

Decision 08-02-016 February 28, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wickland Pipelines LLC for
Authorization to Increase Membership
Contribution and Debt Limits.

Application 07-06-016
(Filed June 14, 2007)

**OPINION GRANTING AUTHORITY TO ISSUE DEBT
AND EQUITY AND IMPOSING A FINE OF \$5,000**

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**OPINION GRANTING AUTHORITY TO ISSUE DEBT
AND EQUITY AND IMPOSING A FINE OF \$5,000**

1. Summary

This opinion grants Wickland Pipelines LLC (Wickland) authority under Pub. Util. Code §§ 816 *et seq.*, and § 851 to issue \$10 million of debt and equity, including debt secured by utility assets.¹ This represents an increase of \$2.619 million over the debt and equity authorized by Decision (D.) 02-11-023. This opinion also requires Wickland to pay a fine of \$5,000 for violating § 818 and § 851 by issuing secured debt and equity without Commission authorization.

2. Background

Wickland owns the SMF Pipeline that carries jet fuel from the SFPP North Line (which is owned by a non-affiliated entity) in the City of West Sacramento to the Sacramento International Airport. In D.02-11-023, the Commission took the following actions concerning Wickland and the SMF Pipeline:

- Approved the Final Environmental Impact Report (EIR) for the SMF Pipeline as a Responsible Agency under the Californian Environmental Quality Act (CEQA).
- Authorized Wickland to provide pipeline services pursuant to market-based tariff rates.
- Authorized Wickland to issue \$7.381 million of debt and equity to finance the construction of the SMF pipeline, including \$5.368 million of secured debt.

Subsequent to D.02-11-023, the owners of the SFPP North Line obtained approval for a new 20-inch line between Contra Costa County and the City of West Sacramento to replace the existing 14-inch SFPP North Line. The

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

California State Lands Commission (SLC) acted as the Lead Agency under CEQA for the environmental review of the new 20-inch line. The SLC approved the project on November 13, 2003.² An element of the approved project was a connection of the SMF Pipeline to the new 20-inch line in lieu of the previously planned connection to the 14-inch line. This change required Wickland to construct one-half (1/2) mile of additional pipeline that was not considered by D.02-11-023. The additional pipeline cost approximately \$0.795 million.

Wickland's pipeline construction costs and business start-up expenses totaled \$8.775 million,³ which exceeded by \$1.394 million the \$7.381 million of debt and equity authorized by D.02-11-023. Wickland funded the \$1.394 million by issuing secured debt and equity without Commission authorization. As of December 31, 2006, Wickland had \$8.601 million of long-term debt and equity outstanding, including the current portion of long-term debt.⁴

3. Application 07-06-016

Wickland filed Application (A.) 07-06-016 on June 14, 2007. Notice of A.07-06-016 appeared in the Commission's Daily Calendar on June 18, 2007. There were no protests or other responses. Wickland filed additional documents and information on November 9, 2007, pursuant to a ruling issued by the assigned Administrative Law Judge (ALJ). Wickland also filed an amendment to A.07-06-016 on January 4, 2008, pursuant to instructions from the assigned ALJ.

² Wickland states that the SLC filed its Notice of Determination with the California State Clearinghouse on June 20, 2004 (SCH No. 2002022010). (A.07-06-016, p. 3, Fn. 2.)

³ Total pipeline constructions costs were \$7.980 million. (Wickland amendment filed Jan. 4, 2008, p. 2.)

⁴ Wickland amendment filed Jan. 4, 2008, Exhibit A, p. 2.

In A.07-06-016, as amended, Wickland requests authority under §§ 816 *et seq.*, and § 851 to increase its debt and equity by \$2.619 million, for a total of \$10 million, of which \$7 million may be secured debt, unsecured debt, and a line of credit. Part of the requested authority is for debt and equity that Wickland issued previously to finance pipeline construction costs and business start-up expenses in excess of the amount authorized by D.02-11-023. Wickland requests that such authority be granted retroactively. The remainder of the requested authority is for debt and equity that may be issued in the future, as needed, to finance pipeline repairs and upgrades.

Wickland asserts that its situation differs from previous cases where the Commission denied retroactive authority for debt issued without authorization. Unlike the previous cases, Wickland obtained authorization for its financing, but inadvertently exceeded the authorized amount. Wickland believes its situation presents “compelling circumstances” for granting retroactive approval.

