

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wickland Pipelines LLC for
Authorization to Increase Membership
Contributions and for Approval of Rates and
Conditions of Service.

Application 99-08-050
(Filed August 23, 1999;
Amendment Filed
May 20, 2002)

O P I N I O N**1. Summary**

Wickland Pipelines LLC (applicant, or Wickland) seeks Commission approval of an environmental review, a new corporate membership structure, additional membership capital contributions, issuance of promissory notes, and authorization of market-based rates in connection with its operation of a jet fuel pipeline and tank farm project at Sacramento International Airport. The application is unopposed. The application is granted to the extent set forth below.

2. Background

Applicant filed this application in August 1999 seeking authorizations by the Commission in connection with applicant's proposal to construct, own and operate a common carrier jet fuel pipeline. The pipeline project would connect the existing SFPP North Line in West Sacramento to a new fuel tank storage facility that would be constructed, owned and operated by a consortium of airline companies operating at Sacramento International Airport. SFPP North Line is owned by Santa Fe Pacific Pipeline Partners, L.P., an indirect

subsidiary of Kinder Morgan Energy Partners, L.P., which is under Commission jurisdiction.

In its application, applicant asked that the Commission first issue a decision and interim order determining that Wickland is a public utility pipeline corporation subject to the Commission's jurisdiction. An interim opinion confirming Wickland's status as a public utility pipeline corporation was issued in Decision (D.) 99-12-038 in December 1999.

Applicant stated that, following environmental review, it would file an amendment to its application seeking Commission approval for Wickland:

- To require additional membership capital contributions to fund project pre-development costs, and
- To provide fuel pipeline services under market-based rates, established through arm's-length negotiations between Wickland and shippers, according to a tariff styled like those acceptable to the Federal Energy Regulatory Commission (FERC).

Applicant filed its amendment to the application on May 20, 2002. In it, applicant also seeks Commission approval of a proposed financing structure to acquire real property interests and to construct the proposed pipeline at such time as applicant has obtained other regulatory approvals necessary for this project.

No protests to the application or to the recent amendment have been filed, and this matter is uncontested.

3. Environmental Compliance

The County of Sacramento has acted as the "lead agency" under the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000, *et seq.*, for the environmental review of the proposed pipeline project. The County prepared a draft Environmental Impact Report (EIR), and the Commission staff

was consulted and provided review comments on behalf of the Commission. The Commission is a responsible agency in reviewing the project (CEQA Guidelines at 14 C.C.R. § 15096).

At its meeting on April 17, 2002, the County Board of Supervisors certified the final EIR and tentatively approved the proposed project. On May 1, 2002, the County Board adopted findings of fact and a statement of overriding considerations and approved a grant of easement for the proposed project.¹ On May 6, 2002, the County filed a notice of determination with the County Clerk of Sacramento County and with the Governor's Office of Planning and Research. Copies of the County's certified final EIR, the resolution approving the grant of easement, findings of fact and a statement of overriding consideration, and the notice of determination are provided as Exhibit A to the amendment of the application. These documents provided the basis for the Commission to proceed as a responsible agency under CEQA with respect to this application.

4. Request for Exemptions

Applicant's proposed pipeline will extend approximately 10 miles to the new fuel tank storage facility to be constructed and operated by the consortium of airlines. Applicant states that shippers using the pipeline will most likely be only participants in the airline consortium and, possibly, the county airport system, the public agency responsible for Sacramento International Airport.

Because its fuel deliveries likely will be made only to airlines and a public agency, applicant asks the Commission to determine whether it is exempt from

¹ The grant of easement is authorized to be made to Southwest Airlines, with assignment to Wickland Pipelines pre-approved in the grant. (Exhibit A, Vol. 1.)

stock and security regulations in Pub. Util. Code §§ 816-830 by virtue of Section 829 of the Code. Section 829 states:

This article does not apply to any person or corporation which transacts no business subject to regulation under this part, *except performing services or delivering commodities for or to public utilities or municipal corporations or other public agencies primarily for resale or use in serving the public or any portion thereof*, but shall nevertheless apply to any public utility if the commission finds in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public interest. The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the provisions of this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest. (Emphasis added.)

