

138 FERC ¶ 61,022
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Dixie Pipeline Company

Docket No. IS12-88-000

ORDER ACCEPTING AND SUSPENDING TARIFF AND ESTABLISHING
TECHNICAL CONFERENCE

(Issued January 13, 2012)

1. On December 15, 2011, Dixie Pipeline Company (Dixie)¹ filed FERC Tariff No. 99.1.0, which cancels FERC Tariff No. 99.0.0 and modifies language regarding Injection Capacity Allocation under Item 70, "Proration." Dixie states that FERC Tariff No. 99.1.0, which it proposes to become effective January 16, 2012, also reflects the updated issuer and complier information, as well as the cancellation of the Table of Contents.
2. Dow Hydrocarbons and Resources LLC (Dow) filed a motion to intervene and a protest asking the Commission to reject FERC Tariff No. 99.1.0. Dow contends that Dixie's proposed revisions will illegally discriminate against Dow, while providing a competitive advantage to an affiliate of Dixie's. In the alternative, Dow asks the Commission to accept and suspend the filing for the full seven-month period authorized by section 15(7) of the Interstate Commerce Act (ICA) and set it for hearing or technical conference.
3. Dixie filed an answer to the protest, urging the Commission to reject the protest and accept the filing without suspension or investigation. Dow filed a response to Dixie's answer.

¹ Dixie is now a limited liability company and has changed its name to Dixie Pipeline Company LLC.

4. As discussed below, the Commission accepts and suspends FERC Tariff No. 99.1.0 to become effective August 16, 2012, subject to the outcome of the technical conference established in this order.

Background

5. In its answer, Dixie states that its pipeline system extends from Mont Belvieu, Texas, to Apex, North Carolina, and that it has numerous origin and destination points along the route. Dixie explains that it primarily transports propane, but that it also transports ethane and refinery grade propylene between certain points. According to Dixie, its tariff requires it to allocate capacity during periods of constraint based on each shipper's historical movements. Dixie states that it calculates injection and withdrawal capacity separately, although it bases each calculation on a 12-month historical period. Dixie explains that it employs this methodology because shippers primarily use its pipeline to transport propane. Further, states Dixie, because it maintains significant propane line fill and storage on the system, it does not require shippers to withdraw the exact amounts that they deliver in any particular month.

Interventions, Protest, and Answer

6. Blossman Gas, CHS Inc., Ferrellgas, L.P., and the National Propane Gas Association (NPGA)² (collectively, Propane Group) filed a timely motion to intervene. Dow also filed a timely motion to intervene and protest. The Commission grants all timely and any unopposed untimely motions to intervene filed before this order is issued, as granting an unopposed late intervention at this stage of the proceeding will not disadvantage any party. Dixie filed an answer to the protest, and Dow filed a response to Dixie's answer.³

7. Dow generally argues that Dixie has not shown FERC Tariff No. 99.1.0 to be just and reasonable and that the Commission should reject or suspend it pending further proceedings, such as a technical conference or hearing. Dow states that, during most of the year, it ships propane on Dixie's system from Mont Belvieu, Texas, to Erwinville,

² The Propane Group explains that NPGA is the national trade association of the LP-gas (principally propane) industry representing, *inter alia*, several direct shippers and/or direct customers or consumers of propane shipped on Dixie's pipeline system and, as such, NPGA has a substantial economic interest in the proceeding.

³ The Commission's procedural rules prohibit answers to answers unless otherwise ordered; accordingly, Dow's response to Dixie's answer is not permitted. Nevertheless, all issues arising from the filing remain open to examination at the technical conference.

Louisiana, where the propane is then transported via a different pipeline to The Dow Chemical Company's (Dow Chemical) chemical and plastics manufacturing site near Plaquemine, Louisiana. According to Dow, the propane is consumed as a feedstock in manufacturing a number of chemicals, including ethylene and propylene. Further, states Dow, during some winter months when the demand for propane for home heating increases, it has transported propane via Dixie's pipeline system from Mont Belvieu to Hattiesburg, Mississippi for sale. Therefore, states Dow, it has a substantial economic interest in this proceeding.

8. Dow avers that, in the instant filing, Dixie proposes to revise the proration policy for injection capacity established in Section B of Item 70 of its tariff. Dow maintains that Item 70 currently provides for allocation of the Dixie system or a portion of the system for injection capacity on the basis of a shipper's historical volume. Further, states Dow, the historical volume is the shipper's product receipts during the first 12 calendar months following a date 13 months prior to the first day of the calendar month during which Dixie will allocate capacity.

9. Dow asserts that Dixie's current filing would delete the following two sentences: "Injections at Hattiesburg and origin points West of Hattiesburg will be allocated based on a Shipper's historical volume at those origins. Injections at origin points East of Hattiesburg will be allocated based on Shipper's historical volume at those origins." Dow contends that Dixie proposes to replace this language with the following new language: "During periods of injection allocation, a Shipper's historical volume to a specific destination will not be able to be used for movements east of that destination; provided however, for purposes of injection allocation, both the Hattiesburg destination and all destinations east of Hattiesburg will be considered as one destination." Dow claims that, in operation, the tariff filing would restrict its ability to transport propane to destinations on the Dixie system located to the east of Erwinville, including Hattiesburg, as it has been doing during the winter months.

10. Dow emphasizes that Dixie has not met the requirement of section 341.2(c)(1) of the Commission's regulations because it has not described and explained the filing in the transmittal letter.⁴ Dow also points out that Dixie bears the burden of proof of demonstrating that its proposed revisions are just and reasonable. Specifically, Dow argues that Dixie has failed to demonstrate how the new prorating policy would operate and the effect of the revisions on current shippers. Dow asserts that the revisions will be unduly discriminatory or preferential in effect, particularly in that they will illegally discriminate against Dow, resulting in a competitive advantage for an affiliate of Dixie's.

⁴ 18 C.F.R. § 341.2(c)(1) (2011).

11. Dow explains that the Commission has accepted tariff filings implementing prorationing policies based on past usage that reward historical shippers for their loyalty by protecting their historic usage patterns during periods of capacity constraint versus new shippers that have no such historic usage patterns.⁵ However, Dow argues that Dixie's current proposal departs from Commission precedent because it would treat certain historical shippers differently based on the distance of the propane movements on the system. Dow explains that, if prorationing were to occur under the proposed provisions, its own historical volume would be based on its propane movements from Mont Belvieu to a delivery point in Erwinville, which is approximately 30 miles from Dow Chemical's chemical and plastics manufacturing site near Plaquemine. Further, explains Dow, Dixie would no longer count Dow's historical propane shipments from Mont Belvieu to Erwinville during periods of injection allocation in determining Dow's share of capacity for shipping propane east of Erwinville, including to Hattiesburg.

12. Dow contends that it would be the only shipper to be affected in this manner and that it would have limited ability to compete for propane sales to meet home heating demands when prices in that propane market make it an attractive alternative to use of the propane as a feedstock in Dow Chemical's Plaquemine facility. Dow also points out that the proposed tariff language would preclude it from injecting any propane at Mont Belvieu for delivery to Hattiesburg even if Dixie had available capacity between Erwinville and Hattiesburg. Dow argues that it is not clear that this delivery restriction has a logical basis.

13. According to Dow, Dixie's proposed change would not impact shippers whose historical volumes are based on longer movements to Hattiesburg or destinations east of Hattiesburg, and Dow also asserts that Dixie has failed to justify the disparate treatment. Specifically, Dow contends that the proposed revision would provide an undue or unreasonable preference to an affiliate of Dixie's in violation of ICA section 3(1). Dow states that the affiliate ships significant volumes of propane to Hattiesburg or beyond that destination for sale into the residential heating market. Dow submits that this concern warrants further investigation.

