

125 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dixie Pipeline Company

Docket No. IS08-449-000

ORDER ACCEPTING TARIFF

(Issued October 22, 2008)

1. On September 22, 2008, Dixie Pipeline Company (Dixie) filed FERC No. 94 asking the Commission to permit the tariff to be effective September 22, 2008. Dixie explains that FERC No. 94 provides for emergency transportation of natural gas liquids (NGLs) (including demethanized mixed, ethane-propane mix, isobutane, butane, and natural gasoline) from Mont Belvieu, Texas, to Anse La Butte and Breaux Bridge, Louisiana. Dixie asserts that the emergency transportation is necessary because of the damage to oil and gas production facilities, processing operations, and transportation caused by Hurricanes Gustav and Ike in the Gulf Coast area. Dixie states that FERC No. 94 already provides that it will expire on February 28, 2009, unless otherwise cancelled, revised, or extended. Dixie further states that the filing constitutes a request for a waiver in compliance with section 6(3) of the Interstate Commerce Act (ICA)¹ and section 341.14 (Special Permission) of the Commission's regulations.²

2. On September 24, 2008, certain intervenors protested the filing, contending that FERC No. 94 will adversely impact their ability to transport and sell propane and ultimately to compete in the propane markets connected to the Dixie system, including

¹ 49 App. U.S.C. § 6(3) (1998), which authorizes the Commission to allow tariff changes on less than 30-days notice.

² 18 C.F.R. § 341.14 (2008).

the market in Hattiesburg, Mississippi. These protestors further contend that Dixie has not justified the need for the emergency service.³

3. As discussed below, the Commission grants Dixie's request for a waiver of ICA section 6(3) and accepts FERC No. 94 to be effective September 22, 2008. Granting the waiver and accepting FERC No. 94 for the limited term it contemplates will aid in alleviating the disruptions caused by the recent hurricanes in the Gulf Coast area.

Description of the Filing

4. Dixie states that, as a result of Hurricanes Gustav and Ike, the production of NGLs in Louisiana has been reduced by more than 100,000 barrels per day (bpd). Dixie further states that refineries and petrochemical facilities located in Louisiana need access to the NGLs at Mont Belvieu, the largest NGL market in the world, so they can continue to produce motor gasoline and petrochemical products. Because it has substantial excess capacity on its pipeline, Dixie contends that the addition of this service will not affect its ability to accept and deliver all regular nominations from current shippers. Dixie further states that the rates are agreed to by a non-affiliated shipper⁴ and emphasizes that FERC No. 94 specifically states that it will expire on February 28, 2009, unless otherwise cancelled, revised, or extended.

Protests

5. Joint Protestors state that FERC No. 94 appears to change the priority of existing propane shipments contrary to Dixie's rules tariff (FERC No. 88). Joint Protestors and

³ ConocoPhillips Company (ConocoPhillips) and Targa Midstream Services Limited Partnership and Targa Louisiana Field Services LLC (jointly, Targa). ConocoPhillips and Targa are referred to jointly in this order as Joint Protestors. On September 29, 2008, Crosstex Energy Services, L.P., Crosstex NGL Marketing, L.P., and Crosstex Processing Services, LLC (collectively, Crosstex) filed a motion to intervene and stated that it shares the concerns of Joint Protestors and joins their request that this proceeding be consolidated with the proceedings in Docket No. IS08-405-000. Also on September 29, 2008, CITGO Petroleum Corporation (CITGO) filed a protest contending that Dixie's proposal affords Dixie too much discretion and threatens wholesale disruption of refining activities along the Gulf Coast. Additionally, on September 29, 2008, Dow Hydrocarbons and Resources LLC also filed a motion to intervene. Dow Hydrocarbons and Resources LLC filed a motion to intervene, but did not protest FERC No. 94. On October 7, 2008, the National Propane Gas Association (NPGA) filed a motion to intervene and a protest, echoing issues raised in earlier protests.

⁴ *Citing* 18 C.F.R. § 342.2(b) (2008).

NPGA contend that Dixie has failed to support its claim of an emergency with respect to particular shippers or shortages of NGLs for purposes of a waiver pursuant to ICA section 6(3).

6. Joint Protestors state that Dixie acknowledges that it has long operated as a propane-only line (except for minimal, if any, shipments of butane and ethane). They also observe that, while Dixie's tariff provides for batching of products other than propane, the pipeline has not operated as a batched line on a regular basis. Joint Protestors contend that propane shippers have shown in another proceeding the serious effects that disruption in propane services could have on their businesses and related energy markets.⁵ Joint Protestors observe that the Commission has established a technical conference to address those concerns.

7. Joint Protestors claim that Dixie personnel have indicated that FERC No. 94 would end continuous propane service. Joint Protestors also state that it is not clear how Dixie would determine whether pipeline capacity is available and how that relates to pumping capacity. Further, they contend that Dixie proposes to have complete discretion to choose which product would have priority when propane nominations are below pipeline pumping capacity and that FERC No. 94 may negatively affect propane shippers' allocation rights.

8. Joint Protestors also fear that Dixie cannot guarantee that propane shipments will not become contaminated, which could create a safety problem, for which Dixie appears to take no responsibility. At a minimum, argue Joint Protestors, Dixie should provide facilities to ensure that propane does not become contaminated, and that Dixie also should be responsible for any economic costs and liabilities resulting from contamination. Joint Protestors further emphasize that the potential reduction in service will occur just as southeastern propane markets enter their peak demand season, when Dixie typically prorates the pipeline.

9. Joint Protestors contend that Dixie has failed to show that the new NGL shippers would bear a reasonable share of Dixie's costs. According to Joint Protestors, the Commission refused to allow oil pipelines to add new services and to subsidize the associated costs through rates collected from existing shippers that will not use the new services.⁶ In addition, Joint Protestors question the timing of the filing, and they raise the possibility that Dixie is attempting an end-run around the Commission's order in

⁵ Citing *Dixie Pipeline Co.*, 124 FERC ¶ 61,175, at P 14 (2008).

⁶ Citing *Enbridge Energy Co.*, 123 FERC ¶ 61,130, at P 22-23, 34-38 (2008). Joint Protestors also point out that the Commission cited the possibility of cross-subsidization in *Dixie Pipeline Co.*, 124 FERC ¶ 61,175, at P 14-15 (2008).

Docket No. IS08-405-000 by filing FERC No. 94 prior to the pending technical conference in that proceeding. Joint Protestors and NPGA urge the Commission to consolidate the instant proceeding with Docket No. IS08-405-000 for purposes of the technical conference.

10. Joint Protestors maintain that Dixie personnel have indicated that they would not want shipments made under FERC No. 94 until October 1, 2008, which casts doubt on the claim of an emergency. Joint Protestors also point out that previous hurricanes have damaged Gulf Coast facilities, but that Dixie did not seek to change its transportation practices in response. Joint Protestors suggest that this action may primarily benefit Enterprise affiliates of Dixie's that are engaged in the storage, fractionation, propylene, and propane marketing businesses.

11. CITGO asks the Commission to suspend FERC No. 94 for the full seven-month period permitted by ICA section 15(7) and to consolidate it with the ongoing proceedings in Docket No. IS08-405-000. CITGO maintains that there is no existing feasible alternative to the use of Dixie's pipeline to dispose of propane generated by the CITGO refinery because CITGO has only limited storage facilities available. According to CITGO, if it is prevented from using the Dixie pipeline for a significant period of time, it may have to curtail or shut down operations at the refinery.

