

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Texaco Petrochemical Pipeline LLC

Docket No. IS04-179-000

ORDER ACCEPTING AND SUSPENDING TARIFF SUPPLEMENT

(Issued February 27, 2004)

1. On January 30, 2004, Texaco Petrochemical Pipeline LLC (TPP) filed Supplement No. 1 to its FERC No. 2 tariff to become effective March 1, 2004. The supplement would cancel all tariffs TPP now has on file with the Commission. The practical effect of the cancellation is to remove Commission rate regulation for the transportation of ethylene by TPP. The Commission will accept and suspend the proposed supplement for seven months to become effective October 1, 2004 to maintain the current status while providing time for the Commission to conduct an investigation of this filing.

2. TPP's filing asserts that the transportation of ethylene is not subject to the Commission's jurisdiction. Relying on Gulf Central Pipeline Co.,¹ TPP asserts that the concerns of the Department of Energy Organization Act are clearly energy-related and the Commission does not have jurisdiction over the transportation of commodities that are not fuels. It asserts that ethylene is not a fuel, cannot be used as such, and that the primary market is in the production of polyethylene, a polymer. TPP further asserts that ethylene cannot be used as a pipeline fuel and that its pipeline operates at substantially different heat levels and operating pressures than other pipelines. TPP concludes that ethylene is therefore similar to the characteristics of anhydrous ammonia, the commodity at issue in Gulf Central, supra, and therefore the Commission should conclude that it has no jurisdiction over the transportation of ethylene by oil pipeline.

3. The Commission concludes that it lacks sufficient information to permit the proposed cancellation of Supplement No. 1 to become effective at this time. While TPP asserts that ethylene cannot be used as a fuel, the product is clearly hydrocarbon based, unlike anhydrous ammonia, which is not. Moreover, while the primary use of ethylene may be helping to produce polyethylene, TPP does not fully discuss the other commercial uses for ethylene. For example, if the commodity is used as the base of additives

¹ Gulf Central Pipeline Co., 50 FERC ¶ 61,381 (1990), aff'd sub nom., CF Industries Inc. v. FERC, 925 F.2d 476 (1991).

involving other commodities that are clearly energy-related, such as gasoline, then to this extent, one could consider ethylene to be useful in energy-related industries. Moreover, while TPP's tariff addresses only ethylene, there are other pipelines that transport both ethylene and other commodities that are energy-related. Because this filing may involve a generic ruling on jurisdiction, the Commission should also review the implications for changes in the rate structures of other pipelines if one of their commodities is not regulated by the Commission. This might involve the displacement of important energy regulated commodities by a higher priced unregulated commodity or discrimination in scheduling and capacity allocation. The Commission cannot determine the impact on other energy-related commodities using only the chemical references in TPP's filing.

4. For these reasons, the Commission will accept and suspend proposed tariff Supplement No. 1 pursuant to Section 15(7) of the Interstate Commerce Act² for a period of seven months. While the Commission rarely suspends oil filings for more than the minimum period, permitting the instant filing to become effective immediately could result in substantial rate increases while the Commission deliberates the jurisdictional issue. It could also lead to additional cancellation supplements before the broader issues involved are resolved. The Commission sets this proceeding for a paper hearing, directs TPP to submit a brief addressing the jurisdictional issue, and invites interested persons to intervene and brief the issues raised by this proceeding. The Commission will also issue a public notice of this filing to advise interested persons of the issues presented and the time schedule for filing briefs. The Commission will lodge a copy of this order with the Surface Transportation Board and welcomes the Board's participation in this proceeding. Initial briefs are to be filed within 30 days after this order issues, with reply briefs due 15 days thereafter.

The Commission orders:

(A) Pursuant to Section 15(7) of the Interstate Commerce Act, TPP's Supplement No. 1 is accepted and suspended for seven months, to become effective October 1, 2004, subject to investigation.

(B) Initial briefs on the jurisdictional matter at issue here shall be filed by TPP and any other interested persons within 30 days after this order issues, with reply briefs due 15 days thereafter.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

² 49 App. U.S.C. §15(7) (1988).