



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application by Zenith Energy West Coast Terminals  
LLC (PLC-28) to Remove Public Utility Designation.

Application 21-11-010

**FILED**

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**NOTICE OF EX PARTE COMMUNICATION OF ZENITH ENERGY  
WEST COAST TERMINALS LLC (PLC-28)**

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November 23, 2022

Attorneys for Zenith Energy West Coast  
Terminals LLC

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WEST COAST TERMINALS LLC (PLC-28)**

Pursuant to Rule 8.4 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Zenith Energy West Coast Terminals LLC (PLC-28) (“Zenith Terminals”) hereby gives timely notice of the following ex parte communications.

On November 21, 2022, Dana Love, General Counsel, Zenith Energy; and Vidhya Prabhakaran and Anna Fero, Davis Wright Tremaine LLP, outside counsel, met with Caitlin Pollock, advisor to Commissioner John Reynolds, over Webex from approximately 10:00 a.m. to 10:30 a.m.; on November 23, 2022 the same parties met with Kelsey Choing, advisor to Commissioner Genevieve Shiroma, over Webex from approximately 2:00 to 2:45 p.m.

The purpose of the meetings was to discuss the proposed decision and alternate proposed decision in this proceeding. Specifically, Zenith Terminals requested that each of the Commissioner offices approve the proposed decision for the reasons described in the proposed decision. Zenith Terminals explained why the Alternate Proposed Decision commits legal error and includes some factual errors. The meeting was initiated by Zenith Terminals. The attached written materials were used.

Respectfully submitted November 23, 2022 at San Francisco, California.

/s/

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Attorneys for Zenith Energy West Coast  
Terminals LLC

# Zenith Energy West Coast Terminals LLC

Request to Remove Public Utility Designation

**PRESENTERS:**

Dana Love – Zenith Energy, General Counsel

Grady Reamer – Zenith Energy, VP West Coast Operations

Vidhya Prabhakaran – Davis Wright Tremaine LLP

Anna Fero – Davis Wright Tremaine LLP

DWT.COM

Zenith Energy 



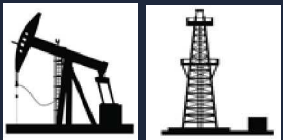
Davis Wright  
Tremaine LLP

# Introduction to Zenith



- Zenith Energy U.S., L.P. (“Zenith”) owns and operates terminals all across the United States.
- Provides unregulated and competitive oil terminaling services and storage services to third-party large multi-national oil companies.

# Different Businesses



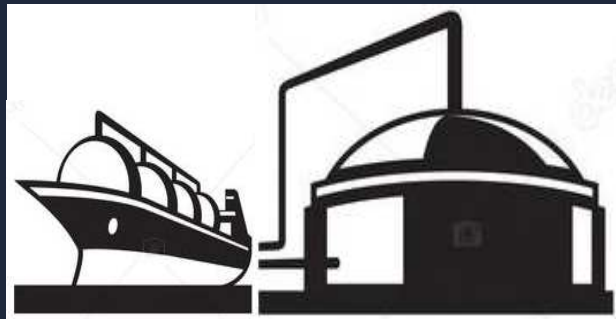
- Oil producers extract crude oil from production fields and sell it by the barrel to oil refineries.
- Oil transporters move the crude oil product on behalf of customers for compensation. This can be done by pipeline, tanker truck, maritime vessel, or railroad tank car.<sup>1</sup>
- Oil terminals are transshipment warehouses that facilitate the offloading and storage of customers' crude oil product for compensation in connection with the transportation of the product by a third party.<sup>2</sup>
- Oil refineries process the crude oil into a refined product.<sup>3</sup>

# Different Categories of Public Utilities

- When the relevant sections of the Public Utilities Code were enacted in 1951, the Legislature categorized these different businesses as distinct public utilities.
  - Common carriers: owners and operators of rail roads, trucks, or vessels transporting products for compensation within the state (PUC 211)
  - Pipeline corporations: owners and operators of pipelines for the transmission of crude oil for compensation within the state. (PUC 227, 228)
  - Warehousmen: owners and operators of buildings or structures where property is stored for compensation within the state, in connection with or to facilitate the transportation of property by a common carrier or vessel. (Former PUC 239)

# Zenith Terminals is a Warehouseman

Zenith Terminals provides:



- The unloading and storage of customer's crude oil product
- For compensation
- Typically in connection with the product's transportation by marine vessels.

