

Decision 16-09-012 September 15, 2016

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

Application of WICKLAND PIPELINES LLC (PLC27) for Authorization to Establish Market-Based Rates and Conditions of Service and for Approval of Exemptions under Sections 818 and to 851 or, alternatively, Authorization to Increase Membership Contributions and Debt Limits and to Encumber Utility Property.

Application 14-08-011  
(Filed August 6, 2014)

**DECISION DENYING PETITION FOR MODIFICATION  
OF DECISION 15-07-011 FILED BY WICKLAND PIPELINES, LLC**

**Summary**

We deny the Petition for Modification of Decision 15-07-011 filed by Wickland Pipelines LLC (Wickland) on February 16, 2016, requesting that the Commission order the refund of a fee of \$16,200 that Wickland paid with its Application 14-08-011, pursuant to § 1904(b).<sup>1</sup> Wickland has not demonstrated that, because we granted its request for exemption from the requirements of §§ 818 and 851, it is entitled to a refund of the fee.

The Petition is denied. This proceeding is closed.

**1. Background**

Wickland Pipelines LLC (Wickland or Applicant) is a limited liability company with a principal place of business in Sacramento, California. It is a

---

<sup>1</sup> All § references are to the California Public Utilities Code.

public utility pipeline corporation that currently owns and operates common carrier jet fuel pipelines to fuel tank storage facilities owned and operated by a consortium of airline companies operating at Sacramento International Airport (SMF Pipeline), Mineta San Jose International Airport (SJC Pipeline) and John Wayne Airport in Orange County (SNA Pipeline).

In its Application (A.) 14-08-011, Wickland sought authorization to finance the new SNA Pipeline and requested that the Commission: (1) exempt Wickland from the requirement for the Commission's authorization of its proposed secured financing transactions in connection with the SNA Pipeline; or (2) authorize Wickland to increase its total capitalization and debt financing to fund the construction of the SNA Pipeline and, at Wickland's discretion, consolidate such financing with a refinancing of its existing debt. Wickland also requested authorization to provide fuel pipeline services over the SNA Pipeline pursuant to market-based rates established through arms-length negotiations between Wickland and shippers, according to a Federal Energy Regulatory Commission-style tariff.<sup>2</sup>

In Decision (D.) 15-07-011, the Commission found that Wickland had the financial capacity to pay for the cost of the requested debt and equity capital, and granted Wickland exemptions from: (1) prior approval requirements under §§ 818<sup>3</sup> and 851<sup>4</sup>; (2) the requirements of General Order (GO) 96-B<sup>5</sup>; and (3) the

---

<sup>2</sup> See Application at 1-2.

<sup>3</sup> Section 818. No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness payable at periods of more than 12 months from the date thereof unless...it shall have first secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied....

Commission's New Financing Rule, established in D.12-06-015.<sup>6</sup> We also agreed that the exemptions would apply to any refinancing that Wickland might undertake with respect to the SMF and SJC Pipelines.

On February 16, 2016, Wickland filed a Petition for Modification to request that the Commission modify D.15-07-011 to order the refund of a fee of \$16,200 that Wickland paid with its A.14-08-011.

On March 17, 2016, the assigned Administrative Law Judge (ALJ) issued a ruling requesting briefing in support of the Petition for Modification. Wickland submitted a brief on March 30, 2016, in which it cited several cases in which the Commission exercised its authority under § 829(c) or § 853(b) to exempt utilities from the requirements of §§ 818 and 851.

## **2. Petition for Modification**

A Petition for Modification is timely, if it is filed and served within one year of the effective date of the decision proposed to be modified.<sup>7</sup> It asks the Commission to make changes to an issued decision.<sup>8</sup> It must concisely state

---

<sup>4</sup> Section 851. No public utility...shall lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...property useful in the performance of its duties to the public...without first having either secured an order from the commission authorizing it to do so....

<sup>5</sup> GO 96-B governs advice letters and information-only filings submitted to the Commission by public utilities that are gas, electrical, telephone, water, sewer system, pipeline, or heat corporations.

<sup>6</sup> The New Financing Rule provides utilities with flexibility to take advantage of market opportunities and adjust pricing in order to reflect current market practices and standards, and to obtain low-cost debt financing. It includes an exemption for bond issues of \$42 million or less, adjusted each year for the Consumer Price Index found on the California Department of Finance website.