12. CITGO states that, in Docket No. IS08-405-000, a number of propane shippers protested Dixie's effort to change the nature of its operations to accommodate shipments of refinery grade propylene (RGP). CITGO emphasizes that Dixie conceded in that proceeding that it would shut out propane shippers during the periods when it elected to reverse the pipeline flow to accommodate the RGP shipments. CITGO maintains that this is in contrast to Dixie's claim in this proceeding that handling NGL shipments will not affect its ability to accept and deliver regular nominations from current shippers. CITGO also objects to Dixie's effort to reserve the exclusive right to determine the amount of NGLs it will accept and when it will do so, arguing that this threatens wholesale disruption of refining activities along the Gulf Coast. Further, CITGO maintains that Dixie misrepresents the amount of available propane storage capacity. CITGO estimates that it would take up to a year to add sufficient storage capacity to hold a month's volume of propane at a cost of \$8 to \$10 million. CITGO also claims that other pipelines are available to handle NGL shipments, including an affiliate of Dixie's.

Answers

13. On September 29, 2008, October 2, 2008, and October 9, 2008, Dixie filed responses to the protests of Joint Protestors, CITGO, and NPGA, respectively, emphasizing the critical need for NGLs from Mont Belvieu, Texas. Dixie states that it has excess capacity available to transport these NGLs without affecting its ability to accept and deliver all nominations from its current propane shippers. Dixie submits that Joint Protestors fear that they might have to obtain additional short-term storage for their

propane during the days when Dixie transports batches of NGLs; however, Dixie asserts that all of its shippers have adequate storage options available to accommodate the proposed batching of NGLs, although they may have to pay for short-term storage. Dixie contends that the Commission should not allow Joint Protestors to force the pipeline to operate at significantly reduced capacity when there is a critical need for the transportation of NGLs.

14. Dixie claims that its short-notice filing is appropriate given the emergency situation caused by the hurricanes. Dixie points out that NGL production in Louisiana has been reduced by approximately 100,000 bpd and that it expects that it can accommodate NGL shipments to Louisiana as early as October 1, 2008. Dixie also emphasizes that its tariffs always have permitted batching. Dixie points out that, while the demand for NGLs in Louisiana may be abnormal, the supply levels are significantly below normal. Dixie also contends that Joint Protestors' concern may be motivated in part by the fact that the reduced supply allows them to charge higher prices for the NGLs they produce in Louisiana. Moreover, continues Dixie, there is no reason to prevent this emergency service while the Commission considers the transportation of RGP in the Docket No. IS08-405-000 technical conference.

15. Dixie observes that it has the right under its current tariff and the ICA to offer batched service to NGL shippers.⁷ Moreover, adds Dixie, the Joint Protestors have no legal right to expect "24/7" access to Dixie's pipeline for the shipment of propane. According to Dixie, it has provided batched butane transportation in the past, and it now offers ethane transportation. Dixie challenges Joint Protestors' claim that these other transportation offerings have been used minimally or not at all. At any rate, argues Dixie, it is not prohibited from offering a new service if it chooses to do so, especially when such service is in the public interest. Dixie maintains that its proposal to serve both propane and NGL shippers is consistent with the non-discrimination and common carrier principles of the ICA. Indeed, adds Dixie, shippers are not currently guaranteed space on the line and occasionally must make arrangements to store propane that they cannot deliver. Dixie points out that it's the rules provision found in FERC No. 88, Item 50, requires all shippers to arrange for origin and destination storage, so prudent shippers should have such storage available in case of unexpected disruptions of service.

16. Dixie argues that the new NGL service will not unduly harm the propane shippers. Dixie explains that it has significant excess capacity, so it can accept and deliver all regular nominations from current shippers. In fact, states Dixie, the priority for propane shippers is protected in the current propane tariff and in FERC No. 94. Dixie states that shippers that inject propane west of Breaux Bridge, Louisiana, will need to store product

⁷ Dixie cites its FERC No. 88, Item 10.

during periods when it moves the NGL batches on this segment, but all the shippers have adequate storage alternatives available to them, although perhaps at some additional cost.

17. Dixie states that, between 2003 and 2007, the average capacity use of the segment between Mont Belvieu and Breaux Bridge was only approximately 35 percent, the five-year average monthly capacity use in the winter was 44 percent, and the average summer use over the same period was 26 percent. Dixie also explains that annual throughput on that segment has declined in recent years. Dixie acknowledges that, during periods when it moves NGL batches, shippers cannot inject propane, but Dixie reiterates that ample storage is available at most locations to accommodate the propane shippers. For example, continues Dixie, ConocoPhillips states that it has only two days of storage at its refinery, but this likely will be adequate if Dixie moves the volumes of NGLs that it anticipates.

18. Dixie further observes that FERC No. 94 requires it to maintain the integrity of the propane being transported and that NGL shippers must provide sufficient inventory for interface and to comply with the pipeline's specifications. Moreover, adds Dixie, it has the right to refuse to accept any commodity that is not compatible with its system and method of operation.

19. Dixie next argues that its NGL tariff is not discriminatory. It maintains that the NGL tariff is in the best interests of the pipeline and all shippers because it will increase volumes on the system. Dixie admits that permitting NGL shipments on its pipeline would benefit its Enterprise affiliate, which is a major producer of NGL products, but Dixie contends that this does not make the tariff discriminatory. Further, Dixie emphasizes that propane rates are not changed by this tariff and, in fact, that the NGL rate is significantly higher than the propane rate for a comparable movement.

20. Dixie similarly refutes CITGO's protest. Dixie again emphasizes the emergency nature of the service it seeks to provide and suggests that CITGO also seeks to protect its higher NGL prices in Louisiana. Dixie contends that the proposed NGL service will not unduly harm CITGO, in part because CITGO has access to an underground salt dome with significant capacity to store propane, as well as other storage facilities in the area, even if CITGO itself does not have capacity to store propane more than one and one-half days. Dixie also points to CITGO's 12-inch NGL pipeline from Mont Belvieu, Texas, to Lake Charles, Louisiana, that is bi-directional and capable of batching propane back to Mont Belvieu if necessary.

Commission Analysis

21. Pursuant to the provisions of section 341.14 of its regulations, the Commission grants a waiver of ICA section 6(3) and accepts FERC No. 94, effective September 22, 2008. Further, the Commission will not consolidate this proceeding with the proceedings in Docket No. IS08-405-000.

22. The Commission finds that Dixie has justified the need for FERC No. 94 to provide limited-term transportation of NGLs from Mont Belvieu, Texas, to Anse La Butte and Breaux Bridge, Louisiana. This short-term use of Dixie's facilities, which is consistent with the provisions of its tariff allowing batching of shipments, will not unduly disrupt propane transportation on the pipeline. While the protesting parties may be accustomed to service on demand, the short-term inconvenience to them is outweighed by the public interest in assisting the Gulf Coast area in recovering from the damage to the energy facilities in that area.

23. Dixie demonstrated that its tariff provides for batching and that it has batched shipments of other products in the past and continues to do so. In addition, Dixie assured the protesting parties that it can accommodate their shipments of propane with modest delays and with only minimal if any additional cost to its propane shippers. Further, as Dixie has pointed out, its pipeline has excess capacity virtually all year and that additional volumes shipped on the pipeline will benefit all parties. Dixie also explained that its tariff allows it to refuse shipments of other products that could contaminate the propane.

24. The Commission intends to assist the Gulf Coast region in recovering from the damage caused by the recent hurricanes, and the Commission believes that acceptance of Dixie's FERC No. 94 providing for short-term batched NGL transportation is consistent with that goal. The protesting parties failed to demonstrate that their desire to have essentially on-demand propane transportation service available outweighs the public interest in recovering from the disruptions and shortages caused by Hurricanes Gustav and Ike.

The Commission orders:

(A) The Commission grants a waiver of ICA section 6(3) and accepts FERC No. 94 for filing to be effective as of September 22, 2008, as discussed in the body of this order.

(B) The requests to consolidate this proceeding with the ongoing proceedings in Docket No. IS08-405-000 are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.