

**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
(Filed April 12, 2019)

**PROTEST OF TESORO REFINING & MARKETING COMPANY LLC, A PART OF
MARATHON PETROLEUM CORPORATION, AND VALERO MARKETING AND
SUPPLY COMPANY FOR AUTHORITY TO ACQUIRE CONTROL OF SAN PABLO
BAY PIPELINE COMPANY, LLC (PLC-29)**

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Pursuant to California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rule”) 2.6, Tesoro Refining & Marketing Company LLC, a part of Marathon Petroleum Corporation (“Tesoro”) and Valero Marketing and Supply Company (“Valero”) (together the “Joint Shippers”) hereby submit this Joint Protest to 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* (the “Application”), filed on April 12, 2019.¹

I. FACTUAL BACKGROUND

Crimson Pipeline, LLC (“Crimson”) is a California limited liability company that is wholly owned by Crimson Midstream Operating, LLC. Crimson and its affiliated companies, including Crimson California Pipeline L.P., own and operate several common carrier crude oil pipeline systems throughout the state, among which includes the KLM pipeline that was previously owned by Chevron Pipe Line Company.²

¹ The Application was noticed on the Commission calendar on April 15, 2019. Therefore, pursuant to Commission Rule 2.6, this Protest is timely.

² In Decision (“D.”) 05-04-006, the Commission authorized Crimson California’s acquisition of: (1) the Thums 8-inch pipeline system, which transports crude oil produced in the Long Beach Harbor area to various refineries and terminals in the Los Angeles area; (2) the Ventura gathering pipeline system, which transports crude oil produced in the Fillmore and Ventura areas to the Crimson Ventura Tank Farm; and (3) the Ventura 10-inch pipeline system, which transports crude oil from the Crimson Ventura Tank Farm and crude oil produced in the Inglewood area to

San Pablo Bay Pipeline Company, LLC (“SPBPC”) owns and operates a 265-mile-long oil pipeline transporting heated crude oil from San Joaquin Valley oil fields to Bay Area refineries, including those owned by Joint Shippers. This pipeline is the only pipeline providing heated crude service of San Joaquin Valley Heavy barrels from the San Joaquin Valley (“SJV”) oil fields to the Bay Area, where Tesoro/Marathon owns and operates its Golden Eagle Refinery in Martinez, California, and where Valero owns and operates its Benicia Refinery and associated Asphalt Plant in Benicia, California. Substantial quantities of neat SJV heavy barrels are transported on this pipeline.

Overall, the crude transportation network out of the San Joaquin Valley is essentially comprised of two major pipelines that run to the Bay Area: the KLM Line, which Crimson acquired from Chevron Pipeline Company in 2016, and the SPBPC line, which Crimson herein seeks to acquire. Accordingly, if the Application is approved, Crimson would control virtually all crude transport options from the SJV to the Bay Area.

II. PROCEDURAL BACKGROUND

Crimson acquired the KLM pipeline system from Chevron Pipeline Company in 2016 and, during this acquisition, committed to maintaining the system’s tariffs and rates.³ However, approximately 14 months after completing this acquisition, Crimson filed for a rate increase on the system.⁴ On Crimson’s other pipeline system, which includes the Thums and Ventura lines

various refineries in the Los Angeles area. D.07-12-046 authorized Crimson California’s acquisition of the Line 600 pipeline system and the Line 700/East Crude pipeline system and its associated gathering pipelines, which generally parallel Crimson California’s pre-existing pipeline systems. D.10-12-005 authorized Crimson California’s acquisition of certain common carrier crude oil pipelines identified as CPL’s Ingelwood and Northam crude systems. And in D.16-03-016, the Commission authorized Crimson’s acquisition of the KLM pipeline, which was previously owned by Chevron Pipe Line Company.

³ D.16-03-016, *Joint Application of Chevron Pipe Line Company (PLC-13) and Crimson California Pipeline, L.P. (PLC-26)*, pursuant to Section 851 of the Public Utilities Code, for Authorization to Sell and Transfer Certain Pipeline Facilities, dated March 17, 2016, pp. 3, 5, 8, Ordering ¶ 2 (describing how Crimson will adopt the current Commission-approved tariff rates).

⁴ See Application (“A.”) 17-06-007 of *Crimson California Pipeline L.P. (PLC-26) for Authority to Increase Rates for Its Crude Oil Pipeline Services*, filed June 1, 2017.

in the Los Angeles area, Crimson filed for a sixty percent rate increase in 2016 and has filed for an additional ten percent every year since.⁵ With exception to the KLM rate increase, which was settled by party agreement,⁶ all of Crimson's rate applications remain pending final resolution before the Commission.

