

124 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dixie Pipeline Company

Docket No. IS08-405-000

ORDER ACCEPTING AND SUSPENDING TARIFFS AND ESTABLISHING
TECHNICAL CONFERENCE

(Issued August 22, 2008)

1. On July 25, 2008, Dixie Pipeline Company (Dixie) filed FERC No. 92, which establishes new rates for the transportation of Refinery Grade Propylene (RGP) from Anse La Butte and Breaux Bridge, Louisiana, to Mont Belvieu, Texas. Dixie states that the rates are agreed to by a non-affiliated shipper. Dixie also filed FERC No. 93 (cancelling FERC No. 88), which applies to the transportation of propane. Dixie states that FERC No. 93 revises Item 10 (Commodity) and Item 36 (Bi-Directional Routing) to allow the pipeline section between Mont Belvieu, Texas, and Hattiesburg, Mississippi, to flow bi-directionally based on shippers' nominations. Additionally, Dixie states that FERC No. 93 revises Item 20 (Tenders and Scheduling) to allow shippers to nominate via Dixie's CIS system, and it revises Item 70 (Proration) to allow a shipper's historical volume for all products to be used in determining a shipper's total available allocation.
2. Four protests challenge FERC Nos. 92 and 93. The following shippers filed protests: CITGO Petroleum Corporation (CITGO); ConocoPhillips Company (ConocoPhillips), Targa Midstream Service Limited Partnership and Targa Louisiana Field Services LLC (together, Targa) (collectively, Joint Protestors); Crosstex Energy Services, L.P., Crosstex NGL Marketing, L.P., and Crosstex Processing Services, LLC (collectively, Crosstex), and Dow Hydrocarbons and Resources LLC (Dow). They generally allege that the tariffs are ambiguous and vague, unjust and unreasonable, and unduly preferential. These shippers also ask the Commission to suspend Dixie's filing for the maximum seven-month statutory period and institute an investigation or convene a technical conference.
3. As discussed below, the Commission accepts and suspends FERC Nos. 92 and 93 to be effective March 25, 2009, subject to the outcome of the technical conference established in this proceeding.

Summary of Protests

4. CITGO emphasizes that it owns and operates the fourth largest oil refinery in the United States, which is located at Lake Charles, Louisiana. CITGO explains that its refinery produces substantial volumes of propane as a byproduct of the refining process, which CITGO ships on a daily basis via the Dixie pipeline. CITGO further states that it does not have a feasible alternative to shipping on the Dixie pipeline because it lacks facilities to store large quantities of propane and there are no viable transportation alternatives to the Dixie pipeline. CITGO maintains that, if it were precluded from shipping the propane on the Dixie pipeline as it has done for many years, it would be forced to curtail or shut down operations at the Lake Charles refinery, which would result in severe consequences to it and to the public at large. CITGO also emphasizes that Dixie gave it no indication that it planned to make a filing of this nature.

5. Joint Protestors state that ConocoPhillips also owns a refinery at Lake Charles and that it ships approximately 3,000 barrels per day (bpd) of its own production each day on the Dixie pipeline, as well as substantial additional volumes of propane it purchases from third parties at various receipt points on the Dixie pipeline. Joint Protestors further state that Targa operates natural gas gathering facilities, gas processing plants, fractionation services, and marketing services. They explain that two of Targa's largest fractionators are located at Mont Belvieu, Texas, and Calcasieu Parish, Louisiana, and that these facilities deliver propane into the Dixie pipeline. Joint Protestors state that, on average, Targa injects 11,500 bpd of propane into the Dixie pipeline. Joint Protestors also emphasize that they lack sufficient storage facilities to accommodate the volumes they typically ship each day on the Dixie pipeline and that there are no viable alternatives for disposal of their propane volumes. They also cite the potential adverse impact on consumers if they are prevented from shipping the propane as they have done historically.

6. Crosstex states that it operates intrastate natural gas pipelines, as well as facilities for gathering, processing, and treating the natural gas. Crosstex also states that it engages in buying and selling natural gas and natural gas liquids. Crosstex asserts that the most critical outlet for propane from its Eunice processing plant in Louisiana is the Dixie pipeline. Dow maintains that Dixie's proposal will have an adverse impact on its ability to ship propane to the propane markets connected to the Dixie pipeline, including the market at Hattiesburg, Mississippi.

7. The shippers generally contend that the new tariffs are unclear and ambiguous in a number of respects in violation of sections 1(6) and 6(1) of the Interstate Commerce Act (ICA);¹ that the tariffs appear to give Dixie unfettered discretion in refusing to accept propane shipments in violation of the common carrier obligation established in ICA

¹ 49 U.S.C. App. §§ 1(6), 6(1) (1988).

section 1(4);² and that the challenged tariffs are unjust, unreasonable, unduly discriminatory, and unduly preferential in violation of ICA section 3(1).³ The shippers also emphasize that Dixie has failed to provide any real justification, factual support, or a reasoned basis for the sudden, dramatic changes in its service.

8. More specifically, the shippers contend that Dixie's new tariffs purport to give it the authority to change the direction of flow of the pipeline at will, do so for indefinite periods at its sole discretion, provide virtually no advance notice to its customers of its intent to do so, assume no responsibility for storage of the propane that cannot be shipped, and assume no responsibility for maintaining the integrity of the shipments that are tendered. The shippers point out that the pipeline has been primarily dedicated to propane transportation from west-to-east for many years, with shipments of other commodities permissible only if Dixie had capacity available and if the transportation would not impair its ability to transport propane. However, the shippers argue that the new tariffs would allow Dixie to change the relevant section of the pipeline to a bi-directional line, to expand the acceptable commodities to include RGP, to change the pipeline's prorating policy to include historical volumes of RGP and possibly other products, and to retain sole discretion to determine when it will accept propane. The shippers further emphasize that the tariffs are vague and ambiguous with respect to critical details of the new service. Moreover, the shippers claim that the new Dixie tariffs could impact related energy markets, including gasoline, natural gas, and plastics manufacturing, to the detriment of these markets and the ultimate consumers of these products.

9. The shippers contend that establishment of the new east-to-west service for RGP unduly favors shippers of RGP, including subsidiaries and affiliates of Dixie's owner, Enterprise Products Partners L.P. (Enterprise), at the expense of existing propane shippers. According to the shippers, this raises the possibility that propane shippers will be required to cross-subsidize the use of the pipeline for the new RGP service.

10. Joint Protestors also state that Dixie personnel have indicated that switching Dixie to a batched system will require shippers to have seven days' worth of storage. Joint Protestors emphasize that, because the Dixie system has not required this in the roughly 40 years it has been in operation, shippers do not currently have these facilities, and such facilities could not be built quickly, even if shippers had the space available to do so. According to Joint Protestors, the shippers' inability to develop their own storage could benefit Enterprise because it owns substantial storage in the region.

² 49 U.S.C. App. § 1(4) (1988).

³ 49 U.S.C. App. § 3(1) (1988).

11. Joint Protestors further point out that the Federal Trade Commission (FTC) has recognized the potential for anticompetitive activity in this area. Joint Protestors cite a consent order issued by the FTC in November 2004, in which the FTC required Enterprise to divest certain propane storage interests at Hattiesburg.⁴ Joint Protestors emphasize that the FTC stated that the market for propane storage and terminaling services in Hattiesburg is highly concentrated and exhibits high barriers to entry.

Dixie's Response

12. Dixie filed its response on August 18, 2008. Dixie maintains that the “speculative allegations” made by the protesting shippers supply no grounds for rejecting FERC Nos. 92 and 93. According to Dixie, it simply is attempting to increase the usage of a significantly underutilized system by expanding the range of products that may be shipped on the system. Dixie points out that FERC No. 91, which provides for the transportation of ethane, took effect on July 6, 2008, without protest or suspension. Further, Dixie cites the ICA’s common carrier obligation to provide and furnish transportation upon reasonable request, and Dixie emphasizes that both propane and RGP shippers have requested transportation on its line. Despite its comments challenging the protests, Dixie acknowledges that the underlying facts are complex and that the issues raised are not susceptible to determination on the pleadings alone. Accordingly, Dixie states that it does not object to suspension of the tariffs for a reasonable period or to the convening of a technical or settlement conference.

Discussion

13. On review of FERC Nos. 92 and 93 and the protests, the Commission concludes that a number of issues require additional clarification and can best be addressed at a technical conference. A technical conference is an informal, off-the-record conference at which the parties and 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 the issues raised by the filing. Following the 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 for the Commission’s final decision on the filing.

14. The shippers have raised serious issues concerning the possible effect of FERC Nos. 92 and 93, including the likely impact on their own businesses, as well as on related energy markets such as gasoline and natural gas that directly affect the country’s citizens.

⁴ Joint Protestors attach the FTC order as Exhibit A to their motion to intervene and protest. Exhibit B is a copy of the FTC’s Analysis of Proposed Order to Aid Public Comment.

They also emphasize that Dixie's abrupt proposal to change the long-standing nature of its operations affords them no opportunity to develop reasonable alternatives to shipping regularly on Dixie's pipeline, such as constructing new storage facilities. The shippers have alleged that the tariffs might require them to cross-subsidize the shipment of RGP. They claim that the tariffs violate a number of sections of the ICA, as well as Commission precedent. Additionally, Joint Protestors have raised the specter of anti-trust violations. Dixie's filings in this proceeding are inadequate for the Commission to find that FERC Nos. 92 and 93 are just and reasonable and not unduly discriminatory or preferential and whether Dixie's proposal is consistent with its common carrier obligation.

15. Accordingly, the Commission will accept and suspend FERC Nos. 92 and 93 to be effective March 25, 2009, subject to the outcome of the technical conference established in this proceeding. The Commission will direct the Staff to convene a technical conference and to report the results of the technical conference to the Commission within 120 days of the date this order is issued. Dixie must be prepared at the technical conference to address the issues raised by the protests and the Commission and to provide full support for its position on each issue. The Commission favors resolution of contested issues through informal means to the extent possible and encourages the parties to explore these issues in advance of the technical conference to facilitate discussion at the technical conference.

The Commission orders:

(A) Dixie's FERC Nos. 92 and 93 are accepted and suspended to be effective March 25, 2009, subject to the outcome of the technical conference established in this proceeding.

(B) The Commission's Staff is directed to convene a technical conference to explore the issues raised by Dixie's filing and to report to the Commission within 120 days of the date of issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.