Applicant argues that since its deliveries will probably be made only to airlines (which it describes as public utilities) and a public agency, the exemption provided by Section 829 should apply. It adds that if the Commission approves applicant's request to establish market-based rates for its transportation of jet fuel, market competition will serve to restrain the cost of capital that applicant will be able to incur and still compete effectively.

By the same token, applicant asks that it be exempted from the requirements of Pub. Util. Code §§ 851 and 854 (transfer or encumbrance of utility property) by virtue of Pub. Util. Code § 853(a), which is essentially identical to Section 829.

We decline at this time to apply the exemptions sought by applicant under Sections 829 and 853(a) of the Code. First, because of the Airline Deregulation Act of 1978, 49 U.S.C.A. §§ 1301, *et seq.*, it is not clear that airlines served by the pipeline are "public utilities" within the meaning of these exemptions. Certainly,

applicant's airline customers are not regulated by this Commission. (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 1204.) Second, applicant "anticipates" that its shippers will be only airlines and a county airport system, but it provides no assurance that other entities will not be served over time. Just as the Commission monitors the financial transactions of other pipeline companies in California, we believe that the public interest is best served by continued Commission oversight of this proposed new pipeline venture. We do not foreclose reexamination of this question at such time as the pipeline project becomes established and develops a history of operation.

5. Proposed Membership Contributions and Indebtedness

If the Commission does not grant the exemptions requested, applicant asks that the Commission authorize its proposed membership structure, capital contributions and indebtedness.

The application states that the membership composition has been restructured to align the ownership with the actual day-to-day management involvement of the family owners. The members of Wickland Pipelines are now: JAMIT LLC, a California limited liability company, which owns an 85% interest and is controlled by Roy L. Wickland; Daniel E. Hall, an individual, who owns a 12 ½% interest; and Wickland Oil Company, which owns a 2 ½% interest. This structure would take the place of the previous one, in which Wickland Oil Company held a 99% interest, with 1% owned by Wickland Oil Martinez, another Wickland family-owned entity. The application states that under that structure, Roy L. Wickland was a co-manager with two other Wickland family members. The new structure recognizes that Roy L. Wickland has been the family member most actively involved in managing the business and makes him sole manager of the business.

The application notes that Wickland Pipelines is still engaged only in pre-development activities with respect to the proposed pipeline project, and it conducts no other business. On these facts and representations, the restructured membership composition is not adverse to the public interest and should be approved.

Applicant anticipates that its costs to complete development of the proposed pipeline project through construction will total approximately \$7,381,000. Costs are set forth in detail in a construction budget and updated balance sheet attached to the application as Exhibits B and C.

Applicant proposes to fund the pipeline project with a combination of additional capital contributions and debt financing. It asks Commission authorization to increase member capital contributions up to \$7,381,000. The Commission also is asked to give advance approval to automatic adjustments to the percentage ownership interests to the extent that members provide additional capital contributions that exceed their then-existing percentage ownership interests.

Applicant states that it plans to rely on additional capital contributions to fund development of the project to the minimum extent of \$2,013,000, and temporarily above that amount to the extent that applicant cannot timely arrange debt financing.

Applicant further asks the Commission's authorization to issue promissory notes in an amount not to exceed \$5,368,000, and to encumber applicant's property to secure such debt financing. The notes would evidence loans arranged under standard credit agreements with one or more banks or insurance company that qualify as a "Finance Lender" under California Financial Code Section 22009. Applicant states that it will not seek debt financing from

any bank having a Moody's Financial Strength Rating of less than "C" (meaning "adequate intrinsic financial strength").

