Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER WOOD**
(Mailed 10/25/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wickland Pipelines LLC for Authorization to Increase Membership Contributions and for Approval of Rates and Conditions of Service.	Application 99-08-050 (Filed August 23, 1999; Amendment Filed May 20, 2002)

O P I N I O N

1. Summary

Wickland Pipelines LLC (applicant, or Wickland) seeks Commission approval of an environmental review, a new corporate membership structure, additional membership capital contributions, issuance of promissory notes, and authorization of market-based rates in connection with its operation of a jet fuel pipeline and tank farm project at Sacramento International Airport. The application is unopposed. The application is granted to the extent set forth below. Wickland's request for authorization for market-based rates is denied without prejudice.

2. Background

Applicant filed this application in August 1999 seeking authorizations by the Commission in connection with applicant's proposal to construct, own and operate a common carrier jet fuel pipeline. The pipeline project would connect the existing SFPP North Line in West Sacramento to a new fuel tank storage facility that would be constructed, owned and operated by a consortium of

airline companies operating at Sacramento International Airport. SFPP North Line is owned by Santa Fe Pacific Pipeline Partners, L.P., an indirect subsidiary of Kinder Morgan Energy Partners, L.P., which is under Commission jurisdiction.

In its application, applicant asked that the Commission first issue a decision and interim order determining that Wickland is a public utility pipeline corporation subject to the Commission's jurisdiction. An interim opinion confirming Wickland's status as a public utility pipeline corporation was issued in Decision (D.) 99-12-038 in December 1999.

Applicant stated that, following environmental review, it would file an amendment to its application seeking Commission approval for Wickland:

- To require additional membership capital contributions to fund project pre-development costs, and
- To provide fuel pipeline services under market-based rates, established through arm's-length negotiations between Wickland and shippers, according to a tariff styled like those acceptable to the Federal Energy Regulatory Commission (FERC).

Applicant filed its amendment to the application on May 20, 2002. In it, applicant also seeks Commission approval of a proposed financing structure to acquire real property interests and to construct the proposed pipeline at such time as applicant has obtained other regulatory approvals necessary for this project.

No protests to the application or to the recent amendment have been filed, and this matter is uncontested.

3. Environmental Compliance

The County of Sacramento has acted as the "lead agency" under the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000, *et seq.*, for

the environmental review of the proposed pipeline project. The County prepared a draft Environmental Impact Report (EIR), and the Commission staff was consulted and provided review comments on behalf of the Commission. The Commission is a responsible agency in reviewing the project (CEQA Guidelines at 14 C.C.R. § 15096).

The Sacramento County Department of Environmental Review and Assessment (DERA) acted as chief consultant to the Sacramento County Department of Airports as lead agency for the purpose of preparing the appropriate environmental document, pursuant to the requirements of CEQA.

A Notice of Preparation (NOP) was issued to interested parties and potentially affected agencies and organizations on November 2, 2000. A Draft Environmental Impact Report (DEIR) was prepared and distributed for comment to interested parties and potentially affected agencies and organizations on March 23, 2001. A Public Notice for the DEIR was published in the Sacramento Bee on March 23, 2001, and the review period for the DEIR ended on May 7, 2001. Comments received on the DEIR prompted minor changes to the text of the DEIR without changing the conclusions of the DEIR.

A Public Hearing before the Project Planning Commission (PPC) was held on April 23, 2001. There were no public comments presented at the PPC hearing. The PPC closed the comment period and directed staff to prepare the Response to Comments and the Final EIR for presentation to the Board of Supervisors of Sacramento County.

The Final EIR was distributed in April 2002. The Board of Supervisors of the County of Sacramento considered the Final EIR for the Sacramento International Airport Jet Fuel Pipeline and Tank Farm project at a public hearing held on April 17, 2002. At the hearing, the Board of Supervisors of the County of

Sacramento certified the Final Environmental Impact Report as adequate and complete and directed the preparation of Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program.