<sup>7</sup> Rule 16.4(d).

<sup>8</sup> Rule 16.4(a).

the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.<sup>9</sup> Wickland's Petition for Modification was timely filed.

### **3. Relationship Between § 1904(b) and Granted Exemptions**

Wickland requests that the Commission modify D.15-07-011 to order the refund of the filing fee of \$16,200 that Wickland paid with A.14-08-011.

Wickland argues that, "under the plain language of § 1904(b),<sup>10</sup> the Commission is required to charge and collect fees only when it issues a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness."<sup>11</sup> We

---

<sup>9</sup> Rule 16.4(b).

<sup>10</sup> Section 1904(b) states:

The Commission shall also charge and collect the following fees:

...(b) For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note, or other evidence of indebtedness on which a fee has theretofore been paid to the Commission. If the Commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the Commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the Commission, such fee shall be returned.

<sup>11</sup> Brief of Wickland at 1.

agree, and point out that, in D.15-07-011, the Commission authorized Wickland to issue bonds, notes or other evidence of indebtedness. However, Wickland does not explain why it believes that, because the Commission granted an exemption from the need to obtain *prior* approval before issuing “evidences of indebtedness,” Wickland is entitled to a refund of the fee it paid for the certificate.

Section 1904(b) is found in “Chapter 10. Official Documents and Fees.” When read within the context of Chapter 10 as a whole, it is clear that the fee under § 1904(b) is simply a fee charged to receive an “official document” from the Commission, i.e., a certificate authorizing an issue of bonds, notes or other evidence of indebtedness.

Section 818 requires prior Commission approval before a public utility can issue stocks or bonds or equivalent instruments, however, § 829(c) creates an exception to the prior approval requirement if the Commission finds that application of § 818 to the public utility is not necessary in the public interest.

Section 851 requires prior Commission approval before a public utility can sell or encumber its property, however, § 853(b) authorizes the Commission to “exempt any public utility from the requirements of § 851 if the Commission finds that application of § 851 to the public utility... is not necessary in the public interest.”

We granted Wickland exemptions from §§ 818 and 851 because Wickland represented that it would itself bear the entire financial risk for the pipeline project, the SNA Pipeline would not have captive customers to finance its

development, and market competition would serve to constrain its capital costs.<sup>12</sup> We concluded that Wickland should be authorized to enter the proposed financing arrangements described in the application, after determining that it was in the public interest to approve financing of the SNA Pipeline, because doing so would afford airline shippers a rate-competitive alternative to existing truck transportation options and would improve the reliability and economics of their fuel supplies. In addition, we were persuaded that several objectives set forth in an initial study by Orange County,<sup>13</sup> which was part of Exhibit E<sup>14</sup> to the Application, were also in the public interest.

The fact that the Commission scrutinized Wickland's application to confirm that its proposals were within the public interest, constitutes the Commission's "certification" of Wickland's various proposed financing alternatives. Wickland has not explained why receiving the Commission's approval that it should be exempt from prior notice requirements under §§ 818 and 851, entitles it to a refund of the fees paid under § 1904(b).

---

<sup>12</sup> See D.15-07-011, § 2.5 at 7.

<sup>13</sup> Orange County was the lead agency under the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 et seq.

<sup>14</sup> On May 9, 2014, Orange County filed with the State Clearinghouse, a Notice of Determination (State Clearinghouse Number 2013121011) providing notice of the approval of a Mitigated Negative Declaration for Wickland Jet Fuel Pipeline Project - CPP 2013-00087 by the Orange County Director of Planning. The Mitigated Negative Declaration, the underlying Initial Study and the associated County Planning Staff Report, dated May 8, 2014 are collectively Exhibit E. The study cited decreased traffic congestion due to elimination of 44 fuel tanker truck trips per day; decreased air pollution; decreased damage related to oil spills and increased airport security among the objectives that were in the public interest.

#### 4. Prior Cited Decisions

In response to the March 17, 2016 ALJ's ruling, Wickland cites three decisions<sup>15</sup> to support its contention that the Commission does not require payment of a financing fee under § 1904(b) when exemptions are granted. These do not persuade us.