14. In its answer, Dixie argues that the proposed change to its allocation capacity rules is in the best interests of the pipeline and shippers as a whole and that it is consistent with the Commission's regulations and ICA requirements. Dixie emphasizes that the

⁵ Dow cites, e.g., *Explorer Pipeline Co.*, 87 FERC ¶ 61,374, at n.14 (1999) (explaining that the common carrier's policy is based on historical usage); *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213 (2005) (accepting prorationing policy based on historical usage); *Bridger Pipeline, LLC*, 123 FERC ¶ 61,081 (2008) (accepting prorationing policy based on historical usage).

Commission repeatedly has made it clear that there is no single method of allocating capacity in times of excess demand on oil pipelines and that pipelines should have some latitude in crafting capacity allocation methodologies tailored to the needs of their operations.⁶

15. Dixie contends that it designed the proposed revisions to remedy a specific operational problem and that the revisions are facially neutral and fair to all shippers. Dixie denies that its intent is to favor an affiliate and explains that Dow's use of the system for short-haul shipments has led to capacity constraints that unduly affect other shippers making long-haul shipments from Mont Belvieu to markets east of Erwinville. Dixie submits that this could lead to various problems, including increasing prices for propane at Hattiesburg and forcing other shippers to sell their product to Dow at a discount. Dixie maintains that this would discourage long-haul shippers from using the pipeline system, even though they are responsible for a greater share of both barrel-miles and pipeline revenue. Dixie speculates that preventing Dow from controlling the capacity in this manner may cause Dow to nominate a more realistic amount to Erwinville, thereby alleviating the capacity constraints.

16. Dixie argues that the proposed new allocation policy will not deny Dow or any shippers the ability to make longer-haul shipments. Further, continues Dixie, it will not keep Dow from using its historical allocation to obtain capacity to move product to Erwinville. Dixie asserts that it is not unduly discriminatory to treat shippers differently if they are not similarly-situated – such as long-haul shippers and short-haul shippers. Dixie also rejects Dow's claim that it would be precluded from injecting propane at Mont Belvieu for shipment to Hattiesburg even if Dixie had available capacity. According to Dixie, to the extent that Dow chooses to move propane to Hattiesburg throughout the year, it will be able to build up historical volumes to that destination, as would any other shipper.

Commission Analysis

17. On review of Dixie's FERC Tariff No. 99.1.0, the protest, and Dixie's answer, the Commission concludes a number of issues require additional clarification that can best be addressed at a technical conference. A technical conference is an informal, off-the-record conference at which the parties and the Commission's Staff can explore the issues raised by the filing, gain an understanding of the facts, and obtain additional information regarding the positions of the parties to facilitate a more prompt resolution of issues

⁶ Dixie cites *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999); *Total Petroleum, Inc. v. Citgo Products Pipeline, Inc.*, 76 FERC ¶ 61,164, at 61,947 (1996)).

raised by the filing. Following the technical conference, the parties will have an opportunity to file comments that will be included in the formal record of the proceeding and will form the basis of the Commission's final decision on the filing.

18. Both Dow and Dixie have raised serious issues concerning the interpretation and application of proposed FERC Tariff No. 99.1.0. For example, they disagree as to whether the proposed revision is unduly discriminatory as it would apply to Dow and whether the proposed revision favors an affiliate of Dixie's.

19. Dixie's filing, the protest, and Dixie's answer are insufficient for the Commission to determine whether FERC Tariff No. 99.1.0 is just, reasonable, and not unduly discriminatory. The burden in this proceeding is on Dixie to justify its proposal, and at the technical conference to be established in this proceeding, Dixie must be prepared to explain, *inter alia* the basis of its decision to file this revision to its tariff, as well as how the revision will operate in practice and its impact on Dow, as well as other shippers. Accordingly, the Commission will accept Dixie's filing and suspend it to be effective August 16, 2012.

The Commission orders:

(A) Dixie's FERC Tariff No. 99.1.0 is accepted and suspended to be effective August 16, 2012, subject to the outcome of the technical conference established in this proceeding and further order of the Commission.

(B) The Commission's staff is directed to convene a technical conference to explore the issues raised by Dixie's filing and to report the status to the Commission within 180 days of the date of issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.