

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Flint Hills Resources Alaska, LLC

Docket No. OR05-9-001

v.

ConocoPhillips Alaska, Inc.
Exxon Mobil Corporation
Tesoro Alaska Company
BP America Production Company
BP Exploration (Alaska) Inc.
OXY USA Inc.
Union Oil Company of California
Petro Star Inc.
State of Alaska
BP Pipelines (Alaska) Inc.
ConocoPhillips
Transportation Alaska, Inc.
ExxonMobil Pipeline Company
Koch Alaska Pipeline Company, LLC
Unocal Pipeline Company

ORDER DENYING REHEARING

(Issued March 29, 2006)

1. Flint Hills Resources Alaska, LLC (Flint Hills) seeks rehearing of the Commission's October 20, 2005 Order (October 20 Order) dismissing its complaint in this proceeding.¹ Flint Hills acquired a refinery situated along the Trans Alaska Pipeline System (TAPS) at North Pole, Alaska on April 1, 2004, and as a result, became a participant in the TAPS Quality Bank. The complaint alleged that the portion of the TAPS Quality Bank methodology relating to the valuation of the West Coast vacuum gas oil (VGO) cut is unjust and unreasonable, and requested the Commission to immediately

¹ 113 FERC ¶ 61,061 (2005).

institute a new reference price of West Coast VGO, grant refunds, reparations, damages and other appropriate relief. The October 20 Order dismissed the complaint because the Commission was issuing an order in Docket No. OR89-2-016 (TAPS Order)² which established the valuation of the West Coast VGO cut, and provided for prospective application of that new valuation. Flint Hills was an intervenor in that proceeding. This order denies rehearing.

Background

2. As more fully described in the TAPS Order, the TAPS Quality Bank makes monetary adjustments between shippers on TAPS based upon the value of the crude oil that they inject into TAPS. The valuation is determined by the value of the constituent “cuts” of the injected crude oil, one of the cuts being VGO. An issue in the TAPS Order proceeding was valuation of the West Coast VGO cut. The existing valuation used the Gulf Coast VGO reference price as the reference price for the West Coast VGO cut as well.

3. At the hearing in that proceeding, the parties, in an October 3, 2002 Stipulation (October Stipulation),³ stipulated that the West Coast VGO cut should be valued on the basis of the OPIS West Coast High Sulfur VGO weekly price, but disagreed as to the effective date. Williams Alaska Petroleum Inc.(Williams), from whom Flint Hills had purchased the North Pole refinery, was a signator of that stipulation. A number of parties urged prospective application of the new valuation, while others urged effective dates as early as 1994. Flint Hills was not a party in that proceeding when the stipulation was executed, but was permitted to intervene after it purchased the North Pole, Alaska refinery in April 2004.

²113 FERC ¶ 61,062 (2005). That order was also issued on October 20, 2005.

³ The stipulation provided:

Stipulation to Issue No. 4 – West Coast VGO Valuation

1. West Coast VGO shall be valued based on the published OPIS West Coast High Sulfur VGO weekly price.
2. The Parties disagree as to the effective date of the new West Coast VGO value. However, the Parties agree that if a different West Coast Naphtha valuation methodology is adopted in this proceeding, it and the new West Coast VGO value should have the same effective date.

4. In an Initial Decision (ID) issued August 31, 2004, the Administrative Law Judge (ALJ) accepted the agreed-upon new reference price in the October Stipulation, but held that there was no evidence in the record that supported making the agreed-upon West Coast VGO price effective on a retroactive basis. Accordingly, the ALJ held that the West Coast VGO would be valued using the OPIS West Coast High Sulfur VGO weekly price on a prospective basis.⁴ The ALJ added that since he had determined that the new West Coast Naphtha cut value also should become effective on a prospective basis, his ruling was consistent with the parties' October Stipulation that the new valuations for the West Coast Naphtha and VGO cuts should have the same effective date.

5. Flint Hills, and another party, filed exceptions to this ruling. Flint Hills' Exception No. 5 stated "The Initial Decision erroneously and arbitrarily orders the stipulated West Coast VGO valuation methodology to be implemented prospectively following final rendering by the Commissions, rather than effective on the date of the parties' Stipulation."⁵

6. On July 11, 2005, Flint Hills filed its complaint in this proceeding. Flint Hills asserted that based on changed circumstances the current reference price for the West Coast VGO cut, the Gulf Coast VGO cut reference price, must be changed to the OPIS West Coast High Sulfur VGO weekly price. Moreover, it requested the Commission to immediately implement the change because the Gulf Coast VGO reference price was much lower than the West Coast reference price, and Flint Hills was being damaged by continued use of the lower-valued reference price.

7. In support of the proposed change, Flint Hills referred to the October Stipulation in the TAPS Order proceeding, *supra*, n.3. This stipulation, Flint Hills asserted, was recognition by all parties that the West Coast OPIS price was the just and reasonable reference price for the West Coast VGO cut. Moreover, Flint Hills stated that the ALJ, in the ID, approved the West Coast OPIS reference price as the just and reasonable price for the West Coast VGO cut. Despite this, Flint Hills argued, the reference price for the West Coast VGO cut has not been changed, and the existing Gulf Coast reference price, which is no longer just and reasonable, remains in effect.

8. The October 20 Order stated that Flint Hills had filed exceptions to the ALJ's ruling where it repeated the same contention raised in the complaint, namely, that the effective date for the agreed-upon reference price should be October 3, 2002, the date when the parties stipulated what the West Coast VGO cut reference price should be.

⁴ 108 FERC ¶ 63,030 at P 2770.

⁵ Flint Hills' Exceptions to ID, filed November 15, 2004, at 13.