SPBPC has also applied for successive rate increases the past several years and the Commission recently issued a decision in SPBPC's 2016 rate case, wherein it authorized a modified rate increase, which was lower than what SPBPC had originally requested, and directed SPBPC to issue refunds to shippers based on their proportionate volumes in the total amount of \$5,553,580.⁷ SPBPC's most recent application for a rate increase, filed in 2017, as well as its application to suspend heated crude service,⁸ have been consolidated and are subject to ongoing mediation before the Commission.⁹ In a prehearing conference held on March 5, 2019, the parties and the Commission were advised of Crimson's intent to acquire the SPBPC pipeline system.¹⁰ An alternative dispute resolution conference in the A.17-10-019/A.18-04-011 matter is scheduled for May 22, 2019 before Administrative Law Judge Kim, and it is expected that Crimson will appear as a party.

III. JOINT SHIPPERS' INTEREST IN THIS PROCEEDING

As past, current and future shippers and ratepayers on SPBPC's intrastate pipeline system, Joint Shippers have a substantial economic interest in SPBPC's operation, and will be directly impacted by the Application and any transaction affecting the control of SPBPC.

⁵ See A.16-03-009, A.17-02-009, A.18-04-023 and A.19-03-023.

⁶ See D.18-09-037 *Granting Joint Motion of Crimson California Pipeline L.P. and Tesoro Refining & Marketing Company LLC for Adoption of Settlement Agreement*, issued September 27, 2018 and closing the proceeding.

⁷ D.19-01-004; Advice Letter No. 14-O of SPBPC issuing a refund as required by D.19-01-004.

⁸ A.18-04-011, *Application of San Pablo Bay Pipeline Company LLC (PLC-29) for authorization to suspend heated service*, filed April 13, 2018.

⁹ *Administrative Law Judge's Ruling Consolidating Applications*, issued on October 29, 2018; see Reporter's Transcript of Prehearing Conference, held March 5, 2019, pp. 20:18, 24:16 (discussing ongoing mediation).

¹⁰ Reporter's Transcript of Prehearing Conference, held March 5, 2019 at 26-30.

Additionally, Joint Shippers have a substantial economic interest in this proceeding as its outcome has the potential to affect present and future changes in SPBPC's rates and operations, in addition to its pending (and any future) refund payments owed to Joint Shippers by Commission authorization.

IV. STANDARD OF REVIEW

Pursuant to section 854 of the Public Utilities Code, the Commission has broad discretion to decide whether a transfer of control of utility assets is in the public interest.¹¹ The central issue of any such determination is whether the proposed transaction subject to section 854 would result in potential adverse effects on the public interest.¹² Included in this analysis is the necessary consideration of whether the proposed transaction will result in any adverse effects on ratepayers.¹³ In making its determination, the Commission is authorized "where necessary and appropriate" to "attach conditions to a transaction in order to protect and promote the public interest."¹⁴

V. PROTEST

Joint Shippers submit this protest because further information is needed to determine whether the proposed transaction is in furtherance of the public interest. While Joint Shippers do not object outright to Crimson's acquisition of SPBPC, Joint Shippers have significant concerns that must be addressed before the proposed transfer can be supported or shown to further the public interest.

Specifically, Joint Shippers need more information as to the following: (1) confirmation that SPBPC's refund payments owed to Joint Shippers by Commission Decision 19-01-004, and

¹¹ *Application of Riley Property Holdings, L.L.C., et. al.*, 2005 WL 770622 (Cal. P.U.C. 2005).

¹² *Yerba Buena Water Co.*, 2005 WL 770622 (Cal. P.U.C. 2005).

¹³ *Application of Riley Property*, 2005 WL 2138131, at 4.

¹⁴ *Yerba*, 2005 WL 770622, at 2.

any future Commission decisions regarding SPBPC's pending rate cases, will continue to be paid under Crimson ownership; (2) confirmation that Crimson will continue to provide safe and reliable service; (3) confirmation that Crimson will continue to provide essential heated crude service to the Bay Area; (4) confirmation that Crimson is financially equipped to assume the financial responsibilities of acquiring another pipeline; and (5) clarification as to Crimson's plans for ownership, particularly as to whether any pipeline consolidation will take place and what such consolidation would look like from an operational and economic standpoint.

Only after Crimson provides satisfactory answers and additional information as to these inquiries can Joint Shippers or the Commission support a finding that the proposed transaction would further, or not be adverse to, the public and ratepayer interest.