D.09-10-035 in A.08-07-032/A.08-07-033 involved two separate requests for certificates of public necessity and convenience (CPCN),<sup>16</sup> to construct gas storage facilities and to provide gas storage services.<sup>17</sup> The Commission granted exemptions from the requirements of §§ 818 and 851, after reviewing environmental impacts of the projects, and concluding that the projects were in the public interest.<sup>18</sup> Accordingly, the parties were granted certificates in the form of CPCNs.<sup>19</sup> D.09-10-035 does not mention any refund of fees paid.

D.10-10-001 in A.09-08-008 also involved a request for a CPCN to construct a gas pipeline, with requests for waivers from the requirements of §§ 818 and 851, as well as from § 1005.5(a).<sup>20</sup> The Commission concluded that the

---

<sup>15</sup> D.09-10-035, D.10-07-001 and D.15-07-011.

<sup>16</sup> CPCNs are issued pursuant to § 1001, et seq., but are subject to Chapter 10 discussed above, as they are included within the sections for which fees are collected under § 1902(d).

<sup>17</sup> A.08-07-032 was a request by Gill Ranch Storage, LLC and A.08-07-033 was a request by Pacific Gas and Electric Company.

<sup>18</sup> See D.09-10-035, Conclusions of Law 2, 4, and 22 and Ordering Paragraph 7 granting exemptions to Gill Ranch Storage, LLC.

<sup>19</sup> *Id.*, at 71, Ordering Paragraphs 1 and 3.

<sup>20</sup> Section 1005.5 provides that: "Whenever the Commission issues to an electrical or gas corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the Commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility."

requested waivers should be granted,<sup>21</sup> and issued a certificate to the applicant. D.10-10-001 is also silent on the subject of refunding fees paid.

D.10-07-001 in A.10-04-027 is the single instance where the Commission granted exemptions from §§ 818 and 851 and ordered the return of fees paid.<sup>22</sup> However, there is no discussion in D.10-07-001 about why the Commission ordered return of the fees paid. For this reason, it is speculative to assume that the fee was returned because of the waiver of notice requirements under §§ 818 and 851.

It is notable that Wickland's brief omitted mention of D.08-02-016. In that decision, this Commission granted Wickland's request for authority to issue debt and equity, and expressly discussed the fact that such authorization requires collection of a fee pursuant to §§ 1904(b) and 1904.1.<sup>23</sup>

Similarly, our conclusion in D.15-07-011, that Wickland is exempt from seeking prior authorization before undertaking future financing efforts, does not mean that Wickland is relieved of its obligation for payment of a fee under § 1904(b). Accordingly, we do not find any basis for refunding the fee paid.

## **5. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

## **6. Comments on Proposed Decision**

The proposed decision of ALJ Miles in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments were

---

<sup>21</sup> See D.10-10-001, Conclusions of Law 7 and 12 and Ordering Paragraphs 6 and 9.

<sup>22</sup> Ordering Paragraph 6 at 7.

<sup>23</sup> See D.08-02-016, at 13 "4.6 Fee for Authority to Issue Debt and Equity."

allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 25, 2016. The comments place additional emphasis on arguments made in the Petition for Modification and do not persuade that the petition should be granted.

### **Findings of Fact**

1. Section 1904(b) permits the Commission to charge and collect fees when it issues a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness.

2. In D.15-07-011, the Commission authorized Wickland to issue bonds, notes or other evidence of indebtedness by approval of its application.

3. In D.15-07-011, the Commission granted Wickland an exemption from the necessity to obtain prior approval to issue bonds, notes, or other evidences of indebtedness, as required by §§ 818 and 851 with respect to financing transactions for the SNA Pipeline project and with respect to refinancing of the SMF and SJC Pipelines.

4. The exemption from seeking prior approval for future financing transactions, does not negate the fact of the Commission's certification of the financing transactions.

### **Conclusions of Law**

1. Wickland has not demonstrated that it is entitled to a refund of fees paid with A.14-08-011, pursuant to § 1904(b).

2. The Petition for Modification should be denied.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition for Modification of Decision 15-07-011 filed by Wickland Pipelines LLC is denied.
2. Application 14-08-011 is closed.

This order is effective today.

Dated September 15, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being  
necessarily absent, did not participate.