, so ratepayers will not be adversely affected by this transaction. EOTT has stated that it has the technical capabilities and expertise as well as the financial capability and integrity to continue to operate this pipeline in a safe and reliable manner.

Finally, we have no reason to believe that Joint Applicants' failure to obtain § 851 approval for this transaction was anything other than a mistake. (*See, Pacific Gas and Electric Company, supra,* slip op. at p. 7.) Accordingly, although disfavored, under the limited and narrow facts presented, and on a non-precedential basis, we will approve the transfer of the Elk Hills Pipeline and related assets to EOTT *nunc pro tunc.* Our approval includes EOTT's acquisition and operation of the pipeline and related assets and its assumption of Koch's filed tariffs.

Penalty Assessment

While we approve this § 851 transaction *nunc pro tunc,* we believe that penalties are appropriate. Joint Applicants give no reason for their failure to seek approval before the transaction was completed except to say that the application was not filed "through inadvertence." Unlike the situation in *Pacific Gas and Electric Company, supra,* here there has been no adjusted rate base or other benefit to customers from this transaction which may serve to excuse Joint Applicants from paying appropriate penalties. We must act to discourage parties from avoiding their statutory duty and bypassing the Commission when entering into agreements to transfer utility assets. As we said in the *Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted By the Commission In Decision 97-12-088* (R.98-04-009) (*Affiliate Enforcement Rulemaking Decision*), "[i]t is fundamental to the Commission's exercise of its powers and jurisdiction that the agency take reasonable steps to ensure that the utilities comply with its orders and rules." (Slip. op. at p. 5.)

The Commission is generally authorized to assess penalties for violations.

Section 2107 sets forth the parameters for maximum and minimum penalties:

> Any public utility which violates or fails to comply with any provision of the Constitution of this state or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than twenty thousand dollars ($20,000) for each offense.

Section 2108 provides that in the case of a continuing violation, "each day's continuance thereof shall be a separate and distinct offense."

In the *Affiliate Enforcement Rulemaking Decision, supra,* we set forth several general principles to consider in establishing an appropriate fine, including: (1) the severity of the offense; (2) the conduct of the utility (before, during and after the offense); (3) the financial resources of the utility; and (4) the totality of the circumstances related to the violation. (Slip op. at. p. 7.)[8] We also determined that a fine should be considered in the context of past Commission decisions.

Severity of the offense includes a consideration of the economic harm caused to the victims or to the integrity of the regulatory processes, unlawful benefits gained by the utility, and the number of violations. The conduct of the utility includes the utility's actions to prevent the violation, detect the violation, and disclose and rectify the violation. With respect to the financial resources of

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[8] While this rulemaking specifically concerned enforcement of the affiliate transaction rules, the Commission opted to craft a set of principles within the parameters of § 2107, which statute applies more generally to all public utilities. The principles are set forth in Appendix A to the decision.

the utility, the Commission "intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources." (*Affiliate Enforcement Rulemaking Decision, supra*, Appendix A at p. 10.) Finally, consideration of the totality of the circumstances requires the Commission to look at the unique facts of each case which may mitigate or exacerbate the degree of wrongdoing, in the furtherance of the public interest.

In this case, joint applicants have averred that the failure to seek approval for the transfer of the pipeline prior to finalization of the sale was inadvertent. Given the magnitude of the entire transaction – a complex multi-party,[9] multi-state, multi-facility transaction valued at $223 million, of which this California pipeline was one very small part, it is reasonable to find that joint applicants' failure to seek prior approval was inadvertent and not intentional or willful. Thus, under these circumstances, while we could find a continuing violation, and assess additional fines, we will use our discretion to assess a penalty of $8,000.00 for one offense – the failure to seek approval for the transfer of the pipeline and related assets prior to the finalization of the sale. (See, e.g., *TURN v. Pacific Bell*, wherein we held that the Commission has "the discretion to set an appropriate penalty or to compromise an action for collection of the penalty." (D.94-04-057, 54 CPUC2d 122, 124 (1994).)

An $8,000.00 fine for this offense is reasonable considering the factors identified in the *Affiliate Enforcement Rulemaking Decision*. The violation of § 851 by transferring ownership and operation of an oil pipeline without first seeking Commission approval is a serious violation—so serious that the statute provides that such transactions shall be void. Further, both Koch and EOTT are large,

[9] Koch was one of two sellers; the other was an affiliate, Koch Oil Company.

multi-state companies. However, in mitigation, there is no evidence that the public was harmed by the transaction or that the utility unlawfully gained from the transaction. While there is no evidence that Koch or EOTT took any action to prevent the violation or to promptly detect the violation, Koch did disclose and attempt to rectify the violation by filing the instant application, albeit almost four months later. Under these circumstances, we believe that an $8,000.00 penalty is an equitable outcome given the mitigating factors present, and serves our purpose to deter future violations while not being excessive.