A. Commission-Ordered Refunds and Potential Refunds Owed to Shippers Must be Protected in any Transfer of Ownership

SPBPC has applied for several successive rate increases over the past several years. Most recently, SPBPC's 2016 requested rate increase was partially approved subject to adjustment and refund in Decision 19-01-004. SPBPC's 2017 rate increase request has been consolidated with its application to suspend heated service, and is still pending Commission resolution.

The Commission must ensure that any transfer of ownership will not affect Joint Shippers' right to and collection of the ordered refunds, in addition to any future refunds owed as part of any prospective resolution of SPBPC's open rate proceedings. Therefore, if the Commission is to approve the Application, it must act to ensure that Crimson "is able to honor and timely discharge any refund liability that [has been or] may be determined", as it did in the Commission's approval of the Kinder Morgan related application to transfer control of the SFPP

and Calnev pipelines.¹⁵ In Decision 07-05-061, the Commission exercised its “broad general and remedial regulatory authority under Sections 701 and 761” of the Public Utilities Code to require KinderMorgan to establish a letter of credit for \$100 million for refunds owed to any SFPP and Calnev shippers so entitled.¹⁶ Notably, KinderMorgan was prohibited from recovering any financing costs associated with the letter of credit from SFPP and Calnev shippers.

Joint Shippers contend that, to the extent the Commission approves this Application, Crimson should be similarly directed to establish a letter of credit or other means of protecting and guaranteeing refund obligations owed by SPBPC in any of its previous or pending proceedings.

B. Any Commission Approval of the Application Must Ensure Crimson’s Financial Integrity and the Protection of Future Rates

Just over one year after Crimson acquired the KLM Pipeline system and committed to the Commission its strong financial integrity and strategic decision acquire the pipeline,¹⁷ Crimson filed for a ten-percent rate increase on the line wherein it claimed that even with such a rate increase, Crimson would realize a negative return on its investment.¹⁸ Tesoro protested Crimson’s application for a rate increase on the KLM line and expressed significant concern that, after only one year of operating experience, Crimson was seeking a rate increase and expressing such a negative economic outlook. However, the parties were able to reach a settlement on this matter that was adopted by Commission Decision 18-09-037.

On its other pipeline systems, Crimson filed for a sixty-percent rate increase in 2016, and

¹⁵ D.07-05-061, *Interim Opinion Approving, with Conditions, Transfer of Indirect Control and Authorizing, with Conditions, Exemption from Public Utilities Code Section 852 for some Investors in Knight Holdco*, issued May 24, 2007, p. 41.

¹⁶ *Id.* at 41-42.

¹⁷ A.15-10-005, *Joint Application of Chevron Pipe Line Company (PLC-13) and Crimson California Pipeline L.P. (Plc-26), Pursuant to Section 851 of the Public Utilities Code, for Authorization to Sell and Transfer Certain Pipeline Facilities*, dated October 16, 2015, pp. 1, 6, 13, Exhibit C (discussing how Crimson will adopt the current Commission approved tariff rates).

¹⁸ See A.17-06-007; see also Protest of Tesoro Refining & Marketing Company LLC, p. 2

has subsequently filed for an additional rate increase each year following.¹⁹ The Commission has consolidated each of Crimson's rate proceedings but has yet to issue a final decision in the matter.

In light of the above, Joint Shippers respectfully urge the Commission to direct Crimson to provide, and to carefully review, Crimson's financial books and records to properly assess whether Crimson is economically equipped to acquire yet another large pipeline infrastructure. Only after such review can the Commission determine whether the proposed acquisition would result in safe and reliable service and would further the public interest.

C. Joint Shippers are Concerned With How Crimson Will Operate Both the KLM and SPBPC Pipelines Following Any Potential Transfer of Control

The Application states that Crimson is interested in acquiring SPBPC to "maximize efficiencies."²⁰ However, Crimson does not define what it means to "maximize efficiencies," especially as it respects the operation of the SPBPC pipeline. As previously indicated, Joint Shippers are heavily reliant on SPBPC's provision of heated transport of SJV heavy to its refineries. Joint Shippers worked closely with SPBPC to create SPBPC's existing tariff such that it provides Joint Shippers with adequate protections to ensure the continuous, safe and reliable provision of this service.²¹

Given this background, Joint Shippers respectfully urge the Commission to direct Crimson to provide additional information as to its plans for operation of the SPBPC pipeline, and to make a commitment not to end this important heated service.