Wickland represents that the debt and equity requested by A.07-06-016 will not increase rates for its customers because shipments on the SMF Pipeline are subject to market-based rates. Wickland also states that it has adequate operating revenue to pay the additional interest expense for the requested debt, as demonstrated by the financial statements appended to A.07-06-016.

4. Discussion

A.07-06-016 is subject to § 816 *et seq.* and § 851 which state, in relevant part, as follows:

§ 816: The power of public utilities to issue [debt and equity] and to create liens on their property...is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised...under such rules as the commission prescribes.

§ 817: A public utility may issue [long-term debt and equity] for any of the following purposes and no others:

- (a) Acquisition of property.
- (b) Construction, completion, extension, or improvement of its facilities.
- (c) Improvement or maintenance of its service.
- (d) Discharge or lawful refunding of its obligations...
- (g) Retirement of or in exchange for...outstanding [debt or equity]..., with or without the payment of cash.

§ 818: No public utility may issue [debt or equity]...unless...it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the...proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that...such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

§ 823(a): No public utility shall, without the consent of the commission, apply any...of the [proceeds from debt and equity] to any purpose not specified in the commission's order, or to any purpose specified in the order in excess of the amount authorized for such purpose.

§ 825: All [debt and equity] of a public utility, issued without an order of the commission...is void. No failure in any other respect to comply with...the order of authorization of the commission shall render void any [debt or equity], except as to a corporation or person taking it otherwise than in good faith and for value and without actual notice.

§ 851: No [utility]...shall...encumber...any part its...property necessary or useful in the performance of its duties to the public, or any franchise or permit or right thereunder...without first having secured from the commission an order authorizing it to do so. Every such...encumbrance...made other than in accordance with the order authorizing it is void.

The Commission has broad discretion in deciding whether a utility should be authorized to issue debt and equity pursuant to § 816 *et seq.* and § 851. The primary standard used by the Commission is whether a utility has demonstrated a reasonable need to issue debt and equity for utility-related purposes. When necessary, the Commission may attach conditions to the issuance of debt and equity in order to protect and promote the public interest.

There are three issues associated with A.07-06-016. These are:

1. Whether Wickland should be granted prospective authority to issue an additional \$2.619 million of debt and equity, for a total of \$10 million of debt and equity, including a maximum of \$7 million of debt consisting of secured promissory notes, unsecured promissory notes, and a line of credit.
2. Whether Wickland should be granted retroactive authority for debt and equity previously issued in excess of the amounts authorized by D.02-11-023.
3. Whether Wickland should be fined pursuant to § 2107 for violating § 818 and § 851 by issuing secured debt and equity without authorization.

We address each of these issues below:

4.1. Prospective Authority to Issue Debt and Equity

We first consider Wickland's request for prospective authority under § 816 *et seq.*, to issue an additional \$2.619 million of debt and equity. We find that Wickland has demonstrated a reasonable need to issue the requested debt and equity for the following purposes: (1) provide permanent financing for business start-up expenses and pipeline construction costs in excess of the \$7.381 million of debt and equity authorized by D.02-11-023; and (2) finance future repairs and

upgrades to the SMF Pipeline.⁵ These purposes are authorized by § 817 and, as required by § 818, are not reasonably chargeable to current operating expense or income.⁶ Wickland also has the financial capacity to pay for the cost of the requested debt and equity capital.⁷ Therefore, we will grant Wickland authority under § 816 *et seq.*, to issue \$2.619 million of additional debt and equity.

We next consider Wickland's request for authority under § 851 to issue additional long-term secured notes. The use of secured debt by public utilities is routine, because such debt is often cheaper than non-secured debt. Therefore, we find Wickland's request to be reasonable, and we will grant it. However, if a default occurs and title to any property, franchise, permit, or right that is necessary or useful in the performance of Wickland's duties to the public is transferred pursuant to the terms of the secured debt, the thing transferred shall not be removed from utility service without prior authorization from the Commission.

The debt and equity authorized by today's opinion is subject to the following conditions. First, the proceeds shall only be used for the two purposes identified previously. Second, the authorized debt and equity consists of a line of credit, secured and unsecured long-term notes, and member contributions.

⁵ As used by today's opinion, the term "repairs" does not encompass routine maintenance expenditures charged to current operating expense or income.

