

Decision 96-12-014 December 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and )  
Electric Company for Authorization )  
to Sell the Richmond Pipeline and )  
Hercules Pumping Station to )  
Wickland Oil Martinez, L.P. )  
Pursuant to Public Utilities Code )  
Section 851 )  
(Electric) (U 39 E) )

**ORIGINAL**

Application 95-07-023  
(Filed July 28, 1995)

Application of Wickland )  
Pipelines LLC for authorization )  
to increase membership )  
contributions, to incur )  
indebtedness, to encumber )  
property, and for approval of )  
rates and conditions of service. )

Application 96-05-005  
(Filed May 1, 1996)

INTERIM OPINION

Summary

Wickland Pipelines LLC (Wickland) is a pipeline corporation and public utility by virtue of its dedication to public use of its rights to acquire certain oil pipeline facilities and its intent to operate them to deliver commodities to the public for compensation.

Background

Last year, Pacific Gas and Electric Company (PG&E) filed an application to transfer an oil pipeline and associated rights-of-way to an affiliate of Wickland, Wickland Oil Martinez, L.P. (Wickland Martinez). Commission staff of the former Division of Ratepayer Advocates, now Office of Ratepayer Advocates (ORA), filed a protest and began discovery. A prehearing conference (PHC) was held on January 29, 1996 to determine the status of the application and whether the parties were prepared to bring the matter forward for resolution.

Counsel for Wickland Martinez disclosed that it had concluded a legal risk existed if the pipeline transfer from PG&E was not made to another public utility. This is due to the real property interests that affect the right-of-way. It was determined that proceedings would be suspended while Wickland Martinez prepared a suitable application. That application was filed on May 1, 1996, not by Wickland Martinez, but by Wickland. This application sought authorization to increase membership contributions,<sup>1</sup> incur indebtedness, and for approval of rates and conditions of service. The application also confirmed formally that Wickland intended to acquire the PG&E pipeline from Wickland Martinez (which has the agreement to acquire it from PG&E, subject to our approval) and to undertake substantial construction improvements, including a new deep water wharf facility in the Port of Richmond.

Following review of Wickland's proponent's environmental assessment, it was determined that an environmental impact report pursuant to the California Environmental Quality Act (CEQA) would be required for the project described in the application.

The assigned administrative law judge (ALJ) issued an order consolidating the two applications and convened a second PHC on August 6, 1996. In addition to PG&E, Wickland Martinez, and Wickland, Chevron U.S.A. and ORA entered appearances. Wickland's counsel discussed the importance from a planning perspective to have the status of Wickland as a public utility settled prior to the final decision following completion of an environmental impact report. On September 6, 1996 Wickland filed its motion for an order on its status. PG&E filed a response in support of the motion. No other party filed a response.

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<sup>1</sup> Wickland is organized as a limited liability company, and membership contributions are the functional equivalent of equity securities.

Discussion

Public Utilities (PU) Code Section 228 defines a "pipeline corporation" to include "every corporation or person owning, controlling, operating, or managing any pipeline for compensation within this state." A "pipeline" includes "all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipelines."

As Wickland notes in its motion, we have granted relief to others seeking to confirm their status as public utility oil pipeline companies. (See, e.g., In the matter of the Application of Pacific Pipeline System, Inc. (Decision (D.) 92-10-048.)

Wickland supports its motion by stating it "clearly qualifies as a pipeline corporation as a result of its proposed acquisition of the Richmond Marine-Link Pipeline System<sup>(2)</sup> for the sale of oil pipeline transportation service for compensation."

The statutory definition of "pipeline corporation" requires that the corporation or person be presently involved in the ownership, control, operation, or management of a pipeline. It is problematic whether Wickland can meet that factual requirement simply by proposing to be so involved in the future. However, we can certainly take notice that the PG&E facility is an oil pipeline and there can be little doubt that once Wickland acquires it, it will become a pipeline corporation, if we approve the acquisition. Wickland's beneficial ownership of the PG&E pipeline, even though contingent, is sufficient to satisfy the requirement of present ownership or control.

We interpret the "for compensation" provision of PU Code Section 228 as a matter of intent. Because Wickland will be performing service for, or delivering any commodity to the public

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<sup>2</sup> This consists of the pipeline that Wickland Martinez would acquire from PG&E and the proposed construction by Wickland.

for which any compensation or payment will be received, it satisfies all the requirements to be a pipeline corporation under Section 228.

Wickland's motion shows that it contemplates dedicating its oil pipeline to public use and offering service to any entity in a position to utilize the pipeline pursuant to rates regulated by the Commission. Dedication is an essential element of public utility status under PU Code Section 216 and can be satisfied by a finding that it has dedicated its present beneficial ownership in the PG&E facility to public use.

Findings of Fact

1. Wickland moves to have its status as a pipeline corporation and public utility confirmed.
2. Wickland has a beneficial ownership in the PG&E oil pipeline.
3. Wickland intends to perform service for, or deliver commodities to the public for which any compensation or payment is received.

Conclusions of Law

1. Wickland has sufficient beneficial ownership in the PG&E facility to qualify as a pipeline corporation.
2. Wickland has dedicated its beneficial ownership in the PG&E facility to public use.
3. Wickland is a public utility subject to the jurisdiction of the Commission.

I N T E R I M   O R D E R

IT IS ORDERED that the motion for expedited order on public utility status of Wickland Pipelines LLC is granted, and Wickland Pipelines LLC is declared to be a pipeline corporation and public utility.

This order is effective today.

Dated December 9, 1996, at San Francisco, California.

P. GREGORY CONLÓN  
President  
DANIEL Wm. FESSLER  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners