

Decision 08-11-006 November 6, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wild Goose Storage, LLC (U911G),

Complainant,

vs.

Roseville Land Development Association,

Defendant.

(EDM)

Case 08-02-006

(Filed February 13, 2008)

**MODIFIED PRESIDING OFFICER'S DECISION
FINDING THAT CONDEMNATION WOULD SERVE THE PUBLIC INTEREST**

1. Summary

This decision holds that Wild Goose Storage, LLC's (Wild Goose) condemnation of four parcels adjacent to Wild Goose's existing natural gas pipeline and storage facility in Butte County would serve the public interest.

2. Background

On February 13, 2008, Wild Goose filed the above-entitled complaint against the defendant owner of four parcels of property located adjacent to complainant's existing natural gas storage pipeline in Butte County.

Complainant seeks, pursuant to Pub. Util. Code § 625, authorization to condemn the four parcels of Roseville Land Development Association (Roseville Land) property for the purpose of providing public utility services. Wild Goose stated

in its verified complaint that it served the complaint by mail on the defendant and known counsel.

On February 15, 2008, the Chief Administrative Law Judge (ALJ) and the assigned Commissioner issued their ruling containing instructions to answer, noticing the prehearing conference and evidentiary hearings, setting the schedule for distributing written direct testimony, designating ALJ Maribeth A. Bushey the presiding officer, and adopting the scoping memo.

Wild Goose distributed direct testimony prior to the hearings, which were held on April 23 and 24, 2008, in Gridley, California, before the Presiding Officer.

On March 11, 2008, Roseville Land filed its motion to dismiss, and Wild Goose responded on March 26, 2008. With the permission of the Presiding Officer, Roseville Land filed a reply on April 7, 2008.

Opening and reply briefs were filed by Wild Goose and Roseville Land. The matter was submitted on June 13, 2008.

On July 21, 2008, the Presiding Officer issued her decision finding that the proposed condemnation would serve the public interest. Roseville Land appealed the decision on August 20, 2008. The applicant responded in opposition to the appeal on September 4, 2008.

3. History of the Existing Wild Goose Natural Gas Storage and Pipeline Facility

In Decision (D.) 97-06-091, this Commission granted Wild Goose a certificate of public convenience and necessity (CPCN) to develop, construct and operate an underground natural gas storage facility in Butte County on the site of an abandoned, underground natural gas field located approximately 50 miles north of Sacramento. The CPCN authorized Wild Goose to provide firm and interruptible storage service at market-based rates. (D.97-06-091, 73 CPUC2d

90.) The storage field and related facilities interconnect with Line 167 of Pacific Gas and Electric Company's (PG&E) Sacramento Valley Local Transmission System, the major gas transmission line serving the Sacramento area. The certificated facility consisted of 14 billion cubic feet (Bcf) of working gas with maximum firm daily injection of 80 million cubic feet per day (MMcf/d) and maximum firm daily withdrawals of 200 MMcf/d.

In D.02-07-036, we granted Wild Goose an amendment of its CPCN to expand its gas storage facilities in Butte County by 15 Bcf to a total of 29 Bcf and to connect the expanded facility to the major transmission pipeline owned by PG&E, Line 400/401, near the Delevan Compressor Station in Colusa County. That decision specifically contemplated the bi-directional storage loop pipeline for which the proposed condemnation is sought.

The 2002 decision also certified the Environmental Impact Report (EIR) for the Wild Goose expansion project and further conditioned the CPCN on mitigations set forth in the EIR.

4. Description of the Property Proposed to be Condemned

Wild Goose proposes to condemn additional narrow strips of property to enable it to adjust its existing 30-foot easement to accommodate the spacing required between the existing pipeline and the new loop pipeline it needs to build to complete its expansion project. At the conclusion of the construction and easement adjustments, Wild Goose will have two parallel pipelines located at opposite sides of a 30-foot easement across Roseville Land's property.¹

¹ The easement also crosses property of three other landowners, with which Wild Goose has reached agreements for compensation.

The legal descriptions of the four parcels are contained in Exhibit A to the application. Parcels one and two are permanent subsurface utility and gas transmission pipeline easements, each 30 feet wide, that follow different sections of the existing pipeline across Roseville Land's property. Parcels three and four are 60 feet wide temporary construction easements to allow construction of the additional facilities. The four parcels are depicted in Attachment A to today's decision.