⁶ The use of debt and equity to fund the construction of utility infrastructure is authorized by § 817(b). The use of debt and equity to fund utility start-up expenses and capitalized repairs and upgrades of utility infrastructure is authorized by § 817(c).

⁷ The financial statements appended to A.07-06-016 show that (i) Wickland previously issued \$1.394 million of debt and equity authorized by today's opinion, and (ii) that Wickland has been able to pay the interest expense on all of its outstanding debt and earn a reasonable return on all of its outstanding equity.

Third, the total outstanding debt and equity issued pursuant to this opinion and D.02-11-023 shall not exceed \$10 million. No more than \$7 million of this amount may be debt. Finally, consistent with D.02-11-023, the percentage of long-term debt in Wickland's capital structure shall not exceed 72.7%.⁸ The authority granted by this opinion shall remain in effect until it is modified or rescinded by the Commission or another body of competent jurisdiction.

Consistent with § 824, Wickland shall maintain records to (1) identify the specific debt and equity issued pursuant to today's opinion, and (2) demonstrate that the proceeds from such debt and equity have been used only for the purposes authorized by today's opinion.

4.2. Retroactive Authority to Issue Debt and Equity

Wickland was authorized by D.02-11-023 to issue \$7.381 million of debt and equity to finance the construction of the SMF Pipeline. Actual construction costs and business start-up expenses were \$8.775 million, which Wickland funded by issuing more secured debt and equity than authorized by D.02-11-023.

In A.07-06-016, Wickland requests retroactive authority under § 816 *et seq.*, and § 851 for the debt and equity that Wickland issued in excess of the amount authorized by D.02-11-023. We decline to grant the requested authority. The purpose of these laws is to enable the Commission to review a proposed transaction, before it takes place, so that the Commission may take such action as necessary to protect the public interest. Granting retroactive authority would thwart the purpose of these laws.

⁸ A.07-06-016, p. 3.

We are not persuaded by Wickland that “compelling circumstances” weigh in favor of retroactive approval. There is no evidence that Wickland was prevented by circumstances from seeking Commission authorization prior to issuing additional debt and equity. Regardless, Wickland was required by § 818 and § 851 to obtain Commission authorization prior to issuing secured debt and equity. These laws do not allow for retroactive authorization after the debt and equity has been issued.

4.3. Fine for Violating § 818 and § 851

Utilities are prohibited by § 818 from issuing long-term debt or equity without prior authorization from the Commission. Similarly, utilities are prohibited by § 851 from issuing debt secured by utility property without prior authorization. Wickland admits that it issued secured debt and equity without Commission authorization and that its actions violated § 818 and § 851.

The Commission is authorized by § 2107 to levy a fine of \$500 to \$20,000 for each violation of the Public Utilities Code:

§ 2107: 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.

Wickland argues that it should not be fined. If a fine is levied, Wickland submits that its violations of § 818 and § 851 were so intertwined that they should be treated as one violation for the purpose of setting the fine.

We conclude that Wickland should be fined for violating § 818 and § 851. This is because any violation of the Public Utilities Code, regardless of the

circumstances, is a serious offense that should be subject to fines. Further, as the Commission has long recognized, the primary purpose of fines is to prevent future violations by the wrongdoer and to deter others from engaging in similar violations.⁹ Consequently, to deter future violations by Wickland and others, it is necessary to fine Wickland for the violations found by today's opinion.

To determine the amount of the fine, we will rely on the following criteria contained in D.98-12-075:¹⁰

Physical and Economic Harm: The most severe violations are those that cause physical harm to people or property. The severity of a violation increases with (i) the level of costs imposed on the victims of the violation, and (ii) the unlawful benefits gained by the public utility. The greater of these two amounts may be used in setting the fine.

Harm to the Regulatory Process: A high level of severity is accorded to violations of statutory or Commission directives.

The Number and Scope of Violations: A single violation is less severe than multiple offenses. A violation that affects many consumers is a more severe than one that is limited in scope.

Efforts to Prevent a Violation: Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing a penalty.

The Degree of Culpability: Deliberate, as opposed to inadvertent wrongdoing, is an aggravating factor. The extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of a penalty.

⁹ D.01-08-058, *mimeo.*, p. 80; and D.04-09-062, *mimeo.*, p. 62.

¹⁰ D.98-12-075, 84 CPUC 2d 155, 188-190.