4. Project Objectives

The Project has the following objectives (FEIR, pages 3-4)

- Potential to lower jet fuel prices at the Sacramento Airport
- Decrease air pollution
- Increase safety
- Decrease energy consumption
- Decrease oil spill related damage
- Decrease traffic congestion

5. Project Alternatives

The Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR is a project-specific EIR that evaluated alternatives to the proposed project. The following four alternatives to the project were analyzed: no project alternative; alternate pipeline alignment within the Yolo Causeway; alternate pipeline alignment west of the Yolo Causeway; alternate pipeline alignment making maximum use of public roads and rights of way and entering the airport from the west. Potential pipeline alignments were developed or "scoped" at meetings with the Yolo County Planning and Public Works Department, DERA, City of West Sacramento Community Development Department and the project applicants. The goal of the scoping sessions was to develop a self-mitigating project and still meet the project objectives. A number of limiting factors were present in determining potential pipeline alignments. These limiting factors eliminated from further consideration the alternate pipeline alignment within the Yolo Causeway, the alternate pipeline alignment west of the Yolo Causeway, and

the alternate pipeline alignment making maximum use of public roads and rights of way/entering the airport from the west.

Through the analysis of the alternatives, it was determined that the proposed alignment was the environmentally superior alternative. The no-project alternative does not reduce the overall environmental impacts from the project. The continued transport of jet fuel via tanker truck contributes to a greater safety risk, contributes to roadway noise along regional and local roadways, contributes to traffic volumes along regional and local roadways, and contributes to greater emissions of pollutants than does the proposed project. While the remaining alternatives would decrease air quality emissions, lessen noise and traffic volumes along the truck transport routes and pose a safer alternative to truck of the jet fuel, they would (because of their locations and increased pipeline length) produce greater short term environmental impacts associated with biological resources, land use, water resources and soils.

6. Environmental Impacts

The Final EIR identified a number of potentially significant environmental effects (or impacts) that the project will cause. Some of these effects will be fully avoided through the adoption of feasible mitigation measures. Other effects can be substantially lessened, but not fully avoided, and therefore remain significant and unavoidable. In considering the Final EIR for the project, the Sacramento County Board of Supervisors made the following findings for specific resource areas.

The Final EIR found that no significant impacts will occur with respect to:

- Population and Housing

The project will result in significant environmental effects with respect to the following issues or resources that can be reduced to less than significant levels and/or avoided with the implementation of mitigation measures:

- Land Use
- Agricultural Resources
- Open Space
- Aesthetics
- Airports
- Public Facilities and Services
- Transportation and Circulation
- Hydrology and Water Quality
- Geology and Soils
- Cultural Resources
- Hazardous materials/Risk Assessment
- Biological Resources

The project will result in significant environmental effects for the following resources that cannot be fully avoided through the adoption of feasible mitigation measures:

- Short Term Air Quality Emissions
- Construction Related Noise

Each of these significant and unavoidable impacts will be considered below.

7. Air Quality Impacts

With respect to air quality, construction activities associated with the project would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions. According to the FEIR, this would be a significant impact (FEIR, pages 2-8). The FEIR identified and the Sacramento County Board of Supervisors imposed the

following mitigation measures to reduce or avoid air quality impacts to the maximum extent possible:

4.4.1a Project proponent would require construction contractors to implement a detailed construction dust abatement program (FEIR, pages 2-8).

4.4.1b The project applicant would require its construction contractors to comply with the following requirements for project construction:

- Use of California on-road diesel fuel for all diesel powered construction equipment;
- Use of construction equipment that is properly tuned and maintained in accordance with manufacturer's specifications;
- Use of best management construction practices to avoid unnecessary emission (*e.g.*, trucks and vehicles in loading and unloading queues would turn their engines off when not in use). (FEIR, pages 2-9.)

4.4.1c Sets minimum standards for the use of heavy-duty off-road vehicles powered by CARB certified off-road engines (FEIR, pages 2-9).

4.4.1d Construction contractors shall be required to use equipment tuned according to manufacturer's specifications (FEIR pages 2-9).

4.4.1e Since the project would have a significant impact during the construction period, alternative fuels like biodiesel shall be used to the extent possible instead of diesel fuel (FEIR, pages 2-10).

This air quality impact is considered significant and unavoidable. While mitigation measures for air quality impacts would substantially lessen the impacts, the measures will not reduce air quality impacts to a less than significant level. The Sacramento County Board of Supervisors found this impact to be significant and unavoidable, and we concur in that finding.