9. The October 20 Order stated that in the TAPS Order the Commission noted that Flint Hills and others had filed exceptions to the ALJ's ruling, and that the Commission found no merit to these exceptions.⁶ Since the TAPS Order affirmed the ALJ's ruling that the new reference price for the West Coast VGO cut would be applied prospectively, and Flint Hills' complaint was requesting retroactive application of that very same reference price, the October 20 Order dismissed Flint Hills' complaint.

The Request for Rehearing

10. Flint Hills asserts that it filed its separate VGO complaint because other parties in the TAPS Quality Bank proceeding had been successful in arguing that Flint Hills was not entitled to assert that the agreed-upon West Coast VGO value should be implemented effective on the date of the parties' October Stipulation because Flint Hills was a late intervener to those proceedings.

11. Flint Hills contends that its complaint raised two entirely separate issues on the appropriate reference price for the West Coast VGO cut. The first was how the VGO cut should be valued for the period between the date of the October Stipulation, and the filing of Flint Hills' VGO complaint on July 11, 2005. The second issue was whether the agreed-upon VGO value should be implemented immediately, as of July 11, 2005. Flint Hills contends that even if the issue of retroactivity for the period prior to July 11, 2005, could be considered as pending in the prior TAPS Order proceeding, the time period from July 11, 2005 forward was properly before the Commission as a result of Flint Hills' separate VGO complaint.

12. Flint Hill asserts that the Commission's order dismissing its VGO complaint on the basis that the TAPS Order sets the effective date for the VGO cut on a prospective basis, totally ignores the second issue of the period between July 11, 2005 and October 20, 2005, the date of the TAPS Order.⁷

13. Flint Hills also contends that dismissal of the complaint was in error because the dismissal reflects an inconsistency in the Commission's actions between, on the one hand, accepting the argument that Flint Hills, as a late intervener in the TAPS Order proceedings, was precluded from arguing that the stipulated West Coast VGO proxy price should be implemented effective the date of the parties' Stipulation, and, on the

⁶ 113 FERC at 61,198 P 172.

⁷ Flint Hills submitted an affidavit showing that even in this limited period there is a substantial financial impact on it from continued use of the existing reference price for the West Coast VGO cut.

other hand, dismissing Flint Hills' VGO complaint on the basis that the issue Flint Hills raised were resolved by the Commission's TAPS Order. Flint Hills asserts that by filing its VGO Complaint, Flint Hills was entitled to argue for its right to refunds/reparations based on the failure to implement the agreed-upon VGO price, a right that has now been denied due to the improper dismissal of its Complaint.

Discussion

14. There is no merit in Flint Hills' request. Contrary to Flint Hills' contention, there is no "alleged inconsistency" in the Commission's actions. The TAPS Order, at P 171, 113 FERC at 61,198, specifically referred to Flint Hills' contention that the effective date of the new valuation should be the date of the stipulation. The TAPS Order addressed this issue, and concluded, for the reasons set forth, that the new valuation for the West Coast VGO cut should be on a prospective basis.

15. Flint Hills and others filed for rehearing of this ruling in the TAPS Order which urged the same argument Flint Hills makes here, except for the "second issue" argument. The Commission, in an order issuing concurrently with this order, is denying rehearing on this issue, and that order addresses the same arguments raised by Flint Hills in its request here. Thus, Flint Hills' inconsistency argument has no basis.

16. Moreover, Flint Hills' contention that in the TAPS Order proceeding it was not permitted to assert its position on this issue, actually relates to a ruling by the Commission with respect to a different issue addressed in the ID, Issue No. 2, valuation of the heavy distillate cut. There the parties had stipulated on the valuation of that cut, and agreed to an effective date, February 1, 2000, but there was an issue on the level of adjustment to the agreed-upon proxy. Flint Hills argued for prospective application of the stipulated proxy. The TAPS Order affirmed the ALJ's ruling that Flint Hills was bound by the position taken by Williams, from whom Flint Hills purchased the North Pole refinery, and which was a signatory to the stipulation. Moreover, in the TAPS Order, the Commission explained that there was good reason for accepting the stipulated date of February 1, 2000, as the effective date for the new valuation, 113 FERC at 61,186, P 78.⁸

⁸ It is somewhat ironic that Flint Hills raises an inconsistency argument, when it argued for prospective application of the agreed-upon reference price in the stipulation as to the heavy distillate cut, and not retroactive application to the date of that stipulation, but here argues for retroactive application of the agreed-upon reference price in the October Stipulation as to the West Coast VGO cut.

17. Similarly, there is no merit to Flint Hills' contention that in dismissing the complaint the Commission did not specifically address Flint Hills' claim for relief for the period after July 11, 2005, the date it filed the complaint. There is nothing different about the claim for the period after July 11, 2005, than the claim for the period before that date. Flint Hills, in its complaint, is relying upon the same October Stipulation that was the basis of its claim for retroactive application of the new valuation in the TAPS Order proceeding. In the instant proceeding, Flint Hills did not furnish any new evidence on the issue, nor did it make any different type of argument why retroactive application was required.

18. In its request for rehearing, Flint Hills submitted an affidavit showing the difference between the reference price for the Gulf Coast and West Coast VGO cut for the period from January 2000 to October 2005. However, this merely shows that Flint Hills would benefit from the new valuation. It does not show why the new valuation should be applied on a retroactive basis. Accordingly, when, in the TAPS Order proceeding, the Commission affirmed the ruling of the ALJ on the prospective application of the new valuation for the West Coast VGO cut, and then denied rehearing on that issue, there could be no claim for retroactive application for any period before the date of the TAPS Order, namely, October 20, 2005.

The Commission orders:

Flint Hills' request for rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.