5. Evidence

5.1. Wild Goose

Wild Goose presented five witnesses to explain its proposed condemnation. The Chief Operating Officer of Niska Gas Storage, the parent company of Wild Goose, testified that Wild Goose needs to install a loop pipeline to enable it to reach the 29 Bcf in storage previously authorized by this Commission. Safely locating the loop pipeline and the existing pipeline require adjustments to the existing easement boundaries. The total size of the area subject to the easement will increase by 0.11 acre to accommodate directional boring necessary to place the pipeline under a canal on the property. The principal planner for environmental review of the expansion project before the Commission testified that the Commission environmental review included the specific impact of the pipeline loop on aesthetics, agriculture, air quality, biological resources, cultural resources, geology/soils, hazards/hazardous materials, hydrology, land use and planning, noise, population/housing, public services/socioeconomics, recreation, transportation and traffic, and utilities. The witness explained that the EIR determined that the pipeline loop would not create any impacts that could not be mitigated to a less than significant level, and the Commission certified the EIR in D.02-07-036.

Wild Goose also presented extensive testimony regarding a scrivener's error in the original recorded easement, which has been corrected by order of the Butte County Superior Court, as noted below. This matter has been resolved in the Superior Court and is not an issue before the Commission.

5.2. Roseville Land Development Corporation

Roseville Land presented no witnesses.

6. Discussion

6.1. Motion to Dismiss

Roseville Land moved to dismiss this complaint on both procedural and substantive grounds. As set forth below, we find that the procedural requirements for this proceeding are largely determined by § 625, and that the Commission and parties have complied with those requirements. The most significant substantive issue raised in the Motion to Dismiss – that the current pipeline is not located within the actual boundaries of the easement previously granted to Wild Goose – has been resolved by a Butte County Superior Court order correcting an error in the legal description of the original easement.² We, therefore, conclude that the motion to dismiss should be denied.

Procedurally, Roseville Land argued that the complaint initiating this proceeding should have been a petition, and that the Commission has no jurisdiction to instruct non-public utility landowners to answer a complaint. Roseville Land contended that complaints are to be directed to public utilities

² Pursuant to Rule 13.10 of the Commission's Rules of Practice and Procedure, we take official notice of the court's May 9, 2008, order and direct that the copy provided by Wild Goose's counsel be placed in the official record for this proceeding.

pursuant to § 1702, not private landowners over which the Commission has no jurisdiction.

In § 625, however, the Legislature left to the Commission the determination of the filing to be used to initiate the proceeding necessary to make the needed determinations. Specifically, § 625(a)(1)(A) states that the Commission must find that the proposed condemnation would be in the public interest “pursuant to a petition or complaint filed by the public utility.” (Emphasis added.) In the Commission’s manual³ for property owners, utilities, and the public regarding these eminent domain proceedings, the public utilities are directed to use a complaint. This type of filing is within the terms of the statute and is fully consistent with the Legislative directive that the Commission conduct an “adjudication hearing” to make the determinations.

Roseville Land next argues that the complaint should have been personally served on it because § 625 requires “personal notice” to the property owners of the property to be condemned. Roseville Land contends that Wild Goose’s use of first class mail to effectuate service violates this requirement. Rule 1.9 of the Commission’s Rules of Practice and Procedure provides for three different means of serving a document, including first class mail. Wild Goose complied with the Commission’s rule for service of a document. Roseville Land received actual and timely notice of the proceeding.

Roseville Land also raised the issue of necessity in its motion, contending that the Commission authorized Wild Goose’s pipeline expansion in 2002 and that Wild Goose has not moved forward with construction, thus dispelling any

³ Information for Property Owners, Utilities, and the Public Regarding Senate Bill 177.

argument of “necessity.” Wild Goose explained that it has expanded its storage facilities as authorized by the 2002 decision and that the additional areas it proposes to condemn are needed to complete the pipeline portion of the authorized expansion.

As discussed in more detail below, we find that the additional property Wild Goose proposes to condemn is necessary for Wild Goose’s gas storage and pipeline project.

Roseville Land’s other issues with the expedited schedule for this proceeding are essentially objections to the procedural requirements of § 625, which we are not authorized to revise.

We, therefore, conclude that Roseville Land’s motion to dismiss should be denied.

6.2. The Proposed Condemnation is Subject to the Public Interest Test in § 625

The Commission is charged under § 625(a)(1)(A) with determining if a utility may condemn property for the purpose of competing with another entity:

For the purpose of this article, except as specified in paragraph (4), a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity in the offering of those competitive services, unless the commission finds that such an action would serve the public interest.

We next analyze the four statutory standards in relation to the evidence presented.⁴ We analyze the standards in the following order:

⁴ These standards are set forth in § 625(b)(2)(A) – (D). Section 625(b)(1) sets forth an alternative condition for showing “public interest,” namely, that the proposed project would provide service to an unserved area.

- Whether the property to be condemned is necessary for the proposed project;
- Whether the public benefit of acquiring the property by eminent domain outweighs the hardship to the owners of the property;
- Whether the proposed project is located in a manner most compatible with the greatest public good and least private injury; and
- Whether the public interest and necessity require the proposed project.

6.3. The Property to be Condemned is Necessary for the Proposed Project

Wild Goose's witnesses explained that the strips of property proposed to be condemned are the only feasible means to complete the pipeline loop, as previously authorized by the Commission. Other than to take issue with the Commission's authorization of the pipeline loop, Roseville Land has not credibly challenged the need for these particular strips of property.

We, therefore, conclude that the property to be condemned is necessary for the proposed pipeline loop portion of the expansion project.

6.4. The Public Benefit of Acquiring the Property by Eminent Domain Outweighs the Hardship to the Owners of the Property

The Commission has previously determined that additional independent natural gas storage capacity will benefit the public by increasing reliability and exerting downward pressure on natural gas prices. See D.02-07-036, at Findings of Fact 3 and 4.

Roseville Land stated that the pipeline is not far from its clubhouse and bunking cottages, and that the project and its vehicles have disrupted the serenity of farm and wildlife habitat. Roseville Land offered no evidence of

hardships from the proposed condemnation that were in addition to the initial condemnation or uniquely caused by the loop pipeline. Roseville Land argued that the additional pipeline would impose additional risks. Those risks, however, were previously considered by this Commission in the expansion decision, with the Commission determining that the expansion project should go forward.

The public benefits were set out in the 2002 decision, are re-stated below in Section 6.6, and are significant. We have previously determined that these benefits outweigh the disruption of farm life imposed on landowners. We conclude, therefore, that the public benefit of Wild Goose's proposed condemnation outweighs the private harm.

6.5. The Proposed Project is Located in a Manner Most Compatible with the Greatest Public Good and Least Private Injury

The proposed condemnation is located adjacent to the existing pipeline easement and is part of the expansion project approved by the Commission. Roseville Land offered no contradictory evidence. The amount of land to be taken is minimal. We, therefore, conclude that the proposed condemnation is most compatible with the greatest public good and least private injury.

6.6. The Public Interest and Necessity Requires the Proposed Project

In D.02-07-036, the Commission granted Wild Goose's request to amend its CPCN to allow for the expansion of Wild Goose's Butte County natural gas storage and pipeline facility. The Commission found that the following factors supported granting the request:

1. demonstrated customer interest in additional gas storage facilities;
2. increased demand for natural gas from electrical generators;

3. downward pressure on natural gas prices; and
4. increased availability during times of high demand.

Wild Goose testified that these factors remain valid today. In its brief, Roseville Land argued that due to the passage of time, the Commission's 2002 rationale and Wild Goose's presentation in support of that application have become "stale" and no longer valid. Roseville Land offered no evidentiary support for its assertion, other than the passage of time.

In its testimony, Wild Goose contended that during the intervening years, natural gas consumption has increased. There has been no showing that the passage of time has decreased the need and, therefore, we conclude that the public interest and necessity require the proposed condemnation.

6.7. The Proposed Project Has Been Reviewed Under the California Environmental Quality Act

CEQA (Public Resources Code Section 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies, and requires the Commission to consider the environmental consequences of its discretionary decisions, such as § 625 findings of public interest. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereinafter CEQA Guidelines Section 15002.)

Here, Wild Goose included the bi-directional storage loop pipeline in the project evaluated by the Commission in Application 01-06-029. The Commission certified the Environmental Impact Report on this project in D.02-07-036.

Roseville Land argued that the Environmental Impact Report did not consider the impacts of directional boring underneath an existing pipeline. Wild

Goose testified and referenced supporting documentation showing that these impacts were evaluated in the Report.

The record shows that the Commission specifically considered a bi-directional storage loop pipeline in the environmental review leading up to the 2002 decision. Wild Goose's witness persuasively testified that this review included the environmental impacts of directional boring in close proximity to an existing pipeline and that those impacts would not be substantially different should the directional boring pass under the existing pipeline. Roseville Land offered no contradictory evidence.

We, therefore, find that the proposed project including the loop pipeline environmental impacts has been previously reviewed by this Commission and that no further CEQA review is required.

6.8. Appeal of the Presiding Officer's Decision

In its appeal, Roseville Land argues that this proceeding should have been initiated with a petition, not a complaint, and that personal service was required. As set out above, § 625 allows for the complaint form of action and the Commission's Rules of Practice and Procedure provide for service by mail.

Roseville Land also challenges the Commission's practice of using prepared written testimony with cross-examination before the Presiding Officer as denying Roseville Land due process. These are standard Commission procedures designed to enhance discovery and cross-examination by requiring direct testimony ahead of the hearing. These procedures did not deny Roseville Land its due process rights. See D.08-06-021.

Roseville Land next contends that Wild Goose abandoned similar condemnation efforts in 2004 and is therefore barred by California law from pursuing this condemnation. Wild Goose countered that its 2004 abandonment

without prejudice did not bar its proposed condemnation under California law and is no basis for dismissing this proceeding.

The legal effect, if any, of the 2004 abandonment is not within the findings required under § 625. We will, therefore, leave this question for the Superior Court in the ensuing condemnation proceeding.

Roseville Land next reiterated its challenge to the 2002 decision finding that the pipeline expansion would serve the public interest and was necessary. Roseville Land offered no new basis for disturbing our 2002 findings and we will not.

Roseville Land also restated its objections to relying on the 2002 Environmental Impact Report. These objections are resolved above.

We conclude that the appeal presented no basis for substantive alteration of the Presiding Officer's Decision, and we make no such alterations.

7. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ and Presiding Officer in this proceeding.

Findings of Fact

1. The narrow strips of property comprising the permanent easements and the associated temporary construction easements are the most feasible means to enable Wild Goose to construct its loop pipeline.

2. The public will benefit from increased availability and reliability of natural gas supply from the proposed condemnation.

3. Roseville Lands' harm is limited to disturbed farm serenity and concerns about pipeline safety.

4. Wild Goose presented evidence that locating the loop pipeline alongside the existing pipeline minimizes private harm; Roseville Land presented no contradictory evidence.

5. The amount of land to be taken is minimal.

6. Locating the loop pipeline alongside the existing pipeline minimizes private harm.

7. Wild Goose's bi-directional loop pipeline was a primary component of Wild Goose's expansion project approved by the Commission in D.02-07-036.

8. Since the Commission issued D.02-07-036, no evidence was produced showing a decrease in natural gas consumption in California.

9. The environmental review of the expansion project included directional boring.

10. Defendant Roseville Land received actual and timely notice of this proceeding as a result of Wild Goose's service of the complaint on it.

11. Wild Goose presented qualified witnesses in support of its request.

12. Roseville Land presented no witnesses.

13. The findings underlying the Commission's 2002 authorization, allowing Wild Goose to expand certain facilities, are still valid.

Conclusions of Law

1. The four parcels of property proposed to be condemned by Wild Goose are necessary for the expansion project approved in D.02-07-036.

2. The Commission found in D.02-07-036 that the expansion of Wild Goose's natural gas storage and pipeline facility, including the bi-directional loop pipeline, will bring significant public benefits by responding to increased demand for natural gas from electrical generators, exerting downward pressure

on natural gas prices, and providing increased availability of natural gas during times of high demand.

3. The public benefits of the proposed condemnation outweigh the hardship to the landowners.

4. The bi-directional loop pipeline is located in a manner most compatible with the greatest public good and least private injury.

5. The public interest and necessity require Wild Goose's proposed condemnation.

6. Wild Goose's bi-directional pipeline has been previously reviewed pursuant to the California Environmental Quality Act and no further review is required.

7. Section 625 authorizes the Commission to require a complaint to initiate a proceeding pursuant to that section.

8. The evidentiary hearings in this proceeding were conducted consistent with the Commission's procedural standards for hearings and afforded both parties a fair hearing to resolve the issues raised by the complaint.

9. The timing constraints set by § 625 require an expeditious hearing.

10. The primary substantive issue raised in the motion to dismiss, i.e., that the current pipeline is not located within the actual boundaries of the recorded easement, has been resolved by the May 9, 2008, Butte County Superior Court order.

11. The public interest would be served by Wild Goose's proposed condemnation.

12. Roseville Land's appeal presented no procedural or factual basis for substantive alteration of the Presiding Officer's Decision and no such alterations should be made.

13. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 625, this Commission finds that the condemnation by Wild Goose Storage LLC of two permanent subsurface utility and gas transmission pipeline easements and two temporary construction easements as described in Attachment A will serve the public interest.
2. Roseville Land Development Association's appeal is denied.
3. Case 08-02-006 is closed.

This order is effective today.

Dated November 6, 2008, at San Francisco, California.

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

[D0811006 Attachment A](#)