Noise Impacts

With respect to noise impacts, the project would result in noise levels in excess of local standards during project construction (FEIR, pages 2-10). The FEIR identified and the Sacramento County Board of Supervisors imposed the following mitigation measures to reduce or avoid noise impacts to the maximum extent possible:

4.5.1a The project applicant shall require its contractors to comply with the construction hour limitations set forth in Table 4.5-2 for the City of West Sacramento, Sacramento County, and Yolo County except for construction activities (directional drilling) that require continuous operation (FEIR pages 2-10).

4.5.1b To further mitigate potential temporary noise impacts to sensitive receptors within 50 feet of pipeline construction, a set of site-specific noise attenuation measures shall be completed (FEIR pages 2-10).

This noise impact is considered significant and unavoidable. While mitigation measures for construction related noise impacts would substantially lessen the impacts, the measures will not reduce construction related noise impacts to a less than significant level. The Sacramento County Board of Supervisors found this impact to be significant and unavoidable, and we concur in that finding.

8. Findings and Statement of Facts Supporting the Findings

With reference to the above listed significant adverse impacts and as authorized by the Public Resources Code §§ 21000, *et seq.*, and Title 14, California Administrative Code §§ 15091, 15092, 15093, and 15096(h), the Public Utilities Commission makes the following findings for which there is substantial evidence in the record:

Findings

With regard to the significant adverse impacts upon land use, agricultural resources, open space, transportation, circulation, geology, soils, hydrology, water quality, biological resources, cultural resources, visual resources, and risk assessments, the Sacramento County Board of Supervisors found that the project impacts can be reduced to less than significant levels with the implementation of the adopted mitigation measures and the Commission concurs with and adopts that finding. With regard to the significant adverse impacts associated with construction related noise on sensitive receivers and construction related air quality impacts, the Sacramento County Board of Supervisors found that the impacts are significant and unavoidable, albeit, temporary, and the Commission concurs with and adopts that finding. The Commission finds that the proposed alignment for the project will allow the project to meet all of the stated project objectives.

Supporting Facts

1. The project has the potential to lower fuel prices at Sacramento International Airport.
2. The project has the potential to decrease operations related traffic and air pollution associated with jet fuel delivery via trucks between the City of Sacramento and the Sacramento International Airport.
3. The project has the potential to decrease energy consumption and spill related damage associated with jet fuel delivery via trucks between the City of Sacramento and the Sacramento International Airport.
4. The project will include mitigation measures that will reduce potential significant impacts to less than significant levels for all impacts except construction related noise and air quality, which are considered temporary.

9. Statement of Overriding Considerations

Notwithstanding the disclosure of the significant construction related noise impact described above and the construction related air quality impacts, the Sacramento County Board of Supervisors determined, pursuant to § 15093 of the CEQA Guidelines, that the benefits of the project outweigh the adverse impacts and that the project should be approved. The Board of Supervisors found that there are specific social, economic and other reasons for approving this project, notwithstanding the disclosure of the significant adverse impacts, as described and evaluated in the Draft and Final Environmental Impact Reports for the subject project. Pursuant to this finding, the Board of Supervisors prepared and certified a Statement of Overriding Considerations. The Public Utilities Commission concurs with the findings of the Board of Supervisors and finds pursuant to § 15096(h) of the CEQA Guidelines that there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved.

The specific social, economic and other reasons for approving this project, which override the unavoidable construction related noise and air quality impacts and identified in the findings, are as follows:

Supporting Facts

1. The project will eliminate a potential health and safety hazard to public safety.
2. Implementation of the recommended mitigation measures will reduce impacts a less than significant levels.
3. There is no economically feasible alternative that avoids adverse environmental impacts.

10. Request for Exemptions

Applicant's proposed pipeline will extend approximately 10 miles to the new fuel tank storage facility to be constructed and operated by the consortium of airlines. Applicant states that shippers using the pipeline will most likely be only participants in the airline consortium and, possibly, the county airport system, the public agency responsible for Sacramento International Airport. Because its fuel deliveries likely will be made only to airlines and a public agency, applicant asks the Commission to determine whether it is exempt from stock and security regulations in Pub. Util. Code §§ 816-830 by virtue of Section 829 of the Code. Section 829 states:

> This article does 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 corporations or other public agencies 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. (Emphasis added.)

Applicant argues that since its deliveries will probably be made only to airlines (which it describes as public utilities) and a public agency, the exemption provided by Section 829 should apply. It adds that if the Commission approves applicant's request to establish market-based rates for its transportation of jet fuel, market competition will serve to restrain the cost of capital that applicant will be able to incur and still compete effectively.

By the same token, applicant asks that it be exempted from the requirements of Pub. Util. Code §§ 851 and 854 (transfer or encumbrance of utility property) by virtue of Pub. Util. Code § 853(a), which is essentially identical to Section 829.

We decline at this time to apply the exemptions sought by applicant under Sections 829 and 853(a) of the Code. First, because of the Airline Deregulation Act of 1978, 49 U.S.C.A. §§ 1301, *et seq.*, it is not clear that airlines served by the pipeline are "public utilities" within the meaning of these exemptions. Certainly, applicant's airline customers are not regulated by this Commission. (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 1204.) Second, applicant "anticipates" that its shippers will be only airlines and a county airport system, but it provides no assurance that other entities will not be served over time. Just as the Commission monitors the financial transactions of other pipeline companies in California, we believe that the public interest is best served by continued Commission oversight of this proposed new pipeline venture. We do not foreclose reexamination of this question at such time as the pipeline project becomes established and develops a history of operation.

11. Proposed Membership Contributions and Indebtedness

If the Commission does not grant the exemptions requested, applicant asks that the Commission authorize its proposed membership structure, capital contributions and indebtedness.

The application states that the membership composition has been restructured to align the ownership with the actual day-to-day management involvement of the family owners. The members of Wickland Pipelines are now: JAMIT LLC, a California limited liability company, which owns an 85% interest and is controlled by Roy L. Wickland; Daniel E. Hall, an individual, who owns a

12 ½% interest; and Wickland Oil Company, which owns a 2 ½% interest. This structure would take the place of the previous one, in which Wickland Oil Company held a 99% interest, with 1% owned by Wickland Oil Martinez, another Wickland family-owned entity. The application states that under that structure, Roy L. Wickland was a co-manager with two other Wickland family members. The new structure recognizes that Roy L. Wickland has been the family member most actively involved in managing the business and makes him sole manager of the business.

The application notes that Wickland Pipelines is still engaged only in pre-development activities with respect to the proposed pipeline project, and it conducts no other business. On these facts and representations, the restructured membership composition is not adverse to the public interest and should be approved.

Applicant anticipates that its costs to complete development of the proposed pipeline project through construction will total approximately $7,381,000. Costs are set forth in detail in a construction budget and updated balance sheet attached to the application as Exhibits B and C.

Applicant proposes to fund the pipeline project with a combination of additional capital contributions and debt financing. It asks Commission authorization to increase member capital contributions up to $7,381,000. The Commission also is asked to give advance approval to automatic adjustments to the percentage ownership interests to the extent that members provide additional capital contributions that exceed their then-existing percentage ownership interests.

Applicant states that it plans to rely on additional capital contributions to fund development of the project to the minimum extent of $2,013,000, and

temporarily above that amount to the extent that applicant cannot timely arrange debt financing.

Applicant further asks the Commission's authorization to issue promissory notes in an amount not to exceed $5,368,000, and to encumber applicant's property to secure such debt financing. The notes would evidence loans arranged under standard credit agreements with one or more banks or insurance company that qualify as a "Finance Lender" under California Financial Code Section 22009. Applicant states that it will not seek debt financing from any bank having a Moody's Financial Strength Rating of less than "C" (meaning "adequate intrinsic financial strength").

Applicant anticipates first obtaining construction financing and, upon completion of construction, proceeding to obtain permanent financing. Applicant states that is seeking Commission authorization of the proposed debt financing in advance of its negotiation of specific agreements in order to allow applicant to proceed expeditiously, since the County's approval of an easement for the project contemplates start of construction within 120 days of execution of the tank farm site lease. The lease is to be brought to the County Board of Supervisors in approximately four months. (*See* Exhibit A to the application.)

The funding parameters proposed by the applicant, and the competition that applicant will face in offering its fuel transportation services, provide reasonable assurance that the terms and conditions of any financing arranged by the applicant will be commercially reasonable. Exhibits attached to the application indicate that the proposed fuel transportation services will generate sufficient cash flow to fund operations. Under these circumstances, the funding authorizations sought by applicant are reasonable and in the public interest, and should be granted.

12. Exemption from Competitive Bidding

Under the provisions of Commission Resolution F-616 dated October 1, 1986, applicant's proposed issuance of notes is exempt from the Commission's Competitive Bidding Rule because the aggregate principal amount is less than $20 million.

13. Market-Based Rates

Pursuant to Pub. Util. Code §§ 451 and 454, the Commission has authority to establish rates and conditions of service for fuel pipelines under its jurisdiction. Applicant intends to operate its jet fuel pipeline as a common carrier. Applicant seeks Commission authorization to establish market-based rates for its transportation of jet fuel to shippers, through arm's-length negotiations. Applicant states that it will offer the same negotiated rate to all shippers and will publish and maintain on file with the Commission at all times the most current transportation rates. Such rates could be increased or decreased periodically without Commission review or approval.

Applicant states that negotiated market-based rates are appropriate in this case for several reasons. First, applicant states that it will be unable to exercise market power over its shippers to prevent them from using other transportation services. Currently, the airline companies likely to become shippers on the proposed pipeline are served by tank trucks. According to applicant, the possibility of such tank truck service will remain as a competitive pressure on applicant's transportation services.

Second, applicant states that its potential customers are sophisticated airline companies familiar with negotiating fuel transportation services. Finally, according to applicant, it will offer its transportation services on an open, non-discriminatory basis as a common carrier. Applicant will file its rates with

the Commission and will offer its transportation services and charges on the same terms to all potential shippers.

If market-based rates are authorized, applicant requests a waiver of General Order (G.O.) 96-A, Section IX, Contracts Authorized by Tariff Schedules, and Section X, Contracts and Services at Other Than Filed Tariff Schedules, to the extent those provisions require that such contracts shall at all times be subject to modification by the Commission. In addition, because the petroleum fuel transportation industry typically uses the FERC form of tariff schedule, applicant asks that the Commission authorize it to use a FERC-style format rather than the format set forth in Section II of G.O. 96-A.

Finally, applicant asks that the Commission grant it an exemption from the provisions of G.O. 96-A, Sections III, IV, V, VI and VII, to the extent that those provisions are inapplicable to a market-based rate or FERC-style tariff schedule format.

We note that the Commission in the past has authorized market-based rates for independent storage facilities where it is clear that an operator will be unable to exercise market power over its shippers. (*See, Re Wild Goose Storage, Inc.*, D.97-06-091; Resolution O-0028 Pacific Pipeline System Inc).

14. Discussion

The pipeline transportation services that applicant proposes may afford the airline shippers at Sacramento International Airport a competitive alternative to their existing truck transportation option. Moreover, the CEQA review conducted by the County demonstrates that the jet fuel pipeline transportation will provide an environmentally preferable alternative to other forms of jet fuel supply at the airport.

The ownership, financing and tariff arrangements sought by applicant are reasonable arrangements consistent with applicant's proposed undertaking as a public utility pipeline corporation. Expedited authorization by the Commission will allow applicant to proceed with timely development of the proposed pipeline, which we find will serve the public interest. However, the question of whether or not it is reasonable to allow the use of market-based rates for this operation is a more complicated matter.

The Commission has established criteria for determining whether or not market-based rates are appropriate. See, for instance, D.96-04-061, in a complaint involving the Unocal California Pipeline Company. In that decision, the Commission determined that it was appropriate for Unocal to operate under market-based rates after reviewing the criteria the Commission had applied in approving such rates in an earlier decision (D.94-05-022).

The Commission said that the factors supporting market-based rates for Unocal were as follows:

a. Unocal's principal customers are sophisticated market participants
b. Unocal's oil pipelines face potential competition from new pipelines
c. Unocal's customers continue to have reasonable alternatives, such as shipment by truck, vessel or proprietary pipelines
d. Unocal's rates compare favorably to those of other pipelines
e. Even assuming cost-of-service methods, Unocal's rates produce an acceptable rate of return.

Considering these factors in light of Wickland's request, we find the record in this proceeding in some respects superficial, in other respects non-existent. Wickland has argued that its potential customers are sophisticated and that it faces ongoing competition from tank truck companies, but has provided no evidence to support either assertion. Wickland has provided no basis for the Commission to determine how its rates would compare with those of other pipelines or to assess the reasonableness of its likely rate of return.

It is easy to want to believe that airlines, as savvy businesses, are sophisticated purchasers. However, the record does not help us understand their experience and sophistication in negotiating for pipeline services in the Sacramento area, or whether the nature of the market will place them in a strong position to apply their sophistication to advantage in ensuring fair rates. Much of the answer lies in an understanding of whether, after the construction of this pipeline, there will be any meaningful competitive alternative, in the form of another pipeline, tank trucks, or both. We cannot know that at this point, because Wickland has not made the case.

Suppose, for instance, that Wickland could provide transportation at half the cost of a tank-trucker. It would, then, be able to negotiate initial rates at a level that could far exceed its costs while still charging less than truck carriers. Arguably, it could win a contract at rates that might even exceed those of a tank-trucker, if its service would be considered superior in others ways. In either event, Wickland could, then, make exorbitant profits while driving away all competitors.

Its ability to maintain exorbitant profits or drive prices even higher might depend on the ease of re-entry for tank truck carriers. This may depend on many factors, such as whether the tank trucks involved are specialized and whether the

loss of existing fuel transportation drives tank truck operators out of business, or out of the area. If, for instance, conveying this particular commodity required any specialized equipment, would truckers be willing to make such an investment if Wickland could respond by temporarily reducing its rates?

And what about competitive pipelines? Are there any in existence or on the drawing boards? Is there reason to believe that other new lines could be sited easily? What would be the lead time? Once again, is it likely that a competitor would make such a commitment, if Wickland could respond by reducing its prices?

It is possible that none of these hypothetical problems apply to the situation in Sacramento, or that there are other potential concerns we cannot even imagine. What is clear, however, is that we do not have a record before us that provides support for the assertion that Wickland will face competitive forces sufficient to induce reasonable prices. An applicant bears the burden of proving that market-based rates will be reasonable and an assertion of "no market power" must be supported with a credible study of the applicable market.

Finally, since we do not know what rates Wickland will offer, and because Wickland has not provided evidence of rates charged by comparable pipelines, we do not know if Wickland's rates will compare favorably with those of other pipelines or if their rates will reflect a reasonable rate of return. This further undermines our ability to approve Wickland's request for market-based rates now.

For all of these reasons, we deny Wickland's request for market-based rates without prejudice. While it is pursuing completion of its pipeline, Wickland may submit a more comprehensive showing in this docket to support

its request for market-based rates, or prepare a cost-based rate application for the Commission's consideration.

Notice of the application was published in the Commission's Daily Calendar on September 3, 1999. Notice of the amended application appeared in the Daily Calendar on June 4, 2002. No protests have been received. In Resolution ALJ 176-3023 dated September 16, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings would be necessary. Because Wickland will retain the option of improving its showing on market-based rates, it is still too soon to conclude that hearings will not be necessary.

15. Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Comments on Alternate Draft Decision

The alternate draft decision of assigned Commissioner Wood was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on October 31, 2002 by Wickland Pipelines.

Findings of Fact

1. Applicant is a public utility pipeline corporation subject to the jurisdiction of this Commission.

2. Applicant seeks authorizations to operate a common carrier jet fuel pipeline to serve airlines at Sacramento International Airport.

3. The County of Sacramento has acted as the lead agency under CEQA and the Commission has acted as a responsible agency in reviewing the proposed pipeline project.

4. The Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR was prepared pursuant to CEQA and is adequate for this Commission's decision-making purposes.

5. The Commission has considered the Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR in its decision-making process in accordance with the CEQA Guidelines § 15096(f).

6. The project objectives were to potentially lower jet fuel prices at the Sacramento Airport; decrease air pollution; increase safety; decrease energy consumption; decrease oil spill related damage; and decrease traffic congestion.

7. Through the analysis of the alternatives, it was determined that the proposed alignment was the environmentally superior alternative that met the stated project objectives.

8. The Commission finds that the proposed alignment for the project will allow the project to meet all of the stated project objectives.

9. The Final EIR found that no significant impacts will occur with respect to population and housing.

10. The project will result in significant environmental effects with respect to the following issues or resources that can be reduced to less than significant levels and/or avoided with the implementation of mitigation measures: Land Use; Agricultural Resources; Open Space; Aesthetics; Airports; Public Facilities and Services; Transportation and Circulation; Hydrology and Water Quality; Geology and Soils; Cultural Resources; Hazardous materials/Risk Assessment; and Biological Resources.