Customer pay Zenith Terminals to offload the product from the ship and store it in their tanks. Any “transportation” over the land is incidental to these services.



# Legislature removed Oil Terminals from Commission Jurisdiction



- In 1955, the Legislature revised the definition of “warehouseman” to expressly exempt those storing, loading, or unloading “liquid petroleum commodities in bulk” from Commission jurisdiction.
  - Confirms that a corporation performing oil terminaling services was a “warehouseman” and not a pipeline corporation.
  - These services were specifically exempt from Commission jurisdiction.

# The Legislature Removed All Warehousemen from Commission Jurisdiction

- In 1980, Legislature fully removed all “warehousemen” from Commission jurisdiction.
- The word “warehouseman” was deleted from the definition of “public utility” in Section 216 and the definition of warehouseman and references thereto were removed from the Code.
- No specific exemption for oil terminaling services from Commission jurisdiction was necessary as all warehousemen were no longer considered public utilities.

# Zenith Terminal's Public Utility Designation is Vestigial

- Zenith's public utility designation is a vestige of the original need by Southern California Edison to provide tariffed non-electric services to 3<sup>rd</sup> parties
- The Terminal's public utility designation should have been removed a long time ago, but has simply remained an artifact because no party previously sought to have the designation removed.
- There was no intent by the Legislature to purposefully keep Zenith as the ONLY oil terminaling company in California that is a CPUC-regulated pipeline corporation.
- Nothing prevents the Commission from revisiting its own prior decisions and determining that Zenith is more appropriately considered a warehouseman and not a pipeline corporation.

# Zenith Terminals is No Different from its Unregulated Competitors

- The Legislature has clearly determined that oil terminals are not public utilities, given that none of Zenith's competitors are.
- Zenith Terminal's operations are no different from its unregulated competitors (*e.g. Chemoil, Nustar, Kinder Morgan, Vopak, TransMontaigne*) who also have multiple storage sites, a jetty at which maritime imports are offloaded, and unregulated pipelines to transmit customer's product between and among those various locations.
- A determination that Zenith Terminals is a pipeline corporation merely because it owns pipelines incidental to its terminaling and storage operations would result in the discriminatory application of the law to Zenith Terminals compared to its unregulated market competitors.

# No Purpose for Maintaining Zenith's Public Utility Designation

- All of Zenith Terminal's contracts are bilaterally negotiated.
- Zenith Terminals has no annual FERC reports to submit to the Commission.
- Zenith Terminals is subject to the safety and environmental regulations of other governmental agencies.
- Zenith Terminal's only contact with the Commission has been to obtain Section 854 and Section 851 approvals for changes of control and property disposition.

# Factual Errors in Alternative Proposed Decision

- The APD incorrectly states: “Zenith owns and operates approximately 120 miles of pipelines in the Los Angeles area which carry oil owned by third parties, primarily oil producers, to and from its terminal in Carson.”
  - Zenith Terminals only operates 52 miles of pipelines. The remaining 75 miles are out-of-service pipelines that have not been in use for years.
  - Zenith Terminals customers are refineries, not oil producers. Zenith Terminal’s facilities are not connected to any domestic production fields.
  - Zenith does not own a terminal in Carson, California.
- It is not reasonable to assume that “the costs of transportation are reflected in the compensation Zenith receives for storing the oil.”

# Questions?