132 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dixie Pipeline Company Docket No. IS10-541-000

ORDER ACCEPTING AND SUSPENDING TARIFF AND ESTABLISHING TECHNICAL CONFERENCE

(Issued August 31, 2010)

1. On July 30, 2010, Dixie Pipeline Company (Dixie) filed Supplement No. 1 to FERC Tariff No. 88 to be effective September 1, 2010. The tariff supplement adds language that "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." Dixie also states that the proposed language eliminates and replaces the separate injection allocation for origin points that lie east and west of Hattiesburg, Mississippi. Several shippers intervened and protested the filing, contending that it should be rejected or suspended pending further proceedings because it has not been shown to be just and reasonable.

2. As discussed below, the Commission accepts and suspends Supplement No. 1 to FERC Tariff No. 88 to be effective April 1, 2011, subject to the outcome of the technical conference established in this order.

Background

3. 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 provides that capacity is allocated during periods of constraint based on each shipper's historical movements. Dixie states that it calculates injection and withdrawal capacity separately, although each calculation is based on a 12-month historical period.

4. Dixie asserts that, under its prior allocation policy, injections at Hattiesburg (where a large propane storage and marketing hub connects to its system) and origin points west of Hattiesburg were allocated separately from injections at origin points east of Hattiesburg. However, continues Dixie, because it no longer receives injections at

origin points east of Hattiesburg, that distinction is eliminated in the current filing. Further, Dixie asserts that the proposed new policy also provides that, during periods of injection allocation, a shipper's historical volume may not be used for movements east of the destination to which it was earned.

Interventions and Protests

5. Blossman Gas, Inc., CHS Inc., ConocoPhillips Company, Ferrellgas, L.P., and the National Propane Gas Association (NPGA)[1] (collectively, Propane Group) filed a timely motion to intervene and a protest. Targa Midstream Services Limited Partnership (Targa),[2] and Dow Hydrocarbons and Resources LLC (Dow) also filed timely motions to intervene and protests. The Protestors generally argue that Supplement No. 1 has not been shown to be just and reasonable and should be rejected or suspended pending further proceedings, such as a technical conference or alternative dispute resolution (ADR). The Protestors state that they are past, present, or future shippers on Dixie's pipeline system and have a substantial economic interest in the outcome of the proceeding.

6. The Propane Group asserts that Supplement No. 1 is not specific enough to indicate how capacity allocation will operate in practice and that it appears to be contradictory in certain respects. The Propane Group explains that its members have been in communication with Dixie for more than a month seeking an explanation and a more detailed policy spelling out the mechanics of the process. However, they point out that Dixie provided a single example of a scenario under the proposed revision to the prorationing procedure, but did not explain the inputs into the example or how the procedure would apply in other scenarios, such as on other segments of the pipeline, or how history from one segment would apply to allocations on another.

7. In addition to questioning the lack of detail in Dixie's example, the Propane Group states that it is unclear how the revised prorationing procedure will affect the shippers' nominating process. The Propane Group also observes that Dixie has indicated that capacity at injection constraint points under the revised procedure will be allocated to all shippers who withdraw volumes from the pipeline, even those that do not inject volumes through such constraint points (or even purchase in-line propane volumes and do not "inject" any volumes of propane). However, the Propane Group maintains that, if this is the case, it is not clear whether or how Withdrawal Capacity Allocation versus Injection

[1] The Propane Group explains that NPGA is the national trade association of the LP-gas (principally propane) industry representing, *inter alia*, significant users of Dixie's pipeline system and that, as such, it has a substantial economic interest in the proceeding.

[2] Targa filed a protest, but subsequently withdrew it.

Capacity Allocation will be used, which of these two procedures takes precedence if they are used concurrently, or how this is shown in the language of the revised prorationing procedure.

8. The Propane Group further argues that Supplement No. 1 appears to contain an internal contradiction. Specifically, continues the Propane Group, Item 70-A contains two sections: (A) Withdrawal Capacity Allocation and (B) Injection Capacity Allocation. According to the Propane Group, in Section A, a shipper's historical volume is defined as its "product deliveries" for a preceding 12-month period. However, continues Propane Group, in Section B, a shipper's historical volume is defined as its "product receipts" (i.e., injections) for a preceding 12-month period. Thus, states the Propane Group, a shipper's historical volume under Section A sums up the amount it delivered to destinations during the relevant period, and a shipper's historical volume under Section B sums up the amount it injected at origins during the relevant period. According to the Propane Group, the new language added by Supplement 1 appears in Section B, and it refers to "a Shipper's historical volume *to a specific destination*" (emphasis added). Despite that, continues the Propane Group, the "historical volume" under Section B, Injection Capacity Allocation, is not connected to any destination; it is the amount injected at pipeline origin points, regardless of where the injected product was subsequently transported.