11. Pursuant to § 15096(g) of the CEQA Guidelines, the Commission should adopt the mitigation measures identified in the Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR, including mitigation measures 4.4.1a-e for air quality impacts and mitigation measures 4.5.1a-b for construction-related noise impacts.

12. Pursuant to § 15091 of the CEQA Guidelines, the project will result in an environmental effect for noise impacts that is considered significant and unavoidable. While mitigation measures for construction related noise impacts would substantially lessen the impacts, the measures will not reduce construction related noise impacts to a less than significant level.

13. Pursuant to § 15091 of the CEQA Guidelines, the project will result in an environmental effect for air quality impacts that is considered significant and unavoidable. While mitigation measures for air quality impacts would substantially lessen the impacts, the measures will not reduce air quality impacts to a less than significant level.

14. Pursuant to §§ 15093 and 15096(h) of the CEQA Guidelines, there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved pursuant to the Statement of Overriding Considerations.

15. Applicant proposes to realign it membership structure, capital contributions and indebtedness.

16. Because of the nature of this pipeline operation, applicant seeks authority to negotiate market-based rates.

17. Wickland has failed to make a sufficient showing to support its request for market-based rates.

Conclusions of Law

1. Applicant's request for exemptions under Pub. Util. Code §§ 829 and 853(a) should be denied.

2. Applicant's request for authorization of its proposed membership structure, capital contributions and indebtedness appear to be commercially reasonable and should be approved.

3. Applicant is exempt from the Commission's Competitive Bidding Rule under Resolution F-616.

4. Applicant's request for authority to employ market-based rates should be denied without prejudice..

5. Applicant's request for waiver of G.O. 96-A, Sections III, IV, V, VI, VII and IX should be granted to the extent that those provisions are inapplicable to a market-based rate or FERC-style tariff schedule format.

6. The Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR was prepared pursuant to CEQA and is adequate for this Commission's decision-making purposes.

7. The Commission has considered the Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR in its decision-making process in accordance with the CEQA Guidelines § 15096(f).

8. Pursuant to § 15096(g) of the CEQA Guidelines, the Commission should adopt the mitigation measures identified in the Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR, including mitigation measures 4.4.1a-e for air quality impacts and mitigation measures 4.5.1a-b for construction-related noise impacts.

9. Pursuant to §§ 15093 and 15096(h) of the CEQA Guidelines, there is substantial evidence in the record to determine that the benefits of the project

outweigh the adverse impacts and that the project should be approved pursuant to the Statement of Overriding Considerations.

O R D E R

IT IS ORDERED that:

1. Wickland Pipelines LLC (applicant) is authorized to restructure its membership and to require additional membership capital contributions in a total amount not to exceed $7,381,000 for funding of the project costs through construction, as more fully set forth in the application.

2. Applicant is authorized to issue unsecured or secured promissory notes, in lieu of corresponding amounts of membership capital contributions, in a total amount not to exceed $5,368,000, as more fully set forth in the application.

3. Applicant is authorized to develop rates and terms of service determined through arm's-length negotiations with its shippers, as more fully set forth in the application.

4. Sections IX and X of General Order (G.O.) 96-A, are waived to the extent those provisions require utility contracts be made expressly subject to modification by the Commission.

5. The final Environmental Impact Report certified by the Sacramento County Board of Supervisors, is approved.

6. The mitigation measures outlined in the Sacramento International Airport Jet Fuel Pipeline and Tank Farm project FEIR and adopted by the Sacramento County Board of Supervisors are hereby made conditions of project approval by this Commission Order.

7. Before commencing service to customers, if the Commission has not approved market-based rates, applicant shall file with this Commission an application for the approval of cost-based rates.

8. Applicant's request for exemption from Pub. Util. Code §§ 818, 851 and 854 is denied.

9. Since all issues raised in this proceeding have been addressed, the proceeding in Application 99-08-050, as amended on May 20, 2002, is closed, although Wickland may reopen this proceeding by making a supplemental showing on issues related to market-based rates.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached ***ALTERNATE DRAFT DECISION OF COMMISSIONER WOOD*** as on all parties of record in this proceeding or their attorneys of record.

Dated October 25, 2002, at San Francisco, California.

/s/ SUSIE TOY
Susie Toy

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, Workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are Needed, e.g., sign language interpreters, those making The arrangements must call the Public Advisor at TTY# 1-866-836-7825 or (415) 703-5282 at least three Working days in advance of the event.