The Utility's Actions to Disclose and Rectify a Violation:

Utilities are expected to promptly bring a violation to the Commission's attention. Steps taken by a utility to correct violations may be considered in assessing a penalty.

Need for Deterrence and Limits on Excessive Fines: Fines should be set at a level that deters future violations. Effective deterrence requires that the size of a fine reflect the financial resources of the utility. The size of fines will be adjusted to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The Degree of Wrongdoing: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

Consistency with Precedent: A decision that levies a fine should address previous cases that involve reasonably comparable circumstances and explain any significant difference in outcome.

Several of the above criteria suggest that only a modest fine is warranted. In particular, there is no evidence that Wickland's violation of § 818 and § 851 was intentional. Nor is there evidence of any physical or economic harm. In addition, the scope of the violation was relatively small, as was the harm to the regulatory process. Moreover, one of the purposes of Wickland's filing A.07-06-016 was to disclose and rectify the violation.

On the other hand, some of the above criteria suggest that a larger fine might be warranted. Most prominently, any violation of the Public Utilities Code is a serious matter. Additionally, the purpose of fines is to deter future violations. The goal of deterrence is more likely to be achieved by a larger fine, all else being equal. The financial statements appended to A.07-06-016 show that Wickland is a profitable company, having earned a net income of \$0.291 million in 2006. This indicates that a larger fine may be needed to deter future violations.

There are two decisions that involve comparable factual circumstances. In D.07-05-054, the Commission ordered Foresthill Telephone Company and its parent company to pay a fine of \$15,000 for violating § 818, § 851, and § 854 by obtaining a loan and entering into a merger without Commission approval. In D.06-05-004, the Commission ordered Crimson California Pipeline, L.P. to pay a fine of \$5,000 for violating § 818 and § 830 by obtaining a loan, in conjunction with an unregulated affiliate, without Commission approval.

Based on the facts of this case and the criteria established by D.98-12-075, we conclude that Wickland should be fined \$5,000 for violating § 818 and § 851. This fine is meant to deter future violations by Wickland and others. We emphasize that the fine we levy today is based on the facts in this proceeding. We may impose larger fines in other proceedings if the facts so warrant.

Within 20 days from the effective date of this opinion, Wickland shall remit to the Commission's Fiscal Office a check for \$5,000 made payable to the State of California's General Fund. The authority to issue debt and equity granted by this opinion shall not become effective until the fine has been paid.

4.4. Waiver of the Competitive Bidding Rule

Pursuant to Resolution No. F-616, the debt and equity that Wickland is authorized to issue by this opinion is exempt from the Commission's Competitive Bidding Rule because the principal amount is less than \$20 million.

4.5. Annual Reporting for General Order (GO) 24-B

GO 24-B requires utilities to submit a monthly report that contains, among other things, the following information: (1) the amount of debt and equity issued by the utility during the previous month; (2) the total amount of debt and equity outstanding at the end of the prior month; (3) the purposes for which the utility expended the proceeds realized from issuance of debt and equity during the

prior month; and (4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt and equity.

GO 24-B applies to the debt and equity authorized by today's opinion. Although GO 24-B requires monthly reporting, we routinely permit utilities to report quarterly in order to reduce the administrative cost of complying with the General Order.¹¹ There does not appear to be a need at this time for Wickland to report monthly or quarterly because (1) Wickland is a financially healthy utility with market-based rates, and (2) the amount of debt and equity that Wickland is authorized to issue is not excessive relative to its income, cash flow, and other financial metrics. Therefore, to reduce administrative costs, we will authorize Wickland to report annually the information required by GO 24-B.

Wickland shall report on a calendar year basis. The annual report for one calendar year shall be submitted no later than March 31 of the following calendar year.¹² Consistent with § 824, Wickland's reports shall demonstrate that the proceeds from any debt and equity issued pursuant to today's opinion have been used only for the purposes authorized by this opinion.

4.6. Fee for Authority to Issue Debt and Equity

Whenever the Commission authorizes a utility to issue debt and equity, the Commission is required to collect a fee in accordance with § 1904(b) and § 1904.1. These code sections state, in relevant part, as follows:

§ 1904(b): For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for

¹¹ See, e.g., D.07-09-007, D.07-08-012, D.07-06-039, D.03-12-052, and D.00-12-064.

¹² Wickland shall report monthly or quarterly if directed to do so by Commission staff.

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.

§ 1904.1: The commission shall also charge and collect a fee for a certificate authorizing an issue of stock, which fee shall be computed at the rates set forth in subdivision (b) of Section 1904 and determined by the commission upon the basis of the proposed maximum proceeds. No fee shall 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.

Today’s opinion authorizes Wickland to issue an additional \$2.619 million of debt and equity. The following table shows the calculation of the fee that Wickland is required to pay pursuant to § 1904(b) and § 1904.1:

Computation of Fee	
Fee on First \$1 Million	\$2,000
Fee on \$1 Million - \$2.619 Million	\$1,619
Total Fee	\$3,619

Wickland shall remit the required fee of \$3,619 to the Commission’s Fiscal Office no later than 20 days from the effective date of today’s opinion. The authority granted by today’s opinion shall not become effective until Wickland has paid the fee.

4.7. Matters Not Addressed

Today's opinion does not address the following matters: (1) the reasonableness of any expenditures made by Wickland with the proceeds of the debt and equity authorized by this opinion;¹³ (2) the ratemaking treatment or rate recovery of the costs associated with Wickland's debt and equity; and (3) the reasonableness of the costs, terms, or conditions of any debt and equity issued by Wickland. These matters will be addressed in other proceedings, as appropriate.

5. California Environmental Quality Act

The Commission is required by CEQA to consider the environmental consequences of a project that is subject to the Commission's discretionary approval.¹⁴ In doing so, the Commission must act as either a Lead Agency or Responsible Agency. The Lead Agency is the one with the most responsibility for supervising or approving the project as a whole.¹⁵

Today's opinion authorizes Wickland to issue debt and equity for two purposes, each with different implications under CEQA. We address each purpose below.

5.1. Business Start-Up Expenses and Pipeline Construction Costs

The first purpose is to finance business start-up expenses and pipeline construction costs in excess of the debt and equity authorized by D.02-11-023.

¹³ Today's opinion authorizes the specific purposes for which Wickland may issue the debt and equity authorized herein, but does not address the reasonableness of the actual expenditures for these purposes.

¹⁴ Calif. Pub. Res. Code § 21000, *et seq.*

¹⁵ CEQA Guidelines (Title 14, Division 6, Chapter 3 of the California Code of Regulations), Sec. 15051(b).

The start-up expenses were reviewed under CEQA, to the extent necessary, in D.99-12-038 and D.02-11-023 wherein the Commission recognized Wickland's status as a public utility and authorized Wickland to provide pipeline services.

The pipeline construction costs were incurred to connect the SMF Pipeline to the new 20-inch SFPP North Line. This activity, which is now complete, was one element of the larger 20-inch SFPP North Line Project. The SLC was the Lead Agency for this Project and the Commission a Responsible Agency.

CEQA requires the Commission to review and consider the Lead Agency's environmental documents and findings before acting upon or approving a project.¹⁶ To comply with this requirement, the record in this proceeding includes the following CEQA documents prepared by the SLC:

- The Final EIR certified by the SLC (SLC EIR No. 711, State Clearinghouse No. 2002022010).
- The SLC's order issued on November 13, 2003, that certified the Final EIR and contained the SLC's adopted findings, mitigation measures, mitigation monitoring program, and Statement of Overriding Considerations.

The SLC's environmental documents examined two alternatives in detail. One was the 20-inch SFPP North Line Project (Project). The second was the No-Project Alternative. The SLC determined that the Project would provide better protection to the public and the environment compared to the No-Project Alternative. However, the SLC also found that the Project could have potentially significant adverse impacts. The SLC concluded that most of these impacts could be reduced to a level of less than significant by specified mitigation measures,

¹⁶ CEQA Guidelines Sec.. 15050(b) and 15096.

which the SLC adopted. The SLC also determined that the following potentially significant impacts identified in the EIR could not be reduced, with all feasible mitigation, to a level of insignificance:

- Equipment exhaust during construction could substantially contribute to existing violations of ozone standards.
- Construction, operations, and accidents could affect sensitive biological and water resources in the Cordelia Marsh and Slough.
- Active fault crossings could result in pipeline rupture.
- Pipeline ruptures from accidents and other causes could:
(i) contaminate surface water, drinking water, land, property, fish habitat, and fishing gear; (ii) degrade or alter habitat for special status wildlife and plants; and (iii) restrict fishing access.
- Pipeline accidents could cause death and injury by fire or explosion.

