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98 FERC ¶ 61,219

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Plantation Pipe Line Company | Docket No. OR02-1-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued February 28, 2002)

On November 2, 2001, Plantation Pipe Line Company (Plantation) filed a petition for declaratory order, seeking declarations from the Commission regarding the lawfulness and regulatory effect of certain proposed joint rate arrangements in connection with proposed new pipeline service to Chattanooga and Knoxville, Tennessee which Plantation intends to offer in connection with a newly-formed pipeline affiliate. In addition, Plantation seeks a ruling that the proposed arrangements would not affect the existing status of its current rates to mainline destinations under the Energy Policy Act of 1992 (EPAct). Plantation states that given the major financial commitment necessary to finance this project, before it and its owners undertake such a commitment, Plantation needs regulatory assurance from the Commission in the form of an answer to the questions posed in its petition.

Protests were due to be filed on or before November 19, 2001. No comments, protests, or interventions were received.

Background

Plantation is a major pipeline common carrier of refined petroleum products in the southeastern United States.[1] Originally built over fifty years ago, Plantation's system includes approximately 3,100 miles of pipeline, delivering products in eight states. The mainline section of the pipeline extends from Baton Rouge, Louisiana to Greensboro,

[1] Plantation is currently owned by Kinder Morgan Operating L.P. "D" (27%), Kinder Morgan Operating L.P. "A" (24%) (collectively "KinderMorgan") and ExxonMobil Pipeline Company (49%); KinderMorgan is the operator.

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North Carolina, with several spur lines, and includes lateral lines to Roanoke, Virginia and Northern Virginia. Plantation's system parallels the Colonial Pipeline Company (Colonial) system for its entire length, and the two pipelines compete directly for the delivery of petroleum products from Gulf Coast refineries to markets throughout the entire Southeast.

Plantation states that in recent years, capacity to the Chattanooga and Knoxville markets has become increasingly constrained as a result of continued growth in the demand for petroleum products. Plantation states that both it and Colonial have been required to prorate nominations on their lines to these locations periodically since 1996 and continuously since 1999 (Colonial's capacity constraint is in the Knoxville market only). Plantation contends that there is a market for new and expanded pipeline service to Knoxville. As a result, Plantation states it is proposing a new pipeline to meet this demand and to provide a major competitive alternative to service on the other pipeline service provider, Colonial.

To provide expanded transportation capacity to the Chattanooga and Knoxville markets, Plantation proposes two steps. First, a new pipeline would be constructed from Bremen, Georgia to Chattanooga and Knoxville, following the existing right-of-way, to be owned and operated by a new, separate pipeline entity. Next, once the new pipeline facilities are operational - currently projected at the third quarter of 2003 - all but a very short segment of the existing 8-inch line spur line running from Bremen to Chattanooga and Knoxville would be abandoned in place, as well as the service offered by Plantation from Baton Rouge, and from Pascagoula and Collins, Mississippi, to Chattanooga and Knoxville.

The new pipeline would file cost-based local rates for transportation service between the Bremen origin and the destinations of Chattanooga and Knoxville. Plantation and the new pipeline would file joint tariffs for transportation service from Baton Rouge and other origins on the Plantation system to Chattanooga and Knoxville. Further, Plantation proposes to give all shippers, new or existing, the opportunity during an open season to secure the right to use joint rates equal to or less than the current local rate levels, by establishing discounted joint rates to shippers that commit to specific volumes for a five-year period.

Discussion

Plantation states that the estimated cost of the new project is $110 million. Because the cost of the construction would be borne by Plantation's owners, Plantation states that its owners would be at considerable risk. As a result, Plantation contends it is necessary to

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have advance Commission approval in order to finance the new project. Further, Plantation states that commitments by shippers would be contingent upon Commission approval of the discounted joint rates underlying the agreements. Therefore, Plantation seeks a Commission order declaring that:

(1) the abandonment of the existing 8-inch Plantation line and transportation service from Bremen, Georgia to Chattanooga and Knoxville, Tennessee, and that Plantation's cancellation of its rates to those locations, would not be subject to Commission jurisdiction or challenge;

(2) Plantation's contemplated joint rates with a new affiliated pipeline entity serving Chattanooga and Knoxville, via Bremen, would be just, reasonable and not unduly discriminatory; and

(3) the establishment of the proposed new pipeline and accompanying service from Bremen, to Chattanooga and Knoxville, would not affect the grandfathered status of, nor subject to challenge, Plantation's existing mainline rates from its origins to Bremen.