Applicant anticipates first obtaining construction financing and, upon completion of construction, proceeding to obtain permanent financing. Applicant states that is seeking Commission authorization of the proposed debt financing in advance of its negotiation of specific agreements in order to allow applicant to proceed expeditiously, since the County's approval of an easement for the project contemplates start of construction within 120 days of execution of the tank farm site lease. The lease is to be brought to the County Board of Supervisors in approximately four months. (*See Exhibit A to the application.*)

The funding parameters proposed by the applicant, and the competition that applicant will face in offering its fuel transportation services, provide reasonable assurance that the terms and conditions of any financing arranged by the applicant will be commercially reasonable. Exhibits attached to the application indicate that the proposed fuel transportation services will generate sufficient cash flow to fund operations. Under these circumstances, the funding authorizations sought by applicant are reasonable and in the public interest, and should be granted.

6. Exemption from Competitive Bidding

Under the provisions of Commission Resolution F-616 dated October 1, 1986, applicant's proposed issuance of notes is exempt from the Commission's Competitive Bidding Rule because the aggregate principal amount is less than \$20 million.

7. Market-Based Rates

Pursuant to Pub. Util. Code §§ 451 and 454, the Commission has authority to establish rates and conditions of service for fuel pipelines under its

jurisdiction. Applicant intends to operate its jet fuel pipeline as a common carrier. Applicant seeks Commission authorization to establish market-based rates for its transportation of jet fuel to shippers, through arm's-length negotiations. Applicant states that it will offer the same negotiated rate to all shippers and will publish and maintain on file with the Commission at all times the most current transportation rates. Such rates could be increased or decreased periodically without Commission review or approval.

Applicant states that negotiated market-based rates are appropriate in this case for several reasons. First, applicant states that it will be unable to exercise market power over its shippers to prevent them from using other transportation services. Currently, the airline companies likely to become shippers on the proposed pipeline are served by tank trucks. According to applicant, the possibility of such tank truck service will remain as a competitive pressure on applicant's transportation services.

Second, applicant states that its potential customers are sophisticated airline companies familiar with negotiating fuel transportation services. Finally, according to applicant, it will offer its transportation services on an open, non-discriminatory basis as a common carrier. Applicant will file its rates with the Commission and will offer its transportation services and charges on the same terms to all potential shippers.

If market-based rates are authorized, applicant requests a waiver of General Order (G.O.) 96-A, Section IX, Contracts Authorized by Tariff Schedules, and Section X, Contracts and Services at Other Than Filed Tariff Schedules, to the extent those provisions require that such contracts shall at all times be subject to modification by the Commission. In addition, because the petroleum fuel transportation industry typically uses the FERC form of tariff schedule, applicant

asks that the Commission authorize it to use a FERC-style format rather than the format set forth in Section II of G.O. 96-A.

Finally, applicant asks that the Commission grant it an exemption from the provisions of G.O. 96-A, Sections III, IV, V, VI and VII, to the extent that those provisions are inapplicable to a market-based rate or FERC-style tariff schedule format.

We note that the Commission in the past has authorized market-based rates for independent storage facilities where it is clear that an operator will be unable to exercise market power over its shippers. (*See, Re Wild Goose Storage, Inc.*, D.97-06-091; Resolution O-0028 (Pacific Pipeline System Inc.)) Here, in a service that is likely to serve only airlines and the airport operator, it is apparent that Wickland will be restrained in its rates lest shippers elect to turn to tank trucks to meet their needs. We note that the Commission also has granted relief from certain General Order requirements when those requirements were incompatible or inconsistent with market-based rates. (*See, Re Wild Goose Storage*, D.98-06-083.)

In the absence of opposition, and based on the representations in this application and its amendment, we conclude that Wickland has met its burden of showing that market-based rates and the requested filing exemptions are justified and are not adverse to the public interest. As with applicant's request for exemptions, we do not foreclose reexamination of market-based rates at such time as the pipeline project becomes established and develops a history of operation.

8. Discussion

There has been no opposition to the application. The pipeline transportation services that applicant proposes will afford the airline shippers at

Sacramento International Airport a competitive alternative to their existing truck transportation option. Moreover, the CEQA review conducted by the County demonstrates that the jet fuel pipeline transportation will provide an environmentally preferable alternative to other forms of jet fuel supply at the airport.