Environmental Review

The California Environmental Quality Act (CEQA), requires that governmental agencies responsible for taking discretionary action in reviewing and approving private projects, as defined in Public Resources Code § 21065, consider the environmental consequences of such projects. (Public Resources Code § 21080.) The sale and acquisition of a pipeline and related assets pursuant to Public Utilities Code §§ 851 and 854 are projects typically subject to CEQA review by the Commission. However, the facts of this case, as set forth in the record herein, indicate that the sale and acquisition of the Elk Hills Pipeline are exempt and not otherwise subject to CEQA because it can be seen with certainty that there is no possibility that the transaction may have a significant effect on the environment. (CEQA Guidelines, 14 CCR § 15061(b)(3).) Accordingly, the Commission need not perform further CEQA review.

Motion For Protective Order

Concurrently with filing the application and amended application, Joint Applicants filed a motion for limited protective order covering its Agreement, set forth as Exhibit C to the application and amended application. The Agreement was submitted under seal and attached to the motion. Subsequently, Joint

Applicants filed an amendment to the motion. No opposition to the motion has been filed.

The Agreement covers the purchase and sale of crude oil gathering and transportation assets and oil purchase contracts throughout 11 central and western states, and includes both public utility and non-public utility assets. The total estimated purchase price of the assets is approximately $223 million. The California public utility assets subject to the Agreement constitute a small part of the Agreement; they consist solely of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline and related assets in Kern County. Joint Applicants state that they are unable to identify portions of the Agreement which relate solely to this pipeline.

Joint Applicants contend that to date the information in Agreement has not been made available to the public and that in each state the services to be provided using these assets are subject to various types of competitive and market pressures. Joint Applicants further believe that if the Agreement was made public, they would be placed at an unfair business disadvantage relative to their respective competitors in both regulated and unregulated markets.

Joint Applicants have stated grounds under General Order 66-C and authority there cited for the requested relief. Moreover, the time for response to this motion has passed and no one has submitted any opposition. A public hearing on the motion is not needed. Except for the limited information culled from the Agreement and contained in this Opinion, Joint Applicants amended motion for limited protective order will be granted

Other Procedural Matters

In Resolution ALJ 176-3013, dated April 1, 1999, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily

determined that hearings were not necessary. No protests have been received. Given this status, a public hearing is not necessary and it is not necessary to alter the preliminary determination in ALJ 176-3013.

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Joint applicants timely filed nonsubstantive comments on July 23, 1999, which have been incorporated as appropriate. They further recommend deleting Finding of Fact 14 because it repeats Finding of Fact 13. Upon review, we noted that the appropriate Finding of Fact 14 was inadvertently omitted. Thus, Finding of Fact 14 has been revised to reflect the correct Finding.

Further changes to the draft decision have been made to clarify the rationale for the penalty assessment. The amount of the penalty assessed has not been affected by these changes.

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

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of March 25, 1999; notice of the amended application appeared in the Commission's Daily Calendar on April 26, 1999.

2. Although notice was given to shippers and governmental agencies potentially affected by the proposed transaction, no protests have been received.

3. Koch is a public utility common carrier subject to the jurisdiction and regulation of this Commission. It has owned and operated the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline pursuant to duly filed tariffs.

4. EOTT is a Delaware limited partnership that, together with its affiliates and general partner, is experienced in gathering and transporting petroleum products domestically and internationally.

5. With the sale of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline Koch Pipeline Company, L.P. will no longer operate as a common carrier public utility in California.

6. EOTT intends to continue to operate the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline in the same manner in which it has been operated, under the same tariff and as a common carrier public utility.

7. EOTT has stated that it is experienced in gathering and transporting oil and has the technical capabilities and expertise and the financial capability and integrity to continue to operate the Elk Hills Pipeline in a safe and reliable manner.

8. Koch and EOTT consummated the Purchase and Sale Agreement for the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline without prior Commission authorization.

9. The sale of the Elk Hills Pipeline is only one small part of a multi-state, multi-company, multi-million dollar transaction.