The SLC's Statement of Overriding Considerations (SOC) found that the Project would provide the following benefits to California:

- Increased pipeline capacity for the transport of refined petroleum products to the Sacramento International Airport, central California, and northern Nevada to meet projected demand.
- Reduced need for tanker trucks to transport petroleum products. The use of such trucks would have potentially greater impacts to safety, biological resources, water quality, fisheries, air quality, use of fuel, and transportation than the Project.
- The replacement of a 36-year old 14-inch pipeline that runs through environmentally sensitive areas and population centers with a modern facility designed to, and governed by, contemporary engineering and safety standards.
- Additional jobs that will benefit the local economy.
- Additional property tax revenues of around \$168,000 annually.

The SLC adopted all feasible mitigation measures to lessen the significant unavoidable impacts of the Project to the extent possible. Additionally, the SLC found that there are no feasible alternatives to the Project, including the No-Project Alternative. The SLC concluded in its SOC that the benefits of the Project outweigh the significant unavoidable impacts that could remain after mitigation is applied and held that such impacts are acceptable.

We have reviewed and considered the SLC's environmental documents and find them adequate for our decision-making purposes. We conclude that the SLC reasonably found that the Project benefits outweigh the significant unavoidable impacts. Therefore, in accordance with CEQA Guidelines Sec. 15093 and 15096, we will adopt the SLC's environmental documents and the findings, mitigation measures, mitigation monitoring program, and SOC contained therein for purposes of our review and approval of A.07-06-016. The SLC is responsible for monitoring compliance with its adopted mitigation measures. Thus, there is no need for us to adopt a separate program for monitoring and enforcing compliance with the mitigation measures as would otherwise be required by CEQA Guidelines Sec. 15091(d).

5.2. Future Pipeline Repairs and Upgrades

The second purpose of the debt and equity authorized by today's opinion is to finance future pipeline repairs and upgrades. Wickland provided few details regarding the timing and extent of these activities. The CEQA guidelines recognize that the timing of an environmental review involves a balancing of competing factors, and that such review should occur as early as feasible to

enable environmental considerations to influence project design, yet late enough to provide meaningful information for environmental assessment.¹⁷

We conclude that it is premature to conduct a CEQA review of future pipeline repairs and upgrades that may be financed with the debt and equity authorized by this opinion because there is insufficient data to conduct a meaningful environmental review at this time. Instead, we will order Wickland to comply with all applicable environmental laws when planning and implementing future pipeline repairs or upgrades that are financed, in whole or in part, with the debt and equity authorized by this opinion. If no other agency is responsible for CEQA review of future pipeline repairs and upgrades (that are not exempt from CEQA),¹⁸ then Wickland shall file an application at the Commission to obtain CEQA review.

6. Category and Need for Hearings

In Resolution ALJ 176-3194, dated June 21, 2007, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that an evidentiary hearing is not necessary.

Wickland was notified by an ALJ Ruling issued on October 26, 2007, that it might be fined \$5,000 for violating § 818 and § 851 and that it could request an evidentiary hearing. Wickland declined to do so.

Based on the record of this proceeding, we affirm that this is a ratesetting proceeding and that a hearing is not necessary.

¹⁷ CEQA Guidelines Sec. 15004(b).

¹⁸ Certain types of pipeline repairs and upgrades are exempt from CEQA. See, e.g., CEQA Guideline Sec. 15284 and 15302(c).

7. Comments on Proposed Decision

The proposed decision of the ALJ 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. On February 1, 2008, Wickland filed a notice stating that it had no comments on the proposed decision.

8. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

Findings of Fact

1. Notice of A.07-06-016 appeared in the Daily Calendar on June 18, 2007. There were no protests or other responses.
2. Wickland was notified by an ALJ ruling issued on October 26, 2007, that it might be fined \$5,000 for violating § 818 and § 851 and that it could request an evidentiary hearing on the possible fine. Wickland did not request an evidentiary hearing.
3. Wickland has a reasonable need to issue \$2.619 million of additional debt and equity for the purposes set forth in A.07-06-016.
4. The money, property, and/or labor to be procured by Wickland with the proceeds of the debt and equity authorized by this opinion are reasonably required for the purposes specified in this opinion, and such purposes are not reasonably chargeable to operating expenses or income.
5. Wickland issued secured debt and equity without Commission authorization to finance the construction of the SMF Pipeline and business start-up expenses. Most of this debt and equity remains outstanding.

