

130 FERC ¶ 61,257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

TE Products Pipeline Company, LLC

Docket Nos. IS10-160-000
IS10-160-001

ORDER ON TARIFFS

(Issued March 30, 2010)

1. This order addresses several tariffs filed by TE Products Pipeline Company, LLC (TEPPCO) to cancel certain origin and destination points, cancel certain services, and reduce the rates for certain movements of butane and propane. The tariffs also contain various minor administrative and wording changes. TEPPCO requests that the tariffs be made effective April 1, 2010. For the reasons discussed below, the Commission accepts the tariffs to be effective April 1, 2010.

Background

2. On March 1, 2010, TEPPCO filed FERC Tariff No. 117 cancelling FERC Tariff No. 102, FERC Tariff No. 118 cancelling FERC Tariff No. 103, and FERC Tariff No. 119 cancelling FERC Tariff No. 104. TEPPCO requests an effective date of April 1, 2010. FERC Tariff No. 117 is issued primarily to reflect the cancellation of Item No. 30, "Delivery at Todhunter Terminal" and the cancellation of Todhunter, Ohio as a destination for butane from Arcadia, Louisiana and Mont Belvieu, Texas. TEPPCO no longer provides this transportation service, leaving no further rate and routing in effect.

3. TEPPCO issued FERC Tariff No. 118 primarily to cancel Item No. 35, "Delivery at Destination" and Item No. 70, "Odorization". In addition, it also reduced rates in Item Nos. 130 and 135 for propane movements originating at Floreffe Junction, Pennsylvania; Lima, Ohio; and Todhunter, Ohio for delivery to Du Bois, Pennsylvania; Eagle, Pennsylvania; Greensburg, Pennsylvania; Oneonta, New York; Selkirk, New York; and Watkins Glen, New York.

4. New FERC Tariff No. 119 also cancels Item No. 35, "Delivery at Destination" and Item No. 70, "Odorization" and Princeton, Indiana as an origin for propane movements. TEPPCO will no longer provide this service from Princeton, Indiana, and again leaves no further rates and routing in effect. FERC Tariff No. 119 also cancels rates from Arcadia,

Louisiana and Mont Belvieu, Texas to Todhunter, Ohio under Section A. TEPPCO states the rates for these movements are now found under Section B. Finally, FERC Tariff No. 119 reduces rates in Sections B and C, Item No. 125 for propane service from the movements from origin points in Arcadia, Louisiana; and Mont Belvieu, Texas to Coshocton, Ohio; Du Bois, Pennsylvania; Eagle, Pennsylvania; Greensburg, Pennsylvania; Oneonta, New York; Princeton, Indiana; Selkirk, New York; Todhunter, Ohio; and Watkins Glen, New York.

5. FERC Tariff Nos. 117 through 119 also reflect various minor administrative and wording changes.

6. On March 18, 2010, in Docket No. IS10-160-001, TEPPCO filed tariff supplements to correct certain errors in its March 1, 2010 filing. Supplement No. 1 to FERC Tariff No. 118 and Supplement No. 1 to FERC Tariff No. 119 implement certain corrections to TEPPCO's rates. TEPPCO states the rate for movements from Floreffe Junction, PA to Finger Lakes, NY should read 285.8 cents per barrel (cpb) instead of 306.8 cpb. TEPPCO also misstated the county for its Finger Lakes, NY destination. It should be Finger Lakes (Schuyler Co., NY) not Ontario County, NY. TEPPCO also corrects misstated rates for service from Lima and Todhunter, OH to Finger Lakes, NY. The correct rates are 359.0 and 318.8 cpb, respectively, not 380.0 and 339.8 cpb.

7. TEPPCO's March 18th filing also corrects misstated rates for service from Arcadia, LA and Mont Belvieu, TX to Finger Lakes, NY. The correct rates are 394.5 and 416.6 cpb, respectively, not the 415.5 and 437.6 cpb rates originally filed.

8. TEPPCO requests the Commission waive Section 6(3) of the Interstate Commerce Act (ICA) to file Supplement No. 1 to FERC Tariff Nos. 118 and 119 on thirteen (13) days' notice to coincide with the proposed April 1, 2010 effective date, originally filed on March 1, 2010. TEPPCO requests the short notice waiver to correct the overstated rates originally filed. TEPPCO states this correction lowers rates to the correct amounts. TEPPCO understands this tariff filing is conditionally accepted subject to refund pending a 30 day review period.

Protests

9. On March 16, 2010, protests were filed by AmeriGas Propane, L.P. (AmeriGas), CHS Inc. (CHS), Cress Gas Co. (Cress), Ferrellgas, L.P. (Ferrellgas), Suburban Propane, L.P. (Suburban Propane), and the National Propane Gas Association (NPGA)(collectively the Propane Group); the Pennsylvania Propane Gas Association and Shaffer's Bottled Gas, Inc. (collectively PA Propane Group); and Inergy Midstream, LLC, and Inergy Propane, LLC (Inergy). On March 19, 2010, Inergy withdrew its protest as a result of the March 18, 2010 filing correcting the overstated rates.

10. The Propane Group and the PA Propane Group argue that TEPPCO removal of terminalling services (i.e, truck and tanker car loading) and odorization services from its tariff that will now be provided without Commission oversight by TEPPCO's affiliate, Enterprise Terminals & Storage, LLC (ETS). The Propane Group and the PA Propane Group assert that if the Commission accepts the tariffs, TEPPCO and its affiliate will be able to increase the amount charged for the final step of transportation over its interstate pipeline, and they will be able to discriminate freely among shippers using the pipeline. They argue the terminal facilities form the last step of the interstate transportation function and are an integral part of the overall transmission function without which the system cannot operate.¹ Finally, the Propane Group and the PA Propane Group assert TEPPCO imposes a transmix² charge that is not included in the tariff.

11. TEPPCO maintains it appropriately removed the non-jurisdictional terminalling and odorization services from its tariffs. TEPPCO submits that while those services were previously provided by the pipeline for the convenience of shippers, they are no longer offered by TEPPCO, are not necessary for pipeline transportation and are not FERC-jurisdictional. TEPPCO argues its approach is fully consistent with over a century of oil pipeline industry practice. TEPPCO contends that while some pipelines elect to include terminalling charges in their tariffs for the convenience of shippers, oil pipelines that own terminals generally treat those facilities as non-FERC jurisdictional. Moreover, the Commission previously found services offered at terminals to be beyond the scope of the ICA. TEPPCO states numerous non-pipeline companies also own terminals and offer terminalling and odorization services (and other similar services such as storage) without filing FERC tariffs. TEPPCO submits that rejection of its proposed tariffs would upset settled practice and have far-reaching implications for the oil pipeline industry and for independent terminal operators, potentially bringing under FERC regulation the more than one thousand terminals currently treated as non-jurisdictional.

12. TEPPCO also states it previously amended its tariffs to clearly state that shippers are responsible for product downgrades and interfaces (i.e., transmix). TEPPCO states those tariffs were not protested and became effective March 1, 2010, without suspension or investigation. TEPPCO states that the transmix fee, which was issued in a notice to shippers, was not part of the tariff filings at issue here. TEPPCO concludes that since the transmix fee was not changed in the current tariffs and is consistent with the terms of unchanged items in TEPPCO's existing tariff, it is not the proper subject of a protest.

¹ *Citing, Lakehead Pipe Line Co.*, 71 FERC ¶ 61,338, at 62,325 (1995), *order on reh'g*, 75 FERC ¶ 61,181, at 61,601 (1996) (*Lakehead*).

² Transmix is a by-product created by the mixing of different products during transportation.

Discussion

13. The main issue presented by TEPPCO's filing is whether the terminalling and odorization services removed from its tariff are within the Commission's jurisdiction. A service is subject to the ICA and the Commission's jurisdiction only if it is "integral" or "necessary" to the pipeline transportation function.³ The Commission finds the terminalling and odorization services TEPPCO proposes to remove from its tariff are not within the Commission's jurisdiction. Accordingly, the Commission accepts TEPPCO's tariffs to be effective April 1, 2010.

14. The terminalling and odorization services that TEPPCO proposes to remove from its tariff occur at the destination point after transportation of propane and butane products has been completed. The terminalling service, which involves loading propane or butane onto trucks or tanker cars, and the odorization service, a safety measure which involves the addition of a chemical to propane to provide a distinctive smell so that end users can detect leaks if propane is used for heating or cooking, are neither necessary or integral to the transportation of the propane or similar petroleum products. The services here are unlike the services described in *Lakehead*. In that proceeding, the carrier needed the breakout storage tanks to permit the transfer of petroleum products from a large-diameter pipeline segment to a small-diameter pipeline segment. The Commission found the breakout tank facilities and related services were necessary or integral to transportation because they were the functional equivalent of missing pipe.⁴ While the terminalling and odorization services may have been provided by TEPPCO through its FERC tariff as a convenience to its shippers, the Commission has no authority to prevent TEPPCO from removing these non-jurisdictional services from its tariff. This is similar in nature to the *Chevron* case where the Commission refused to order Chevron to reinstate the receipt of oil from barges at certain terminal facilities after authorities suspended the procedure for safety concerns because such facilities were not within the Commission's jurisdiction.⁵

15. TEPPCO also shows in affidavits to its answer that even along its pipeline, many of the terminals connected to its system are not affiliated with TEPPCO or ETS. TEPPCO states that none of these entities have FERC tariffs for terminalling or odorization services. Despite the arguments of the protesters that they are concerned that ETS, the TEPPCO affiliate, may increase the prices for terminalling and odorization services, the Commission in this instance may not exercise jurisdiction over non-

³ *Lakehead Pipe Line Co., L.P.*, 71 FERC ¶ 61,338, at 62,325 (1995), *order on reh'g*, 75 FERC ¶ 61,181, at 61,601 (1996).

⁴ *Lakehead*, 75 FERC ¶ 61,181, at 61,601 (1996).

⁵ *Chevron Pipe Line Co.*, 64 FERC ¶ 61,213 (1993).

jurisdictional services merely because of an affiliate relationship between ETS and TEPPCO.

16. The Commission also rejects the protesters' arguments that TEPPCO proposes to assess a transmix charge that is not contained in its tariff. As TEPPCO explained above, it has not made any such proposal in this proceeding, and the transmix surcharges are a result of previous, unprotested changes to its tariff and consistent with terms that remain unchanged in its current tariff.

The Commission orders:

(A) FERC Tariffs No. 117, 118 and 119 are accepted to be effective April 1, 2010.

(B) The Commission for good cause shown grants waiver of the 30-day notice requirement as provided for in section 6(3) of the Interstate Commerce Act to permit Supplement No. 1 to FERC Tariff No. 118 and Supplement No. 1 to FERC Tariff No. 119 to take effect on short-notice on April 1, 2010.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.