10. The sale of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline to EOTT is non-controversial and there is no evidence that the public will be adversely affected by its authorization *nunc pro tunc.*

11. EOTT does not seek to acquire or control Koch.

12. Failure to seek prior approval of the sale of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline to EOTT is a serious violation by a large, multi-state company that continued for a period of almost

four months before it was disclosed. However, there is no evidence that the public was harmed by the transaction or that Koch unlawfully gained from the transaction. This pipeline sale was a small part of a very large and complex multi-party and multi-state transaction. Under such circumstances, a penalty of $8,000.00 for one offense is appropriate for the violation of Pub. Util. Code § 851.

13. The sale of the Elk Hills Pipeline is a project subject to environmental review pursuant to the California Environmental Quality Act.

14. It can be seen with reasonable certainty that the sale of Elk Hills Pipeline will not have a significant effect on the environment. This is the independent judgment of the Commission.

15. A limited protective order is warranted because joint applicants have made a reasonable case that the information in the Purchase and Sale Agreement is not available to the public and disclosure may place them at an unfair business disadvantage. The motion is unopposed.

Conclusions of Law

1. This proceeding is designated as a ratesetting proceeding and it is determined that no hearing is necessary.

2. The sale of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline from Koch to EOTT will not adversely affect the public and is non-controversial.

3. The acquisition of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline by EOTT is not a merger or acquisition of control pursuant to Pub. Util. Code § 854 so no approval pursuant to § 854 is required.

4. This transaction is exempt from the provisions of the CEQA pursuant to the CEQA Guidelines, 14 CCR § 15061(b)(3).

5. The application for authorization of the sale of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline as set forth in the application should be approved *nunc pro tunc.*

6. EOTT's application to assume Koch's tariff for the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline should be approved *nunc pro tunc.*

7. We must act to discourage parties from avoiding their statutory duty and bypassing the Commission when entering into agreements to transfer utility assets.

8. It is fundamental to the exercise of our powers and jurisdiction that we take reasonable steps to ensure that the utilities comply with our orders and rules.

9. Pursuant to § 2107, the Commission is authorized to assess penalties for violations within the range of five hundred dollars ($500) to twenty thousand dollars ($20,000) for each offense.

10. Pursuant to R.98-04-009, we have considered the severity of the offense, the conduct of the utility before, during, and after the offense, the financial resources of the utility, and the totality of the circumstances related to the violation in determining that a penalty of $8,000.00 be assessed for one offense.

11. Assessment of an $8,000.00 penalty is reasonable under the circumstances.

12. The motion for limited protective order should be approved, as modified herein, on the grounds that the sale and purchase agreement may reasonably be considered to be sensitive from a business standpoint.

13. EOTT should be authorized to reissue the tariffs in its name. The present rates and tariff provisions should continue in effect until changed by the Commission.

14. Koch should be released from its public utility obligations.

15. This order should be made effective immediately in order that EOTT may begin operating as a public utility and assume the tariffs.

16. This proceeding should be closed.

ORDER

IT IS ORDERED that:

1. The application is approved.

2. Koch Pipeline Company, L.P.'s sale of the Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline and related assets located in Kern County to EOTT Energy Pipeline Limited Partnership (EOTT) is authorized *nunc pro tunc*.

3. A penalty of $8,000.00 is assessed and is due and payable to the State of California General Fund 10 days after the effective date of this Decision. Proof of payment shall be filed and served on the service list and the Director of the Energy Division within five days of payment.

4. No further environmental review is required pursuant to the California Environmental Quality Act Guidelines, 14 CCR § 15061(b)(3).

5. On or after the effective date of this order, EOTT is authorized to operate Elk Hills 18G Lease/Derby Acres to Koch Oil Company Ten Section Tank Farm Pipeline and related assets located in Kern County and to assume Koch Pipeline Company, L.P.'s duly filed tariffs for these facilities. The present rates and tariff provisions shall continue in effect until changed by the Commission.

6. The amended motion for a limited protective order is granted to the extent set forth below.

7. The Purchase and Sale Agreement referred to in the amended application as Exhibit C, which exhibit has been submitted under seal as an attachment to the

motion, shall remain under seal for a period of two years from the date of this order, and during that period shall not be made accessible or disclosed to anyone other than Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

8. If Koch Pipeline Company, L.P. or EOTT believe that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the exhibits from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than 30 days before the expiration of this limited protective order.

9. EOTT shall make all books and records available for review and inspection upon Commission staff request.

10. Application 99-03-043 is closed.

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners