

107 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Texaco Petrochemical Pipeline LLC

Docket No. IS04-179-000

ORDER ON JURISDICTION AND LIFTING SUSPENSION

(Issued May 10, 2004)

1. On February 27, 2004, the Commission issued an order in this docket requesting comments on whether the Commission had jurisdiction over the interstate transportation of ethylene by oil pipelines.¹ The Commission concludes that it does not and that jurisdiction over such transportation rests with the Surface Transportation Board (the Board). The suspension of TPP's tariff supplement filed January 30, 2004, is lifted and the tariff supplement is accepted, effective the date that this order issues.

Discussion

2. This proceeding commenced on January 30, 2004, when Texaco Petrochemical Pipeline LLC (TPP) filed Supplement No. 1 to its FERC No. 2 tariff. That supplement proposed to cancel the tariff on file with the Commission governing the transportation of ethylene, a petroleum product used primarily to produce polyethylene. The Commission accepted and suspended the proposed tariff for seven months, concluding that TPP failed to provide sufficient information to support its filing. Accordingly, the Commission directed TPP to submit additional supporting information and requested other interested persons to provide briefs on the issue of whether the Commission has jurisdiction over the transportation of ethylene. The Commission also issued a public notice to advise interested persons of the issues presented and the time schedule for filing briefs. TPP filed the requested brief on March 29, 2004. The Board intervened and filed initial comments on March 29, 2004. A brief was also filed on April 13, 2004 by Concha Chemical Pipeline LLC (Concha), an ethylene pipeline.

¹ Texaco Petrochemical Pipeline LLC, 106 FERC ¶ 61,186 (2004).

3. All parties filing comments here conclude that the Commission does not have jurisdiction over the transportation of ethylene in interstate commerce and that regulation of such transportation lies with the Board.² They first cite to Gulf Central Pipeline Co.,³ stating that the case holds that if a product transported by pipeline is not hydrocarbon based, or it not used for energy purposes, then the Commission does not have jurisdiction over the transportation of that commodity.⁴ Both TPP and Concha state that ethylene requires separation from all other commodities when transported to avoid damage to the commodity from impurities, and therefore the ethylene portions of their systems are used only for the transportation of that commodity. Both assert in general terms that they have no knowledge of the use of ethylene as a fuel or any other energy purposes.

4. They further assert that it is impractical to use ethylene as a fuel because of its highly explosive qualities and the fact that it acts to form ozone if exposed to the atmosphere. TPP includes with its brief, the affidavit of Ron Corn, Light Olefins Business Manager for Chevron Phillips Chemical Company LP, who manages the manufacture, distribution, sales and marketing of ethylene and other petrochemicals. Mr. Corn includes a detailed list of the manufacturing purposes for ethylene with the applicable percentages for ethylene's end-use markets. The compilation, which used sale percentages for all quantities greater than one percent, shows that for 97 percent of ethylene national sales, none of the end-markets involved uses for energy purposes. The affidavit also states that the uses of the remaining three percent of the total were each less than one percent, and thus the Chemical Market Associates did not provide detail for them. Mr. Corn adds that to his knowledge none is used for energy purposes. In total, the affidavit establishes that little, if any, ethylene is used for energy purposes.

² Under 49 U.S.C. 15301 (formerly 49 U.S.C. 105019(a)(1)(C) (1995)), the Board has jurisdiction over the transportation by pipeline, or by pipeline and railroad and water, when transporting a commodity other than water, gas, or oil. To date the Board has exercised jurisdiction over carbon dioxide, hydrogen, coal slurry, phosphate slurry, and anhydrous ammonia. See Issues Associated with Pipeline Regulation by the Surface Transportation Board, U.S. General Accounting Office (1995) at 26-29.

³ Gulf Central Pipeline Company, 50 FERC ¶ 61,381 (1990) (Gulf Central), aff'd sub nom CF Industries Inc. v. FERC, 925 F.2d 476 (1991) (CF Industries).

⁴ The Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (codified at 42 U.S.C. 7101 (1994)) transferred regulatory authority over the pipeline transportation of oil and gas related products from the former Interstate Commerce Commission to the Department. (See 42 U.S.C. 7155). That authority was then delegated to the Commission.

5. No party contradicts these assertions or opposes the conclusion that the Commission lacks jurisdiction over the transportation of ethylene. Thus, while ethylene is unquestionably a hydrocarbon product, the more detailed record provided by TPP and the other parties establishes that ethylene is not used for energy purposes. The parties correctly state that Gulf Central, supra, holds that if a hydrocarbon product shipped by an oil pipeline is not used for energy purposes, the Commission lacks jurisdiction over the transportation of that product. Based on the more detailed information provided here, the Commission concludes it lacks jurisdiction over the transportation of ethylene by interstate oil pipeline and authority over such transportation rests with the Board.

6. Therefore the suspension of TPP's January 20, 2004 tariff Supplement No. 1 is lifted and the tariff supplement accepted effective the date this order issues. All other oil pipelines having tariffs on file with the Commission for the transportation of ethylene should file supplements canceling those tariffs within 15 days after this order issues. TPP and other pipelines transporting ethylene must comply with the Board's requirements if they are to continue the transportation of that commodity.

The Commission orders:

The suspension of TPP's Supplement No. 1 to FERC No. 2 tariff is lifted and the supplement is accepted, effective the date this order issues.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.