The ownership, financing and tariff arrangements sought by applicant are reasonable arrangements consistent with applicant's proposed undertaking as a public utility pipeline corporation. Expedited authorization by the Commission will allow applicant to proceed with timely development of the proposed pipeline, which we find will serve the public interest. Applicant asks that public review and comment period be waived pursuant to Pub. Util. Code § 311(g)(2), and we grant that request.

Finally, applicant has shown that market-based rates for an operation like this one, along with related exemptions from filing requirements, are not adverse to the public interest.

Notice of the application was published in the Commission's Daily Calendar on September 3, 1999. Notice of the amended application appeared in the Daily Calendar on June 4, 2002. No protests have been received. In Resolution ALJ 176-3023 dated September 16, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings would be necessary. Our order today concludes that hearings will not be necessary.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Applicant is a public utility pipeline corporation subject to the jurisdiction of this Commission.
2. Applicant seeks authorizations to operate a common carrier jet fuel pipeline to serve airlines at Sacramento International Airport.
3. The County of Sacramento has acted as the lead agency under CEQA and the Commission has acted as a responsible agency in reviewing the proposed pipeline project.
4. Applicant proposes to realign its membership structure, capital contributions and indebtedness.
5. Because of the nature of this pipeline operation, applicant seeks authority to negotiate market-based rates.
6. No opposition to the application or the amended application has been filed.

Conclusions of Law

1. Applicant's request for exemptions under Pub. Util. Code §§ 829 and 853(a) should be denied.
2. Applicant's request for authorization of its proposed membership structure, capital contributions and indebtedness appear to be commercially reasonable and should be approved.
3. Applicant is exempt from the Commission's Competitive Bidding Rule under Resolution F-616.
4. Applicant should be authorized to establish market-based rates for its transportation of jet fuel to shippers, because it is unlikely that applicant will be able to exercise market power.

5. Applicant's request for waiver of G.O. 96-A, Sections III, IV, V, VI, VII and IX should be granted to the extent that those provisions are inapplicable to a market-based rate or FERC-style tariff schedule format.

6. As a responsible agency, the Commission has reviewed the final EIR certified by the Sacramento County Board of Supervisors.

7. The application is unopposed, and hearings are not necessary.

O R D E R

IT IS ORDERED that:

1. Wickland Pipelines LLC (applicant) is authorized to construct, own and operate a common carrier jet fuel pipeline to serve customers at Sacramento International Airport, subject to all required regulatory approvals.

2. Applicant is authorized to restructure its membership and to require additional membership capital contributions in a total amount not to exceed \$7,381,000 for funding of the project costs through construction, as more fully set forth in the application.

3. Applicant is authorized to issue unsecured or secured promissory notes, in lieu of corresponding amounts of membership capital contributions, in a total amount not to exceed \$5,368,000, as more fully set forth in the application.

4. Applicant is authorized to develop rates and terms of service determined through arm's-length negotiations with its shippers, as more fully set forth in the application.

5. Sections IX and X of General Order (G.O.) 96-A, are waived to the extent those provisions require utility contracts be made expressly subject to modification by the Commission.

6. Applicant is exempt from the provisions of Sections II, III, IV, V, VI and VII of G.O. 96-A to the extent those provisions are inapplicable to a market-based, Federal Energy Regulatory Commission-style tariff schedule format, all as set forth in the application.

7. The final Environmental Impact Report certified by the Sacramento County Board of Supervisors, is approved.

8. Before commencing service to customers, applicant shall file with this Commission an advice letter and accompanying tariff schedules that meet the criteria set forth in G.O. 96-A, unless such criteria are waived or exempted pursuant to Ordering Paragraphs 5 and 6.

9. Applicant's request for exemption from Pub. Util. Code §§ 818, 851 and 854 is denied.

10. Resolution ALJ 176-3023 is amended to show that hearings in this matter are not necessary.

11. Since all issues raised in this proceeding have been addressed, the proceeding in Application 99-08-050, as amended on May 20, 2002, is closed.

This order is effective today.

Dated _____, at San Francisco, California.