

128 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

West Texas LPG Pipeline Limited Partnership

Docket No. IS09-401-000

ORDER ACCEPTING TARIFF SHEET

(Issued July 17, 2009)

1. On June 18, 2009, West Texas LPG Pipeline Limited Partnership (WTP) filed Supplement No. 1 to FERC Tariff No. 49 to be effective June 18, 2009. WTP states that Table 1A of Supplement No. 1 to FERC Tariff No. 49 cancels Table 1 and cancels the Denton, New Mexico plant as a transportation origin point. WTP explains that its Tatum Lateral connected to the Denton Plant recently sustained third-party damage, and in addition, there have been no requests for transportation from this point since November 2007.
2. WTP requests a waiver under section 6(3) of the Interstate Commerce Act (ICA) to allow the filing to become effective on less than one day's notice so that shippers will have notice that WTP will no longer hold itself out to provide transportation service from the Denton Plant.
3. As discussed below, the Commission accepts Supplement No. 1 to FERC Tariff No. 49 to be effective as of June 18, 2009.

Motion to Intervene and Protest

4. Davis Gas Processing, Inc. (Davis) and WTG Gas Marketing, Inc. (WTG) filed a timely motion to intervene and a protest. Davis and WTG state that Davis owns and operates the Denton Plant. They further state that WTG is a marketer engaged in the purchase and sale of natural gas and that it recently arranged for the purchase and sale of natural gas liquids (NGLs) from the Denton Plant. Davis and WTG state that WTG has requested transportation service on the WTP system to complete this transaction.
5. Davis and WTG state that elimination of the Denton Plant origin point also will have a material adverse effect on other shippers, producers, and marketers. They assert

that the immediate cancellation of service from this point is unsupported and improper and that Supplement No. 1 to FERC Tariff No. 49 is unjust and unreasonable. They ask the Commission to reject the tariff sheet.

6. Davis and WTG assert that WTP has provided no explanation as to the nature, extent, or date of the damage, or the cost or date of the repair, and that WTP's mere assertion of damage is not an adequate basis for terminating service. Davis and WTG also challenge WTP's statement that there has been no request for service since November 2007, contending that, in addition to their own attempts, at least one other longtime shipper/purchaser of NGLs from the Denton Plant has made unsuccessful attempts to schedule service since December 2008.

7. Davis and WTG maintain that WTP has not satisfied the burden of proving that the proposed change is reasonable and in the public interest. Davis and WTG acknowledge that the Commission lacks jurisdiction over oil pipeline abandonments, but they argue that there was no operational reason for WTP to discontinue receipts at the Denton Plant after the line damage was repaired. Davis and WTG contend that cancellation of this origin point will force Davis to incur considerable additional cost to truck its products to market. In the alternative, should the Commission not reject the proposed tariff change, Davis and WTG ask the Commission to suspend the tariff sheet for the full seven-month statutory period and establish hearing procedures.¹

WTP's Response

8. WTP filed a timely response to the protest as permitted by section 343.3(b) of the Commission's Rules and Regulations.² WTP emphasizes that the Commission lacks ICA jurisdiction over an oil pipeline's complete abandonment of service, citing the Commission's recent decision in *Rocky Mountain Pipeline System LLC (Rocky Mountain)*.³ Nevertheless, WTP provides information in response to the allegations of Davis and WTG. In part, WTP explains that the lateral line which has provided service from the Denton Plant sustained damage on or about May 22, 2009, and although the damage has been repaired, WTP cannot provide service through that line without performing costly inspection work and hydrostatic testing. WTP further states that it has not received any deliveries from the Denton Plant since November 2007 and that, at any rate, the plant has consistently experienced problems in meeting WTP's product

¹ Citing *West Texas LPG Pipeline Limited Partnership*, 100 FERC ¶ 61,038 (2002); *Eighty-Eight Oil LLC*, 117 FERC ¶ 61,006 (2006).

² 18 C.F.R. § 343.3(b) (2008).

³ 126 FERC ¶ 61,301 (2009).

specifications. As a result, WTP states, it has determined that it cannot justify the magnitude of expense to safely and economically return this lateral to service to serve only this one plant. Moreover, WTP points out that it has been in prorationing every month since October 2006 and that its ability to ship from the Denton Plant depends on the manner in which shippers sub-divide their allocated capacity among various origin points.

Commission Analysis

9. The Commission agrees with WTP's contention that the Commission lacks ICA jurisdiction over complete abandonments of service, as all parties to this proceeding acknowledge. The cancellation of service at the Denton Plant results in a discontinuance of transportation service over the Tatum Lateral. As such this cancellation is a complete abandonment of service on the Tatum Lateral, over which the Commission lacks jurisdiction. In its recent decision in *Rocky Mountain*,⁴ the Commission discussed at length the ample precedent that confirms its lack of jurisdiction over complete abandonments of service.⁵ In that proceeding, the Commission clearly stated that in light of its lack of jurisdiction over abandonments, it was unnecessary for it to address other issues presented by the protesting parties.⁶ Davis and WTG ignore this extensive line of precedent and argue that WTP has not justified the cancellation of the Denton Plant origin point. In fact, WTP is not obligated to justify this abandonment, and as in *Rocky Mountain*, the Commission will not address the allegations of Davis and WTG.

The Commission orders:

(A) WTP's Supplement No. 1 to FERC Tariff No. 49 is accepted to be effective June 18, 2009.

⁴ 126 FERC ¶ 61,301 (2009).

⁵ *Id.* P 9-20.

⁶ *Id.* P 9.

(B) In accordance with section 341.14 of the Commission's regulations,⁷ waiver of ICA section 6(3) is granted to allow the tariff to become effective on less than 30 days notice.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ 18 C.F.R. § 341.14 (2008).