9. Consequently, explains the Propane Group, the addition of the new language to Section B of Item 70-A is a source of confusion. The Propane Group submits that moving the new language to the end of Section A, rather than the end of Section B, would answer this question, although it would not resolve the operational uncertainties identified by the Propane Group.

10. The Propane Group states that, if the published allocation policy does not explain how allocation operates in practice, the actual operation remains within the carrier's discretion and may not be a matter of public knowledge. The Propane Group points out that this is of particular concern with respect to Dixie, because its parent company, Enterprise Products Partners, L.P. (Enterprise), has propane marketing subsidiaries that ship on Dixie's pipeline system and compete with unaffiliated shippers.

11. While it acknowledges that Dixie has represented that the manner in which it implements this new policy will benefit most shippers on its pipeline, including the members of the Propane Group, the Propane Group states that this should be spelled out clearly in the prorationing policy. However, continues the Propane Group, absent such a clarification of the policy, Dixie leaves an important aspect of reliable service open to its own interpretation. The Propane Group emphasizes that this allows the potential for unjust and unreasonable practices. In particular, adds the Propane Group, it is mindful of the approaching winter season and the need to ensure that propane supply is available to the Southeast region.

12. Dow points out that Dixie's transmittal letter contains only a brief, two sentence description of the filing and is completely silent as to Dixie's reasons for proposing to revise its prorationing procedure, the justification for the revision, and factual support for the proposed revision. Dow emphasizes that Dixie's filling may violate the requirements of the Interstate Commerce Act (ICA), particularly sections 1(4), 3(1), and 6,[3] as well as section 341.8 of the Commission's regulations,[4] which requires a common carrier pipeline to set forth in its tariff clear rules governing the prorationing of capacity on its pipeline.[5] Dow explains that the Commission has stated that, "[w]ithout information in the tariff concerning the prorationing policy, shippers and the Commission cannot determine whether assignment of prorated capacity among shippers is performed in a nondiscriminatory and nonpreferential manner"[6] as required by ICA section 3(1).[7]

13. Dow maintains that Dixie's proposed revision to its prorationing procedure would violate ICA section 3(1) because it could provide an undue or unreasonable preference or advantage to Enterprise, owner of Dixie, or one of its affiliates. Specifically, states Dow, the proposed revision could help Enterprise or an affiliate maintain or enhance its position in the wholesale propane market in Hattiesburg or points east of Hattiesburg to the detriment of Dow and other potentially competing suppliers.

14. Further, states Dow, under the prorationing procedure set forth in section B of Item 70-A, Dixie allocates injection capacity based upon a shipper's historical volumes over a 12-month period. Dow explains that, if prorationing were to occur, its historical volume would be based primarily on its movements of propane from the origin of the Dixie pipeline system in Mont Belvieu, Texas, to the Erwinville, Louisiana delivery point located approximately 30 miles from the Dow Chemical Company's chemical and plastics manufacturing site near Plaquemine, Louisiana. Under Dixie's proposed revisions, continues Dow, during periods of injection allocation, its historical shipments

[3] 49 U.S.C. App. §§ 1(4), 3(1), and 6 (1988).

[4] 18 C.F.R. § 341.8 (2010).

[5] Dow states that section 341.8 codifies ICA section 6, which requires a pipeline to publish rates, fares, and charges, as well as any factor that could affect the value of its common carrier service, including prorationing policies, in its tariff.

[6] *Amarada Hess Pipeline Corp*., 68 FERC ¶ 61,057, at 61,196 (1994).

[7] *See Belle Fourche Pipeline Co*., 28 FERC ¶ 61,150, at 61,282 (1984) (explaining that the prohibition against undue discrimination between shippers when allocating insufficient capacity is embodied in section 3(1) of the ICA, which prohibits undue or unreasonable preferences).

of propane from Mont Belvieu to Erwinville would no longer be able to be used for movements of propane east of that destination, including Hattiesburg. Additionally, states Dow, Dixie's proposed changes to its prorationing procedure would arbitrarily limit Dow's ability to ship propane to Hattiesburg to compete with Enterprise for the sale of propane to meet home heating market demands when prices in that market are an attractive alternative to the use Dow would otherwise make of this propane as a petrochemical feedstock at the Plaquemine facility. Dow contends that, under the proposed revisions to Dixie's prorationing procedure, it would be precluded from shipping propane to Hattiesburg even if Dixie had available capacity between Erwinville and Hattiesburg. Dow argues that this delivery restriction appears to bear no logical relationship to an event that would create the need for injection allocations; therefore, it is unjust and unreasonable on its face, as well as unduly discriminatory in its application.

Dixie's Answer

15. In its answer filed August 23 2010, Dixie asserts that the change in policy was designed to address a specific problem that has arisen on its system. Dixie explains that its shippers traditionally have moved propane from origins in Texas and Louisiana to destinations across the Southeast from Mississippi to North Carolina. However, continues Dixie, one shipper recently began making shipments only on the initial segment of the pipeline between Mont Belvieu and Sulphur, Louisiana. While it acknowledges that it generally has sufficient capacity on its system to accommodate such shipments as well as the traditional shipments to more distant destinations, Dixie points out that propane demand is seasonal, with the peak demand months coming in the winter heating season. According to Dixie, the constraints resulting from the shorter shipments unduly impact the shippers to more distant markets.