D. The Commission May Need to Condition any Approval of the Proposed Transaction

As previously stated, the Commission has unequivocal authority to impose and enforce

¹⁹ A.17-02-009, A.18-04-023 and A.19-03-023.

²⁰ Application, p. 7.

²¹ See Joint Shipper Protest to SPBPC Application to Suspend Heated Service, A.18-04-011.

conditions on requests to transfer control of utility operations.²² Indeed, the California Supreme Court has affirmed the Commission's authority to impose conditions on non-utilities doing business with utilities in carrying out the Commission's statutory duty to protect the public.²³ Accordingly, to the extent any approval of the Application is granted, it should be done only subject to certain conditions.

First, the Commission should condition its approval of the proposed transfer on the establishment of a protected reserve account that may only be used to pay refunds that have been ordered, and that may still be ordered in pending rate cases related to SPBPC. The Commission made a similar conditional authorization in Decision 07-05-061 when it approved, with conditions, the transfer of indirect control of the SFPP and Calnev pipelines. The establishment of a reserve account will ensure that Joint Shippers and any other affected shippers will receive the refunds owed or potentially owed.

Second, the Commission should condition any approval of the Application on the requirement that (1) Crimson's books and records remain open and available for Commission inspection, and, to the extent necessary, inspection by ratepayer protestants and complainants, and (2) the periodic filing of financial reports by Crimson to the Commission. As the Commission explained in *San Diego Gas and Electric Company*, D.86-03-090, 20 CPUC 2d 660, "Effective regulation of public utilities is dependent upon this Commission's ability to obtain and evaluate information." The Commission proceeded to determine that any meaningful review of a utility's operations necessarily requires that the books and records of the utility be disclosed to the Commission so that the Commission can verify the financial and cost of service

²² See Cal. Pub. Util. Code sec. 854; *Pacific Gas & Electric*, D.02-01-037 (January 9, 2002) (holding that conditions imposed by the Commission when it approved the transfer of control of a public utility to a holding company in a reorganization pursuant to section 854 are enforceable by the Commission against those holding companies even though they are not "public utilities").

²³ See *Henderson v. Oroville-Wyandotte Irrigation District* (1931) 213 Cal. 514.

claims of the utility.

E. The Application Should be Consolidated with SPBPC's Pending Matters before the Commission

Joint Shippers submit that this matter should be consolidated with SPBPC's 2017 rate case and 2018 application to suspend heated service, both of which have already been consolidated by the Commission.²⁴ As previously mentioned, Joint Shippers are presently engaged with representatives from SPBPC to discuss and mediate the matters pending in SPBPC's 2017 rate case and its 2018 application to suspend heated crude service. Crimson has advised parties to these proceedings and the Commission's assigned mediator that it intends to participate—and parties support such participation—in an upcoming mediation session to be held at the Commission on May 22, 2019. Because Crimson will be expected to be bound by any resolution of the pending matters that may be reached in this or similar meetings, Crimson's participation is paramount. Accordingly, given the overlap of issues associated with any transfer of control or ownership, Joint Shippers strongly recommend that the Application be consolidated with any open matters that involve SPBPC and remain unresolved by the Commission.

VI. CORRESPONDENCE AND COMMUNICATION

A. Tesoro/Marathon

All correspondence and communications regarding this matter should be addressed to the following, with Mr. Huard and Ms. McKenna listed as a "Party" and the others listed as "Information Only":

²⁴ Application 17-10-019 and A.18-04-011 were consolidated by Administrative Law Judge Ruling, issued on October 29, 2018.

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VII. CONCLUSION

Ultimately, the Commission must direct Crimson to provide, or schedule hearings to consider, additional information to show that:

(1) the proposed transaction does not jeopardize the Commission's ability to ensure that authorized rate refunds associated with SPBPC-related proceedings are continued under Crimson;

(2) acquisition of yet another pipeline will not adversely impact Crimson's ability and its commitment to continuing to provide safe and reliable service;

(3) the proposed acquisition will not negatively affect the provision of continuous, safe and reliable transport of *heated* crude service to the Bay Area;

(4) the proposed transaction will not negatively impact ratepayers; and

(5) Crimson's plans for ownership of all three pipelines in the SJV to Bay Area refineries are consistent with continuous transportation service.

Finally, as detailed above, Joint Shippers respectfully urge the Commission to consolidate this Application with Applications 17-10-019 and A.18-04-011 to ensure that all issues are fully considered and to avoid inconsistent outcomes with regard to party interests.

Dated: May 15, 2019

By: /s/ David L. Huard

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