

Decision 11-05-028 May 26, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WesPac Pipelines - Los Angeles LLC for an order granting it public utility status as a common carrier pipeline corporation and authorizing it to file a tariff with market-based rates for its jet fuel pipeline transportation services.

Application 07-04-003
(Filed April 3, 2007)

DECISION DISMISSING APPLICATION

1. Summary

Application 07-04-003, filed by WesPac Pipelines - Los Angeles LLC, on April 3, 2007, is dismissed without prejudice at the request of the applicant.

2. Background and Procedural History

WesPac Pipelines - Los Angeles LLC (WesPac) is a limited liability company organized under the laws of the State of Nevada, and is authorized to do business in California. It is owned by WesPac, a Nevada limited liability company. WesPac affiliates operate jet fuel pipelines in several states, although its sole California affiliate is a proprietary (i.e., non-common carrier) jet fuel pipeline in San Diego.

WesPac filed this application on April 3, 2007, asking the Commission for interim and final authority in connection with its plans to construct a 24-inch jet fuel pipeline to serve airline companies at Los Angeles International Airport (LAX). Specifically, WesPac asked the Commission to issue an initial interim order to establish that, as a common carrier pipeline corporation, it is a public utility, and then to issue a final order authorizing it to file a tariff with the

Commission for market-based rates for its transportation services. WesPac suggests that the procedure followed by the Commission in *Application of Wickland Pipelines LLC for Authorization to Increase Membership Contributions and for Approval of Rates and Conditions of Service*, Application (A.) 99-08-050, is the appropriate model for addressing the similar issues presented in this proceeding.

We granted WesPac's request for a declaration that it is a public utility in Decision (D.) 07-12-047, which was issued July 12, 2007. The second and final aspect of WesPac's application has not been resolved because of the pendency of litigation in the Superior Court for the County of Los Angeles (Case No. BS121134), which is more fully described in the Second Revised Scoping Memo and Ruling of Assigned Commissioner, filed April 28, 2010. That document states that, "this proceeding will not be in order for completion until June 30, 2011," and that the Commission "must await notice from WesPac that the remaining issues are ready for decision."

WesPac has filed a written request that this proceeding be dismissed, with confirmation of our interim order, in light of the certainty that we will not be able to issue a final decision by the projected date because of the litigation. Accordingly, we will dismiss the application without prejudice. WesPac may, at some future date, file a new application requesting resolution of issues that are not *res judicata* under D.07-12-047.

3. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Ryerson in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

4. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Findings of Fact

1. A.07-04-033 was filed on April 3, 2007.
2. D.07-12-047 granting all the relief that could be granted up to that time, was issued July 12, 2007.
3. No further relief can be granted in this matter by reason of pending litigation in the Superior Court of the County of Los Angeles (Case No. BS121134).
4. A.07-04-033 is unopposed.
5. WesPac has requested in writing that the application be dismissed without prejudice because of the delay occasioned by the Los Angeles County Superior Court pending litigation.
6. The Commission cannot reasonably issue a final order in this matter by June 30, 2011.
7. The date when the Commission's record in this matter will be sufficient to decide the remaining issues raised by A.07-04-003 cannot be foreseen at this time.

Conclusions of Law

1. A.07-04-003 should be dismissed without prejudice.

2. WesPac should not be foreclosed from filing a new application for relief concerning issues that are not *res judicata* under D.07-12-047.

O R D E R

IT IS ORDERED that:

1. Application 07-04-003 is dismissed without prejudice; provided, however, that WesPac Pipelines - Los Angeles LLC may file a new application in order to seek relief that has not already been granted by the Commission in this proceeding, at such time as circumstances will permit a final order to be issued.
2. Decision 07-12-047 in this proceeding is hereby confirmed.
3. Application 07-04-003 is closed.

This order is effective today.

Dated May 26, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners