

127 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Holly Refining and Marketing Company

Docket No. OR09-4-000

v.

Plains All American Pipeline, L.P. and
Rocky Mountain Pipeline System LLC

ORDER DISMISSING COMPLAINT

(Issued April 23, 2009)

1. On February 17, 2009, Holly Refining and Marketing Company (Holly) filed a complaint against Plains All American Pipeline, L.P. (Plains) and Rocky Mountain Pipeline System LLC (Rocky Mountain)¹ challenging the lawfulness of the proposed reversal of flow on Rocky Mountain's pipeline segment that currently provides westward crude oil transportation service from Ft. Laramie, Wyoming, to Wamsutter, Wyoming. Respondents filed an answer, asserting in part that the Commission does not have jurisdiction over reversals of this nature and that Holly's claims are speculative.

2. As discussed below, the Commission dismisses the complaint.

Summary of the Complaint

3. In July 2008, Rocky Mountain announced its intention to reverse the flow on the subject pipeline segment from Ft. Laramie to Wamsutter. Rocky Mountain explained that the reversed pipeline segment would transport crude oil eastward from Wamsutter to Ft. Laramie. Rocky Mountain anticipated that the reversal would be completed by the first quarter of 2009.

4. In the complaint, Holly argues that the proposed line reversal will provide an undue and unjust preference for affiliates of Respondents and will be unduly and unjustly prejudicial and discriminatory against Holly in violation of Interstate Commerce Act

¹ Plains and Rocky Mountain are referred to jointly in this order as Respondents.

(ICA) sections 3(1) and 15(1). Holly asks the Commission to issue an order under ICA section 15(1) requiring Respondents to cease and desist from the proposed reversal of flow. Further, in the event that Respondents proceed with the proposed reversal, Holly asks the Commission to award it damages pursuant to ICA section 16(1) to compensate for any resulting injury.

5. Holly states that its refinery at Salt Lake City processes approximately 26,000 barrels per day (bpd) of crude oil. Holly explains that it uses the Rocky Mountain pipeline from Ft. Laramie to Rangely to supply its refinery with 2,000 to 4,000 bpd of crude oil from the Ft. Laramie/Guernsey market. Additionally, Holly states that it uses the Rocky Mountain pipeline from Wamsutter to Salt Lake City to supply its refinery with between 9,000 and 13,000 bpd of crude oil from the Wamsutter market. Holly maintains that its use of these lines gives it a substantial economic interest in the proposed reversal and that it has standing to bring this complaint.

6. Holly argues that the Commission has jurisdiction over its complaint pursuant to ICA sections 9 and 13. While Holly acknowledges that the Commission does not regulate the initiation or abandonment of services by oil pipelines, it claims that the Commission has jurisdiction over the reversal of flow by an oil pipeline, particularly where there is evidence that the reversal would be unduly preferential to a party affiliated with the pipeline. Holly asks the Commission to conduct a full investigation and establish hearing procedures.

Notice and Answer

7. Notice of the complaint was issued on February 19, 2009, requiring interventions, protests, and Respondents' answer to be filed by March 9, 2009.

8. In their answer, Respondents explain that the Ft. Laramie-Wamsutter pipeline has provided transportation in a westerly direction since a prior owner of the line reversed its easterly flow in 1990. According to Respondents, a 2006 boom in natural gas drilling in the Rocky Mountain region caused a surge in crude oil production, which exceeded the needs of the Salt Lake City refineries and resulted in favorable prices for Holly and other refiners. Additionally, Respondents state that Rocky Mountain surveyed affected parties and determined that reversing the flow of the Ft. Laramie-Wamsutter line would help address the lack of affordable transportation options in the area.

9. Respondents argue that many of the allegations contained in the complaint are inaccurate. However, Respondents assert that the Commission need not resolve every factual issue because the Commission has no jurisdiction over Rocky Mountain's decision to reverse the flow of the Ft. Laramie-Wamsutter pipeline, and the complaint is otherwise legally defective. Respondents emphasize that the Commission and the Court

of Appeals for the District of Columbia Circuit have made it clear that the Commission does not have ICA jurisdiction over oil pipeline abandonments or flow reversals,² and Respondents also contend that the cases on which Holly relies provide no support for its position.³ Moreover, continue Respondents, Holly has provided no support for its claim that the reversal is intended to benefit Rocky Mountain's affiliates. Respondents argue that the ICA does not grant Holly a preferential legal right to existing sources of supply or means of transportation.⁴ Respondents also state that Holly has no standing to bring the complaint and that its claims are speculative.

10. Suncor Energy Marketing Inc. and Suncor Energy (U.S.A.) Pipeline Company filed comments opposing the complaint. The Wyoming Pipeline Authority also filed comments asking the Commission to reject the complaint and allow the proposed pipeline reversal to proceed in a timely manner.

11. BP America Production Company (BP) filed a protest, contending that there is a need for the pipeline capacity that would be created by the flow reversal and that producers unaffiliated with Rocky Mountain support the proposed reversal. BP, which does not concede that the Commission has jurisdiction over the proposed reversal, asserts that the reversal should result in greater production.

Discussion

12. The Commission will dismiss Holly's complaint. Applicable precedent makes it clear that the Commission does not have jurisdiction over the reversal of flow on a pipeline.

² Citing *Williams Pipe Line Co.*, 21 FERC ¶ 61,260, at 61,690 n.217 (1982), *aff'd*, *Farmers Union Central Exchange, Inc. v. FERC*, 734 F. 2d 1486, 1509 n.2 (D.C. Cir. 1984); *ARCO Pipe Line Co.*, 55 FERC ¶ 61,420, at 62,263 (1991); *Texaco Pipeline Inc.*, 58 FERC ¶ 62,051 (1992); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219, at 61,864 (2002); *Colonial Pipeline Co.*, 89 FERC ¶ 61,095, at 61,269 (1999); *Tesoro High Plains Pipeline Co.*, 115 FERC ¶ 61,163, at P 4-5 (2006); *Eighty-Eight Oil LLC v. Tesoro High Plains Pipeline Co.*, 117 FERC ¶ 61,006, at P 18 (2006); *SFPP, L.P.*, 86 FERC ¶ 61,022 (1999); *SFPP, L.P.*, 96 FERC ¶ 61,281, at 62,070 (2001); *ARCO Pipe Line Co.*, 66 FERC ¶ 61,159 (1994).

³ Citing *Cheyenne Pipeline Co.*, 19 FERC ¶ 61,077 (1982); *Amoco Pipeline Co.*, 83 FERC ¶ 61,156 (1998); *Dixie Pipeline Co.*, 124 FERC ¶ 61,175 (2008); *Belle Fourche Pipeline Co.*, 126 FERC ¶ 61,054 (2009).

⁴ Citing *Western Refining Pipeline Co.*, 122 FERC ¶ 61,210, *order on reh'g*, 123 FERC ¶ 61,271 (2008).

13. On February 27, 2009, Rocky Mountain filed Supplement No. 4 to FERC Tariff No. 143 to be effective April 1, 2009. This tariff discontinued westward movements on the pipeline segment at issue in this complaint, and Rocky Mountain stated that it intended to reverse the flow of the pipeline segment. Holly protested the filing, raising the same arguments and relying on the same authorities that it cited in the instant complaint. On March 31, 2009, the Commission issued an order accepting the tariff (Order Accepting Tariff).⁵ In that order, the Commission provided a lengthy analysis of the cases cited by Holly, making it clear that the Commission has no jurisdiction over the commencement or abandonment of oil pipeline services and that service in one direction is a service distinct from service in the other direction.⁶ That analysis, which will not be repeated in this order, fully supports the Commission's dismissal of the instant complaint.

14. Additionally, on March 12, 2009, in Docket No. IS09-168-000, Rocky Mountain filed FERC Tariff No. 165 to establish eastward bound service on the pipeline segment. No protests were filed, and the tariff became effective by operation of law on April 15, 2009. No action by the Commission was necessary. In fact, for the reasons stated in the Order Accepting Tariff, the Commission has no jurisdiction over the abandonment of westward bound service, nor does it have jurisdiction over Rocky Mountain's decision to commence eastward bound service in conjunction with the westward abandonment.

The Commission orders:

For the reasons stated above and in the Order Accepting Tariff, the Commission dismisses Holly's complaint.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ *Rocky Mountain Pipeline System LLC*, 126 FERC ¶ 61,301 (2009).

⁶ *Id.* P 9-20.