16. More specifically, states Dixie, because of the Mont Belvieu-Sulphur shipments, when other shippers at Mont Belvieu seek to inject more volumes than can be moved through the initial segment, the Mont Belvieu origin is put on injection allocation.[8] Under the prior policy, continues Dixie, injection allocation at Mont Belvieu was based on each shipper's share of historical volumes, regardless of the distance the barrel traveled. Thus, states Dixie, under the prior policy, the Mont Belvieu-Sulphur shipper was able to acquire a significant percentage of the injection allocation at Mont Belvieu, based solely on movements between Texas and Louisiana. Dixie views this situation as unfair to the shippers to more distant destinations, which may cause them to seek alternative methods of transportation. Dixie adds that such shippers are responsible for a greater share of barrel-miles and a greater share of pipeline revenue, so the pipeline would be harmed by their departure from the system. Moreover, adds Dixie, shippers as

[8] Dixie states that, under ordinary operating conditions, Mont Belvieu is the only origin point to have been put on allocation during the last several years.

a whole would also be harmed because the pipeline's costs would need to be spread over a smaller number of barrel-miles, which would tend to increase rates.

17. Dixie contends that its revised policy is designed to address those problems by providing that, during periods of injection allocation, a shipper may not use its historical volume to a specific destination to support movements east of that destination. Dixie argues that the change to its capacity allocation rules is in the best interests of the pipeline and shippers as a whole and is fully consistent with the ICA and the Commission's regulations. Dixie emphasizes that the Commission has made it clear that "[t]here is no single method of allocating capacity in times of excess demand on oil pipelines."[9] Additionally, states Dixie, the Commission has held that pipelines "should have some latitude in crafting capacity allocation methods to meet circumstances specific to their operations."[10] Dixie contends that the proposed revision to its allocation policy, while designed to remedy a specific problem, is neutrally-worded and fair to all shippers.

18. Dixie challenges Dow's assertion that this revision would arbitrarily limit its ability to ship propane to Hattiesburg. Dixie states that Dow is correct that, to the extent it seeks to move propane to Hattiesburg during periods of capacity allocation using a volume history consisting solely of movements to Erwinville, the new policy will reduce the injection allocation that Dow currently receives. However, continues Dixie, the revised policy is neither arbitrary nor unreasonable.

19. Dixie further refutes Dow's contention that, under the revised rules, it would be precluded from shipping propane to Hattiesburg even if Dixie had capacity available between Erwinville and Hattiesburg. Dixie maintains that Dow is not precluded from shipping propane to any destination. Dixie explains that, to the extent Dow chooses to move propane to Hattiesburg throughout the year, it will be able to build up historical volume to that destination just like any other shipper. In any case, adds Dixie, whether there is available capacity between Erwinville and Hattiesburg is irrelevant, because Erwinville is not an origin on the pipeline. Thus, reasons Dixie, even if there were capacity between Erwinville and Hattiesburg, injection capacity at Mont Belvieu may still be constrained if there is insufficient capacity on the segment between Mont Belvieu and Sulphur.

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[9] *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,* 76 FERC ¶ 61,164, at 61,947 (1996)).

[10] *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004).

20. Dixie challenges the claim that the new policy could confer an unfair advantage on its affiliates. According to Dixie, mere speculation about how the tariff could be discriminatorily applied, presented without the support of any evidence whatsoever, cannot justify rejecting the facially neutral and objective provisions in its tariff. Dixie also argues that Dow fails to explain how the proposed revision is unclear. Dixie also argues that the Propane Group inaccurately describes how the policy is intended to be applied. Finally, states Dixie, there is no merit to the suggestion that the policy is not clearly set forth in the tariff.

Commission Analysis

21. On review of Supplement No. 1 to Dixie's FERC Tariff No. 88, the protests, and Dixie's response to the protests, 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 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.

22. The Protestors have raised serious issues concerning the interpretation and application of Supplement No. 1 to FERC Tariff No. 88. For example, they question whether the proposed revision is intended to favor any affiliate of Dixie to the detriment of any other shipper. They also contend that the proposed revision is not specific enough to allow a shipper to determine the potential operation and effect of the revision. Dixie's filing, the protests, and Dixie's answer are insufficient for the Commission to determine whether Supplement No. 1 to FERC Tariff No. 88 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 its current shippers. Accordingly, the Commission will accept Dixie's filing and suspend it to be effective April 1, 2011.

The Commission orders:

(A) Dixie's Supplement No. 1 to FERC Tariff No. 88 is accepted and suspended to be effective April 1, 2011, 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 to the Commission within 180 days of the date of issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.