6. GO 24-B requires utilities to submit a monthly report that contains specified information regarding their debt and equity. However, the Commission routinely authorizes utilities to report quarterly the information required by GO 24-B in order to reduce the utilities' compliance costs.

7. There is no need at this time to require Wickland to report monthly or quarterly the information required by GO 24-B because Wickland is a financially healthy utility with market-based rates.

8. The connection of the SMF Pipeline to the 20-inch SFPP North Line is one element of a larger project that was reviewed in an EIR that was certified by the SLC pursuant to CEQA.

9. For each potentially significant impact of the Project, the SLC adopted feasible mitigation measures to reduce those impacts to less-than-significant levels. For those impacts that the SLC was unable to reduce to less-than-significant levels, the SLC (i) adopted a Statement of Overriding Considerations wherein the SLC found that the Project benefits outweigh the significant unavoidable impacts that could remain after mitigation is applied, and (ii) held that such impacts are acceptable in light of the Project benefits.

10. The timing and extent of future pipeline repairs and upgrades that may be financed with the debt and equity authorized by today's opinion is uncertain.

Conclusions of Law

1. This is a ratesetting proceeding. There is no need for evidentiary hearings.
2. A.07-06-016 is subject to Commission approval under § 816 *et seq.*, and § 851. The Commission has broad discretion under the Public Utilities Code to take such actions with respect to A.07-06-016 as the Commission deems necessary to protect and promote the public interest.

3. It is in the public interest to grant Wickland prospective authority under § 816 *et seq.*, to issue \$2.619 million of additional debt and equity. The authorized debt and equity should be used only for purposes enumerated in the following order and subject to the conditions set forth in the following order.

4. Wickland should be granted prospective authority under § 851 to issue long-term debt secured by assets that are used and useful in providing public utility service. If a default occurs and title to any of Wickland assets is transferred pursuant to secured debt, the assets transferred should remain in public utility service until the Commission authorizes otherwise.

5. Wickland's request for retroactive authority to issue debt and equity should be denied for the reasons set forth in the body of this opinion.

6. Under the provisions of Resolution No. F-616, the debt and equity authorized by this opinion is exempt from the Commission's Competitive Bidding Rule because the principal amount does not exceed \$20 million.

7. Wickland should maintain records pursuant to § 824 and GO 24-B that (i) identify the specific debt and equity issued pursuant to this opinion, and (ii) demonstrate that the proceeds from such debt and equity have been used only for the purposes authorized by this opinion.

8. Wickland should be authorized to report on a calendar-year basis the data required by GO 24-B regarding debt and equity issued pursuant to this opinion and D.02-11-023, except that Wickland should report this data monthly or quarterly if directed to do so by Commission staff. These reports should show that the proceeds from any debt and equity issued by Wickland pursuant to this opinion have only been used for the purposes authorized by this opinion.

9. Wickland violated § 818 and § 851 by issuing secured debt and equity without prior authorization from the Commission.

10. For the reasons set forth in the body of this opinion, Wickland should be fined \$5,000 pursuant to § 2107 for violating § 818 and § 851. The authority granted by this opinion should not become effective until the fine has been paid.

11. Wickland is required by § 1904(b) and § 1904.1 to pay a fee of \$3,619 for the additional debt and equity authorized by this opinion. The authority granted by this opinion should not become effective until the fee has been paid.

12. Wickland's business start-up activities that are financed with debt and equity issued pursuant to today's opinion were reviewed under CEQA, to the extent necessary, in D.99-11-038 and D.02-11-023. No further environmental review of the start-up expenses is necessary.

13. The SLC is the Lead Agency under CEQA and the Commission is a Responsible Agency with respect to the connection of the SMF Pipeline to the 20-inch SFPP North Line.

14. The SLC's Final EIR for the 20-inch SFPP North Line Project (Project) was prepared pursuant to CEQA and is adequate for decision-making purposes with respect to A.07-06-016. Today's opinion reviews and considers the SLC's Final EIR in accordance with CEQA Guidelines Sec. 15096.

15. As set forth in the SLC's SOC, there is substantial evidence that the benefits of the Project outweigh the adverse impacts of the Project and, therefore, the Project should be approved.

16. The Final EIR certified by the SLC and SLC's associated findings, mitigation measures, mitigation monitoring program, and SOC should be adopted and incorporated into this opinion by reference.

17. There is insufficient information at this time to conduct a meaningful CEQA review of future repairs and upgrades of the SMF Pipeline.

18. The following order should be effective immediately so that the authority granted therein may become effective as soon as possible.

O R D E R

IT IS ORDERED that:

1. Wickland Pipelines LLC (Wickland) is granted authority under Pub. Util. Code § 816 *et seq.*, to issue an additional \$2.619 million of debt and equity. The authority granted by this order is subject to the following conditions:

- i. The debt and equity authorized by this order consists of a line of credit, secured and unsecured long-term notes, and member contributions.
- ii. Wickland may issue a maximum of \$10 million of debt and equity pursuant to this order and Decision (D.) 02-11-023, of which \$7 million may be debt.
- iii. The total outstanding debt in Wickland's capital structure shall not exceed 72.7%.
- iv. The additional debt and equity authorized by this order may only be used to finance (a) previously incurred business start-up expenses and construction costs for the SMF Pipeline in excess of the debt and equity authorized by D.02-11-023, and (b) future capitalized repairs and upgrades to the SMF Pipeline.
- v. Wickland shall comply with all the mitigation measures adopted by the California State Land Commission's (SLC) in conjunction with the SLC's certification of its Final Environmental Impact Report (EIR) No. 711, State Clearing House (SCH) No. 2002022010.
- vi. Wickland shall comply with all applicable environmental laws and regulations when planning and implementing any future repairs or upgrades to the SMF Pipeline that are financed, in whole or in part, with proceeds from the debt and equity authorized by this order. If no other agency is responsible for environmental review under the California Environmental

Quality Act (CEQA) of future pipeline repairs and upgrades (that are not exempt from CEQA), then Wickland shall file an application at the Commission to obtain CEQA review.

2. Wickland is granted authority under Pub. Util. Code § 851 to issue long-term debt secured by assets that are used and useful in the provision of public utility service. Such debt is subject to the conditions in the previous Ordering Paragraph, as well as Paragraphs 6 and 7 below. If a default occurs and title, control, or ownership of any Wickland property, franchise, permit, or right that is necessary or useful in the performance of Wickland's duties to the public is transferred pursuant to the terms of the secured debt, the thing transferred shall continue to be used to provide public utility service until the Commission authorizes otherwise.

3. Wickland's request for retroactive authority to issue debt and equity is denied.

4. Wickland shall maintain records to (i) identify the specific debt and equity issued pursuant to this order, and (ii) demonstrate that the proceeds from such debt and equity have been used only for the purposes authorized by this order.

5. Wickland may report annually, on a calendar-year basis, the data required by General Order 24-B for the debt and equity issued pursuant to this order and D.02-11-023, except that Wickland shall report monthly or quarterly if directed to do so by Commission staff. The annual reports shall be submitted no later than three calendar months after the close of the calendar year. Wickland's reports submitted pursuant to this Ordering Paragraph shall demonstrate that the proceeds from any debt and equity issued pursuant to this order have been used only for the purposes authorized by this order.

6. Wickland shall pay a fine of \$5,000 for violating Pub. Util. Code § 818 and § 851. Within 20 days from the effective date of this order, Wickland shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, a check for \$5,000 made payable to the State of California's General Fund. The decision number of this order shall be written on the face of the check. The authority to issue debt and equity granted by this order shall not become effective until the fine has been paid.

7. Wickland shall pay the fee of \$3,619 required by Pub. Util. Code § 1904(b) and § 1904.1 to the Commission's Fiscal Office no later than 20 days from the effective date of this order. The decision number of this order shall be written on the face of the check. The authority to issue debt and equity granted by this order shall not become effective until the fee has been paid.

8. This order certifies that the Commission has reviewed and considered the information contained in the SLC's Final EIR.

9. The SLC's certified Final EIR No. 711 (SCH No. 2002022010) and the associated findings, mitigation measures, mitigation monitoring program, and Statement of Overriding Considerations that were adopted by the SLC are adopted for purposes of this order and incorporated by reference into this order.

10. Application 07-06-016 is granted and denied to the extent set forth in the previous Ordering Paragraphs.

11. Application 07-06-016 is closed.

This order is effective today.

Dated February 28, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.

