

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of Crimson Pipeline, LLC, Pursuant to Section 854 of the Public Utilities Code, for Authority to Acquire Control of San Pablo Bay Pipeline Company, LLC (PLC-29).

A.19-04-008
(Filing Date: April 12, 2019)

**PROTEST OF THE
CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION**

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The California Independent Petroleum Association (CIPA) submits this protest pursuant to Rules 1.4(2)(i) and 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission. Under Rule 1.4(2)(i) CIPA should be granted party status in this matter based upon the filing of this protest.

I. INTRODUCTION AND SUMMARY OF CIPA's POSITIONS

CIPA is a non-profit, non-partisan trade association representing approximately 500 independent crude oil and natural gas producers, royalty owners, and service and supply companies operating in California.¹ CIPA members represent approximately 70% of California's total oil production and 90% of California's natural gas production. Accordingly, CIPA has a significant interest in assuring fair and reasonable rates and competitive conditions of operation for California's petroleum pipelines.

¹ <https://www.cipa.org/i4a/pages/index.cfm?pageid=1>.

CIPA does not oppose the acquisition of the San Pablo Bay Pipeline Company (SPBPC) by Crimson Pipeline, LLC (Crimson). However, CIPA seeks regulatory conditions to establish critical rate and service obligations for Crimson and the newly consolidated pipeline. The Commission needs to exercise its jurisdiction to establish and extend current rate and operational conditions relative to the SPBPC line. Such conditions for approval are necessary to assure shippers that the current market conditions created by a competitive market are not lost in the consolidation of pipelines by Crimson's acquisition.

The following approval conditions at a minimum are required to preserve existing market conditions and preemptively to prevent the exercise of market power regarding the pipeline system Crimson seeks to control:

1. Existing rates, recently established by the Commission for Crimson and SPBPC, shall remain in effect for a period of not less than five years from the date of approval of the Crimson acquisition.
2. Preserve existing service conditions for shippers and producers who rely on the existing pipelines. Such service conditions include, but are not limited to: access, shipping paths, injection and withdrawal points, and mixture conditions for product. The Commission must not allow modification of service conditions of the pipelines absent the consent of all existing shippers and producers, in any manner that would adversely affect the capabilities to ship product or adversely affect the costs for such shippers or producers.
3. In the event Crimson elects to abandon all or any part of the existing south to north pipelines it holds or acquires under this application, one of two alternative requirements adopted by the Commission to preserve competitive market conditions shall apply:
 - a. Crimson shall be required to alienate to a viable third party committed to operating the pipeline; or
 - b. Crimson shall be required to mothball the pipeline system in a manner that will foster the return to operation of the line;

specifically require Crimson to fill the abandoned line with line-fill and perform sustaining maintenance.

II. PROTEST CONDITIONS FOR APPROVAL OF THE CRIMSON APPLICATION

A. The Commission's Obligations to Sustain Competitive Market Conditions

By any measure, Crimson will have substantial market power over a critical pipeline for California petroleum resources. Crimson's acquisition application itself provides the fundamental facts revealing a material risk of market power. The acquisition seeks to capture the only other significant pipeline that transports product from the San Joaquin oil fields to the Bay Area refineries.² The consolidation of the KLM and SPBPC lines will consolidate the pipeline transportation for an already thin and limited two party "market" for competition.

The Commission has an affirmative duty to pre-empt the exercise of market power, by assuring just and reasonable rates and precluding the imposition of operating conditions adverse to open, competitive markets.³

² "SPBPC owns and operates a 265-mile-long oil pipeline transporting heated crude oil from San Joaquin Valley oil fields to Bay Area refineries, providing public utility service subject to the Commission's jurisdiction. The pipeline currently transports San Joaquin Valley crude oil for four companies (or their affiliates): Shell (of which SPBPC itself is an affiliate), Tesoro, Valero, and Chevron. Crimson Application at p. 1. "Crimson California owns and operates various common carrier crude oil pipeline systems acquired pursuant to Commission authorization that are located in southern California." Crimson Application at p. 5. "Crimson California also owns and operates the KLM Pipeline System, a long-haul pipeline system consisting of approximately 295 miles of pipe running from points in the San Joaquin Valley production areas to San Francisco Bay Area refinery connections." Crimson Application at p. 6.

³ Cal. Pub. Util. Code §451; *City of Los Angeles v. Pub. Utilities Com.*, 15 Cal. 3d 680, 694, 542 P.2d 1371, 1380 (1975).

The conditions set forth above will safeguard those that rely upon the two-pipeline system after consolidation under the Crimson application. Consolidation to a single primary supplier presents the Commission with a need to establish conditions to retain the just and reasonable market conditions for these enterprises.

B. Who Are the Real Parties in Interest to the SPBPC Line?

Real parties in interest are those that are actually bearing the costs of a Crimson action through either rates or conditions of service. Crimson appropriately identifies the four major refinery shippers who move product along the SPBPC line. However, these refiners pass along shipping charges to producers, and those producers are more often than not CIPA members. Accordingly, CIPA and its producer members are real parties in interest to this market consolidation proceeding as well as the four refinery owners.

C. Crimson’s Aspirational Statements Presented in the Application are No Substitute for Commission Regulation

Crimson appropriately acknowledges that it is subject to Commission jurisdiction as providing public utility service.⁴ The application makes multiple aspirational statements regarding the “commitments” of Crimson; for example:

- *“Upon authorization of the requested acquisition of control of SPBPC, Crimson Pipeline will adopt the tariffs, rates, terms and conditions of service as tendered by SPBPC and currently on file with the Commission.”*⁵

⁴ There can be little debate from Crimson of the pipeline’s public utility service and Commission oversight regulation applicable to the pipelines. *San Pablo Bay Pipeline Co. v. Pub. Utilities Comm’n*, 243 Cal. App. 4th 295 (Cal. Ct. App. 2015). Crimson’s application at p. 2 acknowledges, “Crimson Pipeline will own and operate SPBPC’s CPUC jurisdictional assets as a pipeline corporation in accordance with Public Utilities Code section 228 and subject to the jurisdiction of the Commission.”

⁵ Crimson Application at p. 1.

- “...Crimson Pipeline will be responsible for and committed to the continuing provision of safe and reliable pipeline transportation service by SPBPC.”⁶
- “As a consequence of the proposed acquisition of control, there will be no change in utility operations. Crimson Pipeline will own and operate the regulated pipeline assets as a common carrier pipeline corporation subject to this Commission’s jurisdiction and provide related pipeline transportation services at the rates and conditions of service set forth in SPBPC’s approved tariffs on file with the Commission.”⁷
- “Crimson Pipeline is entering into the subject transaction and is acquiring SPBPC with the intent to maximize efficiencies, while maintaining operational safety, reliability, and environmental protection. Crimson Pipeline believes that its acquisition of control of SPBPC is in the public interest.”⁸
- “Pipeline operations will be maintained (i) in a manner consistent with existing authorized uses; (ii) in continued compliance with all applicable federal, state, and local laws; and (iii) in accordance with the rates, terms and conditions currently applicable under existing tariffs.”⁹

CIPA appreciates these aspirational statements from Crimson; however, they simply fail to provide meaningful standards or commitments related to rates and operations. Accordingly, CIPA seeks Commission action to convert these aspirational statements into conditions of approval and standards for Crimson to sustain as committed, regulatory objectives for the control, maintenance and operation of the subject pipelines. As an example of an apparent but unanswered question, how long will Crimson commit to “*adopt the tariffs, rates, terms and conditions of service as tendered by SPBPC and currently on file with the Commission?*” Do these aspirational statements have any commitments that the Commission or producers and shippers can rely upon?

⁶ Crimson Application at p. 2.

⁷ *Id.*, at p. 5.

⁸ *Id.*, at p. 7.

⁹ *Id.*, at p. 9.

Endeavoring to secure clarity over the binding requirements, through regulation over the conditions of the acquisition, is one of the reasons for the conditions CIPA has outlined as standards for Commission approval. However, this is not the only reason to establish commitments on rates and terms of service as evidenced by Crimson's application.

D. Crimson's "Underutilization" Positions Regarding the KLM and SPBPC Pipelines

In seeming direct conflict with the statements of sustained and reliable service conditions regarding the operation of the consolidated KLM and SPBPC pipelines, Crimson readily acknowledges reasons to change service conditions materially.

Crimson unabashedly states on the one hand that its "...control of SPBPC, considered in conjunction with its ownership of the KLM system, will not harm competition but instead will benefit producers and refiners."¹⁰ Yet several other passages in the Crimson application undermine the credulity of this "no harm to competition" assertion. These passages and the consequences for the pipelines raise substantial concern for CIPA to question the "benefits" of Crimson's apparent plans.

Using "San Joaquin Valley falling production" and pipeline "underutilization" as predicates, Crimson sets out a future that is anything but comforting related to the service conditions for producers and shippers.¹¹

¹⁰ Crimson Application at p. 7.

¹¹ Crimson Application at pp. 7-8: "*The overriding trend in the San Joaquin Valley is falling production. Much of the active pipeline capacity out of the San Joaquin Valley is unfilled. Both the SPBPC and KLM pipelines are substantially underutilized* [FN 8 states

Ironically, the Commission must appreciate the candor in Crimson's comments with regard to its vision of the future related to the KLM and SPBPC pipelines. The bluntly stated actions to address the pipeline underutilization "problem" are sobering, particularly abandonment "solutions."

From a San Joaquin producer's perspective, the unconditional or unrestrained consolidation of the pipelines to a single owner whose focus is on resolving Crimson's concerns over "underutilization" must be addressed proactively. In contrast to Crimson's questionable "no problem" assessment of the future, a producer envisions a future with several problematic outcomes, as described below.

Crimson today owns and operates the KLM pipeline, which generally provides a competitive alternative (and vice versa) to the SPBPC line to transport product from the San Joaquin oil fields to Bay Area refiners. If Crimson for any reason elects to shut down completely or in part either the KLM or SPBPC pipelines to "gain efficiencies," there are material, adverse consequences for producers. Producers would be required to either truck a significant portion of its

-- two-thirds of KLM capacity is unutilized.]. In addition to concerns related to unused pipeline capacity, declining SJV production presents a further problem for the SPBPC pipeline...Should SPBPC's undercapacity problem worsen, it could become necessary to suspend heated service and require crude blending. Bay Area refiners—in particular, Shell Martinez, Marathon Golden Eagle, and Valero Benicia—would then have to accept inferior blended crude from SJV or increase marine deliveries of heavy crude. The proposed transaction will contribute to solving SPBPC's underutilization problem and help to ensure continued supply of neat heavy crude from SJV to the Bay Area. KLM pipeline capacity is substantially underutilized, but it still transports 30,000 barrels per day. After acquiring control of SPBPC, Crimson intends to maintain crude transportation service to shippers on both systems under the existing SPB and KLM tariffs, including all receipt and delivery points on KLM, but will operationally interconnect the KLM system to the SPB system and move the KLM blended volumes as a batch onto the SPB system. Crimson expects to be able to vacate the KLM pipeline north of Kettleman."

production to the refineries, or to pursue new, likely unavailable, pipeline connections. Material disruption for a producer's transport of products would occur even if Crimson only shut down a section of a pipeline north of Coalinga, e.g., at Kettleman, to aggregate the two systems for "efficiency." Most likely, Crimson would shut down the northern section of KLM since the pipeline is not heated, and transports product at commingled API gravity.¹² Because SPBPC, in contrast, is operated as a batch and commingled system, with 40% of the throughput at 14" API gravity and 60% commingled, a producer's reliance on commingled shipments would undoubtedly be disrupted.

The Commission, and certainly shippers and producers, have significant concern regarding conditions that would leave unconstrained abandonment of one of the pipeline systems under Crimson's control. For a range of reasons, there is reasonable concern for shippers and producers that the abandonment or operational loss of a line would present a permanent, irreversible loss of a critical facility. Under current and foreseeable conditions, there is every expectation that an abandoned line could not be brought online again. The loss of such a line, in light of current environmental, permitting, costs, land rights and other regulatory restriction issues, would make any comparable replacement for the current pipeline system impossible to envision.

All of these foreseeable adverse consequences to the pipeline services market, product transportation and rates, support CIPA's request to establish

¹² API gravity is an inverse measure of a petroleum liquid's density relative to that of water (also known as specific gravity). It is used to compare densities of petroleum liquids. For example, if one petroleum liquid is less dense than another, it has a greater API gravity.

conditions and regulation over Crimson's future actions. Indeed, CIPA's request mirrors the aspirational "promises" offered in the Crimson application outlined herein.

E. The Commission's Independent Assessment and Review of Market Competition Issues is Warranted in Addition to Federal Trade Commission and the U.S. Department of Justice Assessments

Crimson acknowledges that its application is dependent not only on the approval of the Commission, but also Federal Trade Commission and U.S. Department of Justice review.¹³ CIPA seeks independent review and consideration by this Commission regarding potentially adverse market consolidation by the Crimson application.

F. Commission Alternative Dispute Resolution Process

On May 9, 2019, the Commission issued a notice of assignment of the Crimson application to a Commission-sponsored alternative dispute resolution process with Administrative Law Judge Kimberly H. Kim as the Neutral ALJ. ALJ Kim issued a ruling to the parties scheduling the alternative dispute resolution process to begin with a meeting on May 22, 2019, 9:30a to 5p at the CPUC headquarters.

¹³ Crimson Application at p. 2, FN 3: *"In addition to obtaining Commission authorization, Crimson Pipeline must submit notification forms to the Federal Trade Commission and the U.S. Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a ("HSR" Act). Applicant must wait a specific period of time while these federal antitrust enforcement agencies review the possible competition implications of the proposed acquisition of SPBPC, and closing the transaction is contingent on the expiration or termination of the applicable waiting period under the HSR Act."*

CIPA commits, upon securing party status, its constructive and active participation in that process to seek resolutions that would support the Crimson application subject to protective conditions for producers reflected herein.

III. CONCLUSION

CIPA takes particular note of, and respectfully disagrees with, the following statement from Crimson's application:

*Crimson Pipeline is unaware of any basis upon which any person could be, or could claim to have been, injured or otherwise negatively affected by the transaction proposed herein, or of any other basis upon which this application could be classified as other than noncontroversial.*¹⁴

CIPA sees several reasons for concern over the concentration of this pipeline market and the foreseeable adverse implications for the Commission, shippers and producers. CIPA seeks the adoption of conditions of approval that actually commit Crimson to live by the words it has represented in its application – not aspirations, but as enforceable commitments and conditions for its acquisition of these important pipeline facilities. The conditions outlined in this protest will provide needed assurances.

Respectfully submitted,



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May 15, 2019

¹⁴ Crimson Application at p. 9.