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**ORIGINAL**

Decision 92-10-048 October 21, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
Pacific Pipeline System, Inc. for  
authorization to issue 1000 shares  
of \$0.01 par value capital stock, to  
incur indebtedness and for approval  
of rates and conditions of service.

Application 91-10-013  
(Filed October 10, 1991)

INTERIM OPINION

Applicant Pacific Pipeline System, Inc. (Pacific) is found to be a public utility within the meaning of Public Utilities (PU) Code § 216. Pacific's request for an order permitting it to adopt rates and terms of service by negotiation with its shippers, and excusing Pacific from requirements of Sections IX and X of Commission General Order (G.O.) 96-A that make contracts for service subject to modification by the Commission at any time, is denied as premature. When Pacific files its proposed tariffs, contracts, and supporting materials in accordance with Commission rules, the Commission will entertain Pacific's request for such further relief.

1. Background

Pacific is a newly formed corporation which intends to construct, own, and operate a crude oil pipeline extending some 170 miles from an onshore marine terminal plant near Gaviota, in Santa Barbara County, to two refineries located in Los Angeles County. The alignment of the pipeline has not yet been precisely defined, but it will be situated entirely within the State of California.

Pacific owns no property other than that which is being developed to pursue the pipeline project. It proposes to issue 1000 shares of its capital stock, each share having a par value of \$0.01. The stock would be purchased by Pacific's parent, PPS

Holding Company. It also proposes to enter into funding arrangements with certain oil producers that are interested in shipping crude oil by means of the proposed pipeline. Under these arrangements the producers will fund the majority of the development expenses of the proposed pipeline facility, and Pacific will repay the producers for the development funding when Pacific obtains construction financing. These advances will be nonrecourse loans, and Pacific emphasizes that none of the proceeds will be used to compensate Pacific in any manner for transportation services which it may render to these lenders.

The pipeline will be engaged in common carriage, its services being available on an open, nondiscriminatory basis. According to the application, it is intended to be a means of transporting crude oil produced from the Santa Barbara outer continental shelf (OCS) area to Los Angeles Basin refineries. An affidavit of Pacific's President, Norman L. Rooney, which was filed as part of the record in this proceeding, states that an estimated 10% of the oil transported by the pipeline will be produced and transported entirely within the State. (Exhibit 1 to Pacific's Response to All American's Motion to Dismiss.)

Pacific's application asks the Commission to issue an initial decision and order finding that Pacific is a public utility within the meaning of PU Code § 216; authorizing Pacific to issue 1,000 shares of \$0.01 par value capital stock and incur evidences of debt to be used for funding the development of its proposed pipeline, repayable only if construction financing is obtained; permitting Pacific to adopt rates and terms of service by negotiation with its shippers; and excusing Pacific from certain requirements of Sections IX and X of Commission G.O. 96-A which require contracts for service to be subject to modification by the Commission at any time. By letter dated February 14, 1992, Pacific asked the Commission to issue an interim decision and order relating solely to its status as a public utility and its

ratemaking authority, but defer consideration of the remaining requested relief.

2. Discussion

Pacific is a public utility subject to this Commission's regulation. PU Code § 228 classifies as a "pipeline corporation" every person or corporation "owning, controlling, operating, or managing" a pipeline for compensation within California, except a landfill gas facility. PU Code § 216 designates any pipeline corporation performing a service for, or delivering a commodity to, the public, as a public utility subject to the jurisdiction, control, and regulation of this Commission and the provisions of the Code. Pipeline corporations are not required to obtain a pre-construction certificate of public convenience and necessity, as are other transportation concerns, PU Code § 1001, but the Commission has consistently conferred regulated public utility status upon prospective ventures such as that proposed by Pacific.

In its Interim Decision, Decision (D.) 86125 (mimeo., July 19, 1976), in Application of Sohio Transportation Company of California, Application (A.) 56445, the Commission considered a nearly identical request. The applicant, Sohio, asked for authority to issue 10,000 shares of \$1.00 per value common stock, and a finding that Sohio, which proposed to construct a pipeline in California, was a public utility pipeline under PU Code §§ 216, 227, and 228. Although expressly recognizing that Sohio was a newly formed corporation which owned no property and had not yet engaged in any business, the Commission found that Sohio was a pipeline corporation within the meaning of PU Code § 228 and a public utility subject to its jurisdiction under PU Code § 216. Id., mimeo. pp. 1, 3 (Findings of Fact 5 and 6).

Only where a prospective venture affected with a public interest does not intend to dedicate its facilities to public use has the Commission not found it to be a public utility. Thus, for example, a proposed experimental coal gasification facility was

expressly found not to be a public utility within the meaning of PU Code § 216, because it was not primarily intended to furnish energy for public use. Southern California Edison Company, 4 CPUC 2d 195 (1980).

No documentation was furnished in support of Pacific's request for specific rate relief. Absent the inclusion of even a form of shipper contract for the Commission to consider, the application does not appear to meet the fundamental requirements for approval of rates and terms of service under the Commission's Rules of Practice and Procedure (Rules) and G.O. 96-A. Consequently, Pacific's request for approval of its proposed rates and terms of service, and for exemption from any requirements of G.O. 96-A, is denied without prejudice, and Pacific is granted leave to amend its application at any time to furnish proper support to its request.

In D.86125, supra, the Commission at this stage of the proceeding refrained from taking any action beyond finding that Sohio had public utility status and approving the issuance of stock, pending completion of an environmental impact report (EIR) pursuant to the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 et seq. The Commission thus issued only an interim order. An EIR is also being prepared in conjunction with this application. Although there was initially some concern about the propriety of conducting environmental review under CEQA because of the preliminary nature of Pacific's request, such review appears to be appropriate under Fullerton Joint Union High School Dist. v. State Board of Education, 32 Cal. 3d 779, 187 Cal Rptr 398 (1982), for implementation of Pacific's plans to build the pipeline obviously involves the "possibility of a significant impact." Id. at 794. See also Bozung v. Local Agency Formation Comm., 13 Cal. 3d 263, 118 Cal Rptr 249 (1975). Accordingly, our decision today is also interim, and no final action will be taken on Pacific's application until the EIR is final.

Findings of Fact

1. Pacific is a newly formed corporation which intends to construct, own, and operate a crude oil pipeline from an onshore marine terminal plant near Gaviota, Santa Barbara County, to oil refineries located in Los Angeles County.
2. Pacific owns no property other than that which is being developed to pursue the pipeline project.
3. The pipeline which Pacific intends to construct, own, and operate will be engaged in common carriage, and its transportation services will be available on an open, nondiscriminatory basis.
4. Pacific intends to dedicate its pipeline facilities to public use.
5. Implementation of Pacific's plans to build a pipeline through the financing sought to be authorized in its application involves the possibility of a significant adverse impact upon the environment.
6. An EIR is being prepared in conjunction with Pacific's application.

Conclusions of Law

1. Pacific is a public utility subject to the Commission's jurisdiction, pursuant to PU Code § 216.
2. Pacific's request for permission to adopt rates and terms of service by negotiation with shippers, and for exemption from certain requirements of G.O. 96-A, should be denied without prejudice.
3. An EIR should be prepared in relation to the relief requested in this application.
4. This should be an interim decision, and no final action should be taken on Pacific's application until the EIR is final.

INTERIM ORDER

IT IS ORDERED that:

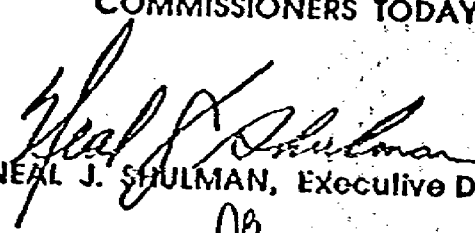
1. Pacific Pipeline System, Inc.'s (Pacific) request for permission to adopt rates and terms of service by negotiation with shippers, and for exemption from certain requirements of General Order 96-A, is denied.
2. An Environmental Impact Report (EIR) shall be prepared in relation to the project which is the subject of Pacific's application.
3. No final action shall be taken in relation to this application until the EIR is final in accordance with the requirements of California Environmental Quality Act and Rule 17.1 of this Commission.

This order is effective today.

Dated October 21, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
NEAL J. SHULMAN, Executive Director