

126 FERC 61,301
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rocky Mountain Pipeline System LLC

Docket No. IS09-157-000

ORDER ACCEPTING TARIFF

(Issued March 31, 2009)

1. On February 27, 2009, Rocky Mountain Pipeline System LLC (Rocky Mountain) filed Supplement No. 4 to FERC Tariff No. 143 to be effective April 1, 2009. Rocky Mountain states that the movements governed by FERC Tariff No. 143 are being discontinued because it intends to reverse the flow on the pipeline segment that currently provides crude oil transportation service westward from Ft. Laramie, Wyoming, to Wamsutter, Wyoming. Holly Refining and Marketing Company (Holly) protested the filing, asking that it be rejected, or in the alternative, suspended for seven months and set for hearing.
2. As discussed below, the Commission accepts Supplement No. 4 to FERC Tariff No. 143 to be effective April 1, 2009.

Background

3. According to Rocky Mountain, the shipments have moved in the westerly direction on the Ft. Laramie-Wamsutter line since a prior owner of the line reversed its easterly flow in 1990. Rocky Mountain contends that a 2006 boom in natural gas drilling in the Rocky Mountain region caused a surge in Southwest Wyoming Sweet Crude production, which exceeded the amount that the Salt Lake City, Utah refineries wanted to process, resulting in favorable prices for refiners such as Holly. Rocky Mountain states that it surveyed affected parties and determined that reversing the flow of the Ft. Laramie-Wamsutter line would help address the lack of affordable transportation options for producers in the area. In addition to the instant filing, Rocky Mountain anticipates making a separate filing to institute new rates for eastbound transportation service on the Ft. Laramie-Wamsutter line.

Interventions, Protest, and Answer

4. Tesoro Refining and Marketing Company filed a timely motion to intervene. Holly filed a timely motion to intervene and protest, and on March 23, 2009, Rocky Mountain filed an answer to the protest.

5. In its protest, Holly states that it ships petroleum products from Ft. Laramie to Wamsutter on Rocky Mountain's pipeline. Holly states that the proposed cancellation will eliminate the pipeline service it uses to obtain crude oil supplies for its refinery at Salt Lake City. Holly contends that the instant filing is part of an unsupported reversal of flow, which will provide an undue and unjust preference for affiliates of Rocky Mountain and will unduly and unjustly discriminate against Holly in violation of sections 3(1) and 15(1) of the Interstate Commerce Act (ICA).

6. Holly asserts that the Commission has jurisdiction over the cancellation pursuant to ICA sections 9 and 13. While Holly acknowledges that the Commission does not regulate the initiation or abandonment of oil pipeline services, Holly argues that the Commission does have jurisdiction over the reversal of flow by an oil pipeline, particularly where there is evidence that the reversal would be unduly preferential to a party affiliated with the pipeline. In support of its claim concerning Commission jurisdiction, Holly relies on *Cheyenne Pipeline Co. (Cheyenne)*,¹ *ARCO Pipe Line Co. (ARCO I)*,² *ARCO Pipe Line Co. (ARCO II)*,³ *Amoco Pipeline Co. (Amoco)*,⁴ *Dixie Pipeline Co. (Dixie)*,⁵ *West Texas LPG Pipeline Limited Partnership (West Texas)*,⁶ and *Belle Fourche Pipeline Co. (Belle Fourche)*.⁷

7. Holly further maintains it and other Salt Lake City refiners have relied on the pipeline as currently configured for many years. Holly claims that the potential reversal of the line would deny it access to its traditional feedstock sources, and because

¹ 19 FERC ¶ 61,077, at 61,122 (1982).

² 55 FERC ¶ 61,240, at 62,263 (1991).

³ 66 FERC ¶ 61,159 (1994).

⁴ 83 FERC ¶ 61,156, at 61,272-73 (1998).

⁵ 124 FERC ¶ 61,175 (2008).

⁶ 100 FERC ¶ 61,038 (2002).

⁷ 126 FERC ¶ 61,054 (2009).

petroleum refineries generally are designed to process a specific type or quality of crude oil, reversal of the pipeline would decrease refining efficiency and also would decrease yields of clean refined products. Holly asserts that there does not appear to be any economic benefit to Rocky Mountain as the result of the reversal, but it appears that it would be unduly and unjustly preferential for Rocky Mountain's marketing affiliate and would constitute an abuse of joint market power.

8. In its answer, Rocky Mountain contends that Holly's protest should be dismissed because (1) the Commission does not have jurisdiction over the reversal of flow on a pipeline, (2) the ICA does not grant Holly a legal right to existing sources of supply or means of transportation in preference to others, (3) Holly has alleged no basis for finding a violation of the ICA, and (4) the protest is procedurally deficient because it does not contain the verified statement required by section 343.2(b) of the Commission's regulations.⁸

Discussion

9. The Commission will accept Supplement No. 4 to Rocky Mountain's FERC Tariff No. 143. While Holly admits that the Commission does not have jurisdiction over the initiation or abandonment of oil pipeline services, Holly attempts to distinguish abandonment from reversal of flow. However, applicable precedent makes it clear that the Commission does not have jurisdiction over the reversal of flow on a pipeline. Because the Commission does not have jurisdiction over Rocky Mountain's cancellation of the tariff and the prospective reversal of flow on the pipeline, the Commission will not address the other issues raised by the parties.

10. The cases discussed below support the Commission's determination here. The Commission does not have jurisdiction over the commencement and abandonment of service on an oil pipeline, and service in one direction is a distinct service from service in the other direction. Therefore, a reversal is the abandonment of service in one direction and the commencement of an entirely new service in the other direction.

11. The tariff changes challenged in *Cheyenne* would have resulted in the reversal of flow on the pipeline. The protesting parties argued that the reversal would end long-standing service and give the pipeline monopoly power over the supply of products into a market, and the Commission cited the potential anticompetitive effect of the reversal in suspending the proposed tariffs for the full seven-month period and establishing a hearing.⁹ However, the *Cheyenne* decision subsequently has been treated by the

⁸ 18 C.F.R. § 343.2(b) (2008).

⁹ 19 FERC ¶ 61,077 (1982). Commissioner Sheldon dissented from the majority's

Commission as an anomaly, and the Commission consistently has ruled that it has no jurisdiction over reversals of flow on an oil pipeline.

12. In *ARCO I*,¹⁰ the Commission distinguished *Cheyenne*, observing that the pipeline in that case was cancelling service on a portion of a pipeline that it was selling to another pipeline, which in turn filed tariff changes for that portion that would allow reversal of the flow. In contrast, in *ARCO I*, a segment of the pipeline was being abandoned completely.¹¹ The Commission also cited *Williams Pipe Line Co.*,¹² in which the Commission stated: “Because control over abandonments is so central a cornerstone of effective regulation, we are loath to confess that we lack it here. Yet it seems clear that we do lack it.”¹³

13. In *ARCO II*,¹⁴ the Commission addressed the pipeline’s proposal to discontinue southbound service on its pipeline while continuing to provide northbound service. The Commission stated:

The essential point is that the services on the northbound and southbound routes are two distinct services. In that light, the Commission concludes that it is without authority under the ICA to disapprove ARCO’s proposal to discontinue completely the southbound routes.

....

... ARCO’s discontinuance of the southbound routes would not

decision, emphasizing that the Commission has no jurisdiction over entry and exit from common carrier operations. She pointed out that, if the actions constituting the reversal were not intended to occur simultaneously, the Commission would have no authority to regulate the direction in which the pipeline would be operated.

¹⁰ 55 FERC ¶ 61,420.

¹¹ *Id.* at 62,263.

¹² 21 FERC ¶ 61,260 (1982).

¹³ *Id.* at 62,263, *aff’d Farmers Union Central Exchange, Inc. v. FERC*, 734 F. 2d 1486, 1509 (D.C. Cir. 1984) (“[Oil P]ipeline companies may abandon service at will.”), *cert. denied, sub nom., Williams Pipeline Co. v. Farmers Union Central Exchange, Inc.* 469 U.S. 1034 (1984).

¹⁴ 66 FERC ¶ 61,159.

violate its duty to furnish transportation upon reasonable request without discrimination. . . . The continuation of service on northbound routes does not require continuation of service on southbound routes under the common carrier duty because the southbound and northbound routes involve different services, and the continuation of northbound service is not unduly discriminatory because the northbound and southbound shippers are not similarly situated in that different routes are involved.¹⁵

14. In *SFPP, L.P.*,¹⁶ the Commission stated:

[T]he Commission does not have jurisdiction over SFPP's decision to reverse the flow of the 6-inch line. Each time the line was reversed, this constituted an abandonment of all west-to-east, or east-to-west service over the 6-inch line. Abandonment of service by an oil pipeline is not subject to the Commission's jurisdiction.¹⁷

15. Likewise, *Amoco*¹⁸ does not support Holly's position. The Commission stated that *ARCO I* was not applicable because Amoco was seeking to cancel certain points of origin on its system, but would continue to provide service through a portion of its system. Finding that it had jurisdiction over the cancellation of individual movements, the Commission stated:

To the extent that Amoco would cancel points of origin on its system, such cancellation would affect throughput on the pipeline. This in turn would affect Amoco's system-wide cost of service, which may affect the rates it can charge should Amoco choose to utilize cost-of-service ratemaking, or be required to justify its rates based on its cost of service.¹⁹

¹⁵ *Id.* at 61,313-14.

¹⁶ 86 FERC ¶ 61,022 (1999).

¹⁷ *Id.* at 61,077 (footnote omitted.)

¹⁸ 83 FERC ¶ 61,156.

¹⁹ *Id.* at 61,673. *See also West Texas*, 100 FERC ¶ 61,038 at P 13 (“The issues in this case related to the elimination of the two destination points, and the timing of the closure of the incentive rate availability, will affect the rates, terms and conditions of service, and the availability of competitive interconnection options for Duke and for all shippers on West Texas.”).

16. Subsequently, the Commission distinguished *Amoco* from the facts in *Colonial Pipeline Co.*²⁰ In that case, the Commission stated:

Amoco involved cancellation of points of origin along a pipeline that would continue to be in service after the cancellations were made, for service to points downstream of the canceled points. That is not the case here. Rather, Colonial's petition indicates that it will idle certain of its facilities, which we take to mean that those facilities which had been used to transport petroleum products to Nashville will be abandoned. The idled facilities include all the pipelines extending from Chattanooga to Murfreesboro, thereby making continued service to Nashville over the pre-existing route impossible. Thus, cancellation of the pre-existing rate schedule for service to Nashville would appear to be appropriate in these circumstances.²¹

17. The Commission also distinguished *Amoco* in *Plantation Pipe Line Co.*:²²

However, *Amoco* involved cancellation of points of origin along a pipeline that would continue to be in service after the cancellations were made, for service to points downstream of the cancelled points. That is not the case here. Rather, Plantation's petition indicates that it will abandon its pipeline and facilities used to transport petroleum products to Chattanooga and Knoxville, thereby making continued service to Chattanooga and Knoxville on this line impossible. Thus, cancellation of Plantation's rate schedule for service to Chattanooga and Knoxville would be a complete abandonment of service over which the Commission would have no jurisdiction.²³

18. In *Mobil Oil Corp. v. SFPP, Tosco Corp.*,²⁴ the Commission again stated that it has no jurisdiction over entrance to or exit from the oil pipeline market: "Given that the Commission has no jurisdiction over whether a pipeline enters or exits a market, in

²⁰ 89 FERC ¶ 61,095 (1999).

²¹ *Id.* at 61,269.

²² 98 FERC ¶ 61,219 (2002).

²³ *Id.* at 61,865.

²⁴ 96 FERC ¶ 61,281 (2001).

contrast to the efficiency of its ongoing operations, the Commission is not the proper venue for reviewing the prudence of SFPP's actions in making the line reversals”²⁵

19. *Dixie*²⁶ also is distinguishable because it involved a pipeline's attempt to provide bi-directional flows on its line, not the total reversal of flow on the line. The shippers alleged that the tariffs would give Dixie the authority to change the direction of flow at will, for indefinite periods, with little advance notice, and with no responsibility for storage of propane that the shippers normally would tender for transportation. Finally, *Belle Fourche* involved two pipelines seeking to offer new services made possible by the construction of a new pipeline. It did not involve reversal of flow on a line and did not involve a jurisdictional issue.²⁷

20. It is beyond dispute that the Commission lacks jurisdiction over Rocky Mountain's termination of westbound service on the Ft. Laramie-Wamsutter pipeline, even if it is part of a plan to reverse the flow on the line. For that reason, the Commission rejects Holly's protest and accepts Supplement No. 4 to FERC Tariff No. 143 to be effective April 1, 2009.

The Commission orders:

Supplement No. 4 to FERC Tariff No. 143 is accepted to become effective April 1, 2009.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁵ *Id.* at 62,070. See also *Tesoro High Plains Pipeline Co.*, 115 FERC ¶ 61,163, at P 5 (2006) (“It is well settled that the Commission does not have jurisdiction over oil pipeline abandonments, and, therefore, lacks the authority to reject or hold in abeyance Tesoro's filing.”); *Texaco Pipeline Inc.*, 58 FERC ¶ 62,051, at 63,101 (1992) (“The Commission lacks statutory authority to suspend Texaco's tariff cancellations since it does not have jurisdiction over the termination of service by a pipeline.”).

²⁶ 124 FERC ¶ 61,175.

²⁷ 126 FERC ¶ 61,054.