We shall discuss each of these requests below.

1. Facilities Abandonment and Cancellation of Service New Pipeline

To provide expanded transportation capacity to Chattanooga and Knoxville, a newly formed Plantation affiliated pipeline would construct a 16-inch pipeline from Bremen to Chattanooga and Knoxville. After this pipeline has been constructed, Plantation proposes to abandon service through its existing 8-inch pipeline from Bremen to Chattanooga and Knoxville.[2] Plantation seeks an order from the Commission declaring that idling of those facilities presently used to serve Chattanooga and Knoxville and cancellation of the existing rates for service to those destinations will not be considered an abandonment of services subject to Commission jurisdiction.

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[2]Plantation plans to abandon 181 of 190 miles of existing pipeline running from Bremen to Chattanooga and Knoxville. Plantation states that deliveries to urban terminals at Chattanooga would be made using the remaining 9 miles of existing 8-inch line which will be sold to, and incorporated in, the new pipeline.

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The Interstate Commerce Act (ICA)[3] does not give the Commission jurisdiction over abandonments of facilities and the services associated with such facilities. Indeed, the Commission has found repeatedly that it has no jurisdiction over oil pipeline abandonments.[4]

Transporters are generally free to cancel services at their will, subject to certain conditions. Although the Commission does not have jurisdiction over a pipeline's abandonment of service, we have asserted jurisdiction over cancellation of services in limited circumstances where service was not completely abandoned. In Amoco,[5] the transporter proposed to cancel service at certain origin points along its mainline pipeline, while keeping the mainline pipeline in service for service downstream of the cancellation points. The Commission indicated there that it was not devoid of jurisdiction in those circumstances, since the mainline pipeline would still be in service. The Commission stated that such cancellation would affect throughput on its system, which in turn would affect Amoco's system-wide cost-of-service, and thereby may affect its rates. The Commission stated that it therefore had jurisdiction under Section 15(7) of the ICA, since the proposed cancellations would in fact affect rates.

However, Amoco involved cancellation of points of origin along a pipeline that would continue to be in service after the cancellations were made, for service to points downstream of the canceled points. That is not the case here. Rather, Plantation's petition indicates that it will abandon its pipeline and facilities used to transport petroleum products to Chattanooga and Knoxville, thereby making continued service to Chattanooga and Knoxville on this line impossible. Thus, cancellation of Plantation's rate schedule for service to Chattanooga and Knoxville would be a complete abandonment of service over which the Commission would have no jurisdiction.

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[3]49 App. U.S.C. 1 (1994).

[4]See ARCO Pipeline Company, 55 FERC ¶ 61,420 (1991); Texaco Pipeline Inc., 58 FERC ¶ 62,051 (1992); ARCO Pipeline Company, 66 FERC ¶ 61,159 (1994); and Colonial Pipeline Company, 89 FERC ¶ 61,095 (1999), reh'g denied, 95 FERC ¶ 61,355 (2001).

[5]Amoco Pipeline Company, 83 FERC ¶ 61,156 (1998).

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2. Approval of the Proposed Rate Structure and Joint Rate Levels

Plantation proposes to form an affiliated pipeline to construct a new 16-inch pipeline that would originate at Bremen, and would serve Chattanooga and Knoxville. Service to the Chattanooga and Knoxville markets would be available via two types of rates: (1) the combination of Plantation's then-current Bremen destination rates,[6] plus the initial local rate to be established by the newly formed affiliate pipeline for service from Bremen to Chattanooga and Knoxville;[7] and (2) joint rates offered by Plantation and the new pipeline reflecting discounts for certain volume commitments. In order to provide adequate regulatory assurance to justify Plantation's owners' large investment in a new pipeline, Plantation is seeking Commission approval that the proposed joint rates would be lawful.

Plantation proposes to give all shippers, new or existing, the opportunity during an open season to secure the right for five years to use joint rates equal to or less than the then-current rate levels applicable under Plantation's tariff for service from various origin points to Chattanooga and Knoxville. Plantation states its proposed joint rates would be substantially less expensive than choosing Plantation's local rates to Bremen and the affiliate pipeline's rates to Chattanooga and Knoxville. The joint rates would be computed in the following manner:

(1) current Plantation shippers to Chattanooga and Knoxville that agree during the open season to ship their historical volumes to those destinations for five years would qualify for a joint five-year rate equal to Plantation's then-current through rates to those destinations.[8]

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[6]The reference to "then-current" in our discussion refers to Plantation's rates at the time of the inception of the new service. Plantation states it expects to increase both cost-based and discounted rates over the first five years of its proposal in accordance with the Commission's indexing methodology (18 CFR § 342.3 (1999)).

[7]Plantation states that the new pipeline would file its initial rate pursuant to 18 CFR § 342.2, which allows a pipeline to file a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service, but requires a cost justification if a protest is filed.

[8]The tariff would define the base period for the measurement of historical volumes as July 1, 2000 through June 30, 2001.

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(2) all shippers, including any new shippers, that agree during the open season to guarantee incremental volumes over and above historical deliveries to these destinations for five years would qualify for a joint five-year rate reflecting discounts from the then-current through rates. The discounts would increase with the size of the volume commitment, starting at 2 cents/barrel for volumes exceeding 1,000 incremental barrels per day, and increasing up to 12 cents/barrel for volumes exceeding 15,000 incremental barrels per day.

Those shippers who decide not to make a volume commitment for a five-year period would have the option of paying the combination of Plantation's Bremen destination rates and the initial rate to be established by the new pipeline from Bremen to Chattanooga and Knoxville, as indexed over the five years.

Our policy has been that a joint rate is just and reasonable if it is less than or equal to the sum of the ceiling levels associated with the individual local interstate rates currently on file with the Commission.[9] Plantation's discounted joint rate proposal meets these criteria, if as indicated by Plantation, the joint rates offered will be less than the ceiling levels associated with the combination of Plantation's local rates to Bremen and the new affiliated pipeline's rates on file with the Commission.

With regard to discounted rates, the Commission has permitted nondiscriminatory, discounted rates to attract a particular type or group of shipper(s) who are amenable to committing substantial volumes and/or to committing to substantial periods of time. In Sea-Land Service, Inc. v. Interstate Commerce Commission[10] the court stated that:

> Current law no longer considers contract rates to be per se violations of the common carrier duty of nondiscrimination. . . . Since 1978 . . . the Interstate Commerce Commission has held that contract rates are not inherently discriminatory provided that the carrier offering them makes them available to all similarly situated shippers of like commodities.

The court then addressed under what conditions contract rates would be acceptable under the Interstate Commerce Act:

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[9] See Texaco Pipeline, Inc., 72 FERC ¶ 61,313 (1995); and Big West Oil Company v. Frontier Pipeline Company, 94 FERC ¶ 61,339 (2001).

[10] 738 F.2d 1311, 1316 (D.C. Cir. 1984) (Sea-Land).

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> Although one normally regards contract relationships as highly individualized, contract rates can still be accommodated to the principle of nondiscrimination by requiring a carrier offering such rates to make them available to any shipper willing and able to meet the contract's terms. If those terms result in lower costs or respond to unique competitive conditions, then shippers who agree to enter into the contract are not similarly situated with other shippers who are unwilling or unable to do so.[11]

For volume incentive rates, (i.e., reduced or discounted rates offered in exchange for shipper commitments to move specified large volumes) the Commission has held that if an oil pipeline files an incentive rate that is less than the applicable ceiling, no further regulatory action will normally be required, so long as the ceiling rate is not exceeded.[12] As discussed above, Plantation has proposed to offer a joint rate that is less than the combination of Plantation's and the new pipeline's ceiling rates. Under its proposal, Plantation intends to offer additional incentive discounts yielding rates below the joint rate. As a result, Plantation's offered incentive rates could not exceed the combination of the two pipelines' ceiling rates.

Term-differentiated incentive programs – like incentive volume rate programs – require certain prerequisites to be met before a shipper can be eligible for the discount. In such cases shippers agree to ship on a pipeline for a specific period of time. As a result, the Commission has viewed such shippers as not being similarly situated as compared to those shippers who have not committed to a specific term and who retain the choice to ship on the pipeline or not. The Commission has found no discrimination results from differential pricing in these circumstances.[13] Plantation's proposal similarly allows shippers who commit substantial volumes for a period of time to derive some benefit, namely, a lower transportation rate, from that commitment.

Plantation's Petition includes estimated cost, revenue, and throughput data in support of the new pipeline's initial local rates. Plantation states that the information was filed for illustrative purposes in order to assist the Commission's review of its Petition,

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[11] Id. at 1317.

[12] Explorer Pipeline Company, 71 FERC ¶ 61,416 (1995); and Williams Pipe Line Company, 80 FERC ¶ 61,402 (1997).

[13] Express Pipeline Partnership, 76 FERC ¶ 61,245 (1996); and Mid-America Pipeline Company, 93 FERC ¶ 61,306 (2000).

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including the joint rates. Plantation states that it is not asking the Commission to rule on the initial cost-of-service rates of the new pipeline at this time. Plantation states that after the construction of the proposed pipeline, the new company would file its application for initial rates, including cost-of-service support if necessary.

The Commission is therefore not expressing here any view on the level of the cost-of-service-rates for the proposed affiliated pipeline listed by Plantation in its application. The new pipeline's actual rates will not be established until after construction of the Bremen-to-Chattanooga and Knoxville line is completed. The appropriate rate level must be determined when the new pipeline files to establish initial rates.

What we are approving here is Plantation's joint rate methodology, which would provide discounts based upon shippers' volume and term commitments. The Commission finds Plantation's joint rate methodology to be not unduly discriminatory. However, the Commission cannot make a finding that the proposed joint rates are just and reasonable at this time. In order to provide the proposed joint service to Chattanooga and Knoxville, Plantation or its proposed affiliated pipeline must submit a joint tariff including the joint rates that will be applicable to service to Chattanooga and Knoxville. At that time, the Commission can determine whether the joint rates are just and reasonable, consistent with the Commission's joint rate policy discussed above.

3. Grandfathered Status and Challenge of Existing Rates

Plantation proposes to idle and abandon the existing spur of its pipeline extending north to Chattanooga and Knoxville from Bremen, and interconnect its mainline with a new affiliated pipeline to be built along this same route. Plantation proposes to continue to offer service to Chattanooga and Knoxville via new joint rates with the proposed pipeline. Plantation is not proposing to alter its existing rates on its mainline system. Plantation seeks an order declaring that the establishment of the proposed new pipeline and accompanying service from Bremen, Georgia to Chattanooga and Knoxville, Tennessee would not affect the grandfathered status of, or make subject to challenge, Plantation's existing mainline rates from its origins to Bremen.

Under the EPAct, Plantation's rates for transportation from points of origin to Bremen are "grandfathered" and, thus, are deemed to be just and reasonable.[14] There is no reason to require Plantation to justify the existing grandfathered rates associated with this

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[14] 42 U.S.C. § 7172 note (1994).

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movement or any other destination point on its system. Plantation is not proposing to change its grandfathered rates. Plantation is simply proposing to form a new affiliated company to own the proposed pipeline running from Bremen to Chattanooga and Knoxville. The mere connection to the proposed affiliated pipeline running from Bremen to Chattanooga and Knoxville would not affect the grandfathered status of the rates for movements from current origin points to Bremen.

The Commission orders:

The petition for declaratory order filed by Plantation on November 2, 2001, is granted as discussed in the body of this order.

By the Commission.

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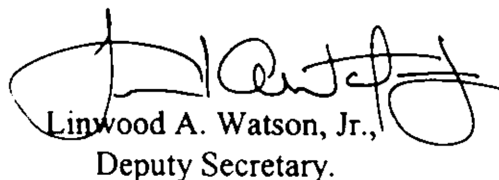

Linwood A. Watson, Jr.,
Deputy Secretary.