

Decision 99-12-038 December 16, 1999

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 market-based rates and conditions of service.

Application 99-08-050
(Filed August 23, 1999)

INTERIM OPINION

Summary

This interim decision finds that applicant Wickland Pipelines LLC (Wickland) is a pipeline corporation, and a public utility subject to the jurisdiction of the Commission.

Background

Wickland filed this application seeking, first, an expeditious Commission finding that it is a public utility pipeline corporation subject to the jurisdiction of the Commission and, subsequently, after environmental review, an order authorizing it to acquire additional membership capital contributions, and to provide fuel pipeline services under market-based rates, established through arms-length negotiations between Wickland and shippers, according to a tariff similar to those filed at the Federal Energy Regulatory Commission.

This interim order deals only with the first request.

Wickland owns no tangible property. It intends to construct, own, and operate a common carrier jet fuel pipeline that will extend from its connection with the SFPP North Line, at a location in West Sacramento, to a new terminus at a new fuel tank storage facility to be constructed at Sacramento International Airport (Airport) by the Airline Group. 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.

The proposed termination is at a tank storage facility to be constructed, owned, and operated by the Airline Group, which has applied to the Sacramento County Department of Airports for a ground lease and linear right-of-way for the storage tank. The Airline Group intends to subgrant to Wickland the rights for the use of the linear right-of-way for the construction, operation, and maintenance of the proposed pipeline across Airport land.

Applicant proposes to operate the jet fuel pipeline in common carriage on an open, nondiscriminatory basis, to provide jet fuel transportation services to all airline companies utilizing the tank storage facility.

Discussion

In its request that we find applicant to be a public utility pipeline corporation under Commission jurisdiction, applicant cites Pacific Pipeline System, Inc., Decision (D.) 92-10-048 dated October 21, 1992 mimeo. at 2, "[O]nly 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." That decision also states,

"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 preconstruction 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 this instance Wickland currently does not own any tangible facilities. It proposes to do so in the future, after the Commission issues a final decision in this matter authorizing it to obtain additional funding and to provide pipeline services. The Commission encountered a similar situation in prior Wickland applications, Application (A.) 95-07-023 and A.96-05-005, which resulted in D.96-12-014 dated December 9, 1996. The Commission determined that:

"The statutory definition of 'pipeline corporation' requires 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 that 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 note that although the Commission found Wickland to be a public utility in D.96-12-014, that finding is not relevant here since it was related to a different proposed venture, which was subsequently terminated.

The Commission made similar findings in D.86125 (80 CPUC 236).

This application is similar to the above instances; we note that Wickland intends to own or control a pipeline. We conclude that this intent is sufficient to satisfy the Pub. Util. Code § 227 requirement of present ownership or control.

Similarly, we interpret the requirement of Pub. Util. Code § 228 that the pipeline be owned, controlled, operated or managed for compensation to be satisfied by the stated intent of applicant to own, control and operate the pipeline for compensation.

Pub. Util. Code § 216(a) states, "'Public utility' includes every...pipeline corporation...where the service is performed for, or the commodity is delivered to, the public or any portion thereof." Under § 216(b) "Whenever any...pipeline corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that...pipeline corporation...is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

We conclude that since Wickland proposes to operate a pipeline as defined in Pub. Util. Code § 227, it will be a pipeline corporation within the meaning of Pub. Util. Code § 228 because it will operate a pipeline for compensation in California. Since it will operate its facilities in common carriage and will deliver a commodity to the public, it is a public utility within the meaning of Pub. Util. Code § 216 and is subject to the jurisdiction of the Commission.

Notice of the application was published in the Commission's Daily Calendar on September 3, 1999. In Resolution ALJ 176-3023 dated September 16, 1999, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings are necessary. No protests have been received.

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. Wickland proposes to operate a pipeline for compensation in California.
2. Wickland proposes to deliver a commodity to the public in common carriage.

Conclusions of Law

1. Wickland has dedicated its future beneficial ownership of the pipeline facilities to qualify as a pipeline corporation.
2. Wickland has dedicated its future beneficial ownership in the pipeline facilities to public use.
3. Wickland is a public utility subject to the jurisdiction of the Commission.

INTERIM ORDER

IT IS ORDERED that Wickland Pipelines LLC is declared to be a pipeline corporation and public utility.

This order is effective today.

Dated December 16, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners