

*ConocoPhillips Company v. Enterprise TE Products Pipeline Company LLC*

ORDER DISMISSING COMPLAINT

134 FERC ¶ 61,174 (2011)

In this case, ConocoPhillips Company (ConocoPhillips) filed a complaint under the Interstate Commerce Act (ICA) against Enterprise TE Products Pipeline Company LLC (Enterprise) and alleged that Enterprise had unlawfully refused to transport propane from ConocoPhillips' refinery in Trainer, Pennsylvania to a delivery point in Mont Belvieu, Texas since Enterprise would no longer would abide by an exchange arrangement whereby ConocoPhillips delivered propane to Enterprise at Trainer, Pennsylvania, and Enterprise credited ConocoPhillips with the same amount of propane at Mont Belvieu, Texas. Enterprise defended claiming, among other things, that the Commission had no jurisdiction over the exchange arrangement as that arrangement did not involve physical movement of propane from the refinery in the northeast to a delivery point in the southwest, and indeed could not in light of the opposite direction of flows on the Enterprise pipeline. Furthermore, asserted Enterprise, ConocoPhillips paid no transportation charge under the arrangement to Enterprise and bore no risk of loss after the propane was delivered at Trainer, Pennsylvania, a location that Enterprise did not list as an origination point in its tariff. Enterprise claimed that the exchange agreement is a private commercial contract to trade propane, and, while common in the oil industry, it is not FERC jurisdictional under the ICA as it involves no transportation of propane in interstate commerce. The Commission agreed and dismissed the complaint.

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134 FERC ¶ 61,174  
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.

ConocoPhillips Company

Docket No. OR11-3-000

v.

Enterprise TE Products Pipeline Company LLC

ORDER DISMISSING COMPLAINT

(Issued March 4, 2011)

1. On November 30, 2010, ConocoPhillips Company (ConocoPhillips) filed a complaint against Enterprise TE Products Pipeline Company LLC (Enterprise TEPPCO) alleging Enterprise TEPPCO unlawfully refused to provide transportation of propane from the ConocoPhillips refinery in Trainer, Pennsylvania (Trainer refinery or Trainer) upon reasonable request, notwithstanding a long-established historical transportation pattern under which ConocoPhillips injects propane into Enterprise TEPPCO's pipeline system at this refinery. For the reasons discussed below, the Commission dismisses the complaint.

**Background**

2. ConocoPhillips states it is one of the largest wholesale marketers of propane in the United States and is a past, present, and/or future shipper of propane on the Enterprise TEPPCO system. ConocoPhillips states Enterprise TEPPCO transports natural gas liquids (primarily propane and butane) from origins in Texas, Louisiana, Ohio, and Pennsylvania, including Trainer, to destinations in Louisiana, Arkansas, Missouri, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and New York. ConocoPhillips states Enterprise TEPPCO's tariffs do not list an origin at or near Trainer for propane or any other transportation.

3. ConocoPhillips states it owns a crude oil refinery at Trainer, Pennsylvania that produces gasoline, diesel, fuel oil, jet fuel and other distillates, together with approximately 4,000 barrels per day of propane that it delivers directly into the Enterprise TEPPCO pipeline. ConocoPhillips states the Trainer refinery is physically connected to the pipeline; propane exiting the refinery into the pipeline is measured at a meter facility

in Marcus Hook/Twin Oaks, Pennsylvania, which are existing destinations under Enterprise TEPPCO's tariffs. ConocoPhillips avers these Trainer-origin barrels are physically transported westward along the Trainer-Greensburg segment of the Enterprise TEPPCO system, commingled with propane shipped from points further south, and are transported onward to points in Pennsylvania and New York. ConocoPhillips states Enterprise TEPPCO, however, does not recognize these product movements in its FERC tariff. ConocoPhillips states instead, for at least 10 years, Enterprise TEPPCO has taken this propane under an exchange agreement or backhaul arrangement (Exchange Agreement), physically receiving it at Trainer and crediting ConocoPhillips for the propane via backhaul transportation, at the pipeline's Mont Belvieu, Texas origin. ConocoPhillips states the most recent reflection of this agreement is a contract dated April 1, 2005. ConocoPhillips believes Enterprise TEPPCO has similar exchanges or backhaul arrangements with other parties in the Northeast.

4. ConocoPhillips states it delivers propane to the Enterprise TEPPCO pipeline from its refinery, and Enterprise TEPPCO in return delivers an equal volume of propane via backhaul to ConocoPhillips' account at its Mont Belvieu, Texas facility under the Exchange Agreement. ConocoPhillips states the Exchange Agreement defines the delivered volume of propane as "all Product produced" at the Trainer refinery, not to exceed 180,000 barrels per month without Enterprise TEPPCO's written consent. ConocoPhillips estimated the volume of product is approximately 4,000 barrels per stream day (or approximately 1,460,000 barrels per year).

5. ConocoPhillips certifies that its propane moving from Trainer meets the pipeline's specified flow, pressure, and product specifications. ConocoPhillips asserts it has met these flow, pressure, and product specification requirements for more than 10 years for product injected at Trainer into Enterprise TEPPCO's pipeline. ConocoPhillips asserts this propane benefits Enterprise TEPPCO by assisting the operation of its open stock system.<sup>1</sup>

6. ConocoPhillips states the Exchange Agreement contains a provision requiring the parties to keep deliveries in approximate balance. Notwithstanding this provision, ConocoPhillips states that in July 2010, Enterprise TEPPCO stopped redelivering propane to ConocoPhillips at Mont Belvieu pursuant to the Exchange Agreement. ConocoPhillips states Enterprise TEPPCO continued to receive ConocoPhillips' propane at Trainer, but it did not credit ConocoPhillips' account at the Mont Belvieu location for this propane, as required under the Exchange Agreement, resulting in a significant and long-lasting imbalance. Specifically, ConocoPhillips states Enterprise TEPPCO seized

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<sup>1</sup> An open stock service permits shippers to withdraw propane at any destination on the system without waiting for their tender to physically move from the origin point to the destination point.

approximately 244,000 barrels of propane belonging to ConocoPhillips and did not return these barrels to ConocoPhillips until the last three weeks of October 2010.

ConocoPhillips states Enterprise TEPPCO stated that it was not practical to redeliver ConocoPhillips' Trainer propane volume to Mont Belvieu because Enterprise TEPPCO had insufficient volume of propane at Mont Belvieu. However, ConocoPhillips believes Enterprise TEPPCO receives substantially more propane each day in Mont Belvieu than is required for the redelivery. ConocoPhillips asserts Mont Belvieu holds the largest inventory of propane in the world, and there are ample volumes available to Enterprise TEPPCO for completing the redelivery.

7. ConocoPhillips states Enterprise TEPPCO provided it with notice in March 2010 of its intention to terminate the Exchange Agreement effective March 31, 2011. ConocoPhillips states it asked Enterprise TEPPCO to extend the Exchange Agreement after March 31, 2011, but to date the agreement has not been extended. ConocoPhillips, wishing to begin its own shipments of propane on Enterprise TEPPCO originating at the Trainer refinery, requested in September 2010 that Enterprise TEPPCO include Trainer as an origin in its tariff. ConocoPhillips states it intends to nominate barrels from Trainer for interstate transportation on the Enterprise TEPPCO system. ConocoPhillips states more than two months later, Enterprise TEPPCO has failed to respond to this request. ConocoPhillips contends Enterprise TEPPCO's continued silence, after more than two months have passed, is effectively a denial.

### **Conoco's Complaint**

8. ConocoPhillips asserts Enterprise TEPPCO's refusal to provide transportation to ConocoPhillips upon reasonable request violates Section 1(4) of the Interstate Commerce Act (ICA). It contends Sections 1(1), 6(1), and 6(7) of the ICA requires Enterprise TEPPCO to file an interstate transportation tariff for movements of propane already occurring at Trainer. Accordingly, ConocoPhillips seeks an order requiring Enterprise TEPPCO to amend its tariff and add Trainer as an origin point, in recognition of actual movements of propane from Trainer. Upon further reflection and analysis of the Exchange Agreement, ConocoPhillips submits this arrangement reflects transportation subject to the Commission's jurisdiction. In addition, ConocoPhillips also seeks an order requiring Enterprise TEPPCO to recognize any exchange agreements or backhaul arrangements that use and depend on the physical facilities of the pipeline in its tariff.

9. ConocoPhillips argues the key fact with respect to this violation of Section 1(4) is that Enterprise TEPPCO already transports propane from the Trainer refinery westward on the Trainer-Greensburg segment that Enterprise TEPPCO delivers to points in Pennsylvania and/or New York. ConocoPhillips asserts Enterprise TEPPCO by not publishing this movement in its tariff omits giving public notice that this transportation service is available. ConocoPhillips contends it is unlawful for Enterprise TEPPCO to represent in its tariff that the Trainer-Greensburg segment is solely a west-to-east pipeline when it is also moving propane from east to west on this line. ConocoPhillips states

Section 6(1) of the ICA requires common carriers to file tariffs that show “all the rates, fares, and charges for transportation between different points on its own route ....” ConocoPhillips states ICA Section 6(7) establishes that a carrier may not engage or participate in the transportation of property “unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter ....”

10. ConocoPhillips asserts the ICA does not permit Enterprise TEPPCO to deny it transportation based on the carrier’s own unlawful omission from its tariff of transportation it actually provides.<sup>2</sup> ConocoPhillips argues here the carrier must provide to the public upon reasonable request the entire service it is actually performing, including the movement of propane from east to west on the Trainer-Greensburg segment.

11. ConocoPhillips submits the duty of a common carrier to provide service upon reasonable request, pursuant to Section 1(4), is well-established.<sup>3</sup> ConocoPhillips asserts if a carrier refuses transportation, it must support its decision.<sup>4</sup> ConocoPhillips argues Enterprise TEPPCO provides no explanation for its refusal to include the Trainer origin in its tariff. Moreover, and as demonstrated herein, ConocoPhillips argues it request for such transportation is wholly reasonable, as Enterprise TEPPCO has conducted these propane product movements for approximately a decade.

12. ConocoPhillips contends whether a request for transportation is reasonable is a factual question. ConocoPhillips maintains the facts relevant to this determination are (a) that the pipeline is connected to the Trainer refinery already; and (b) that it is already physically transporting propane from Trainer westward on the pipeline, i.e., the service requested by ConocoPhillips. ConocoPhillips argues because the origin facility is already connected to the pipeline and the requested product movements are already occurring, the only effort required on Enterprise TEPPCO’s behalf is to add this origin point to its tariff - a duty required under the ICA. ConocoPhillips submits its service request is not an

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<sup>2</sup> *Waxelbaum & Co. v. Atlantic Coast Line R.R. Co.*, 12 I.C.C. 178, 183 (1907). ConocoPhillips states decisions of the Interstate Commerce Commission (ICC) applying the ICA that were issued prior to the effective date of the 1977 legislation transferring oil pipeline jurisdiction to the FERC are treated as if they were FERC decisions. *Citing, Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 776 (D.C. Cir. 2006).

<sup>3</sup> *Citing, e.g., Belle Fourche Pipeline Co.*, 28 FERC ¶ 61,150, at 61,281 (1984), *citing Johnson v. Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 400 F.2d 968 (9th Cir. 1968) (*Johnson*).

<sup>4</sup> *Citing, Johnson*, 400 F.2d at 971.

innovation for Enterprise TEPPCO, as westward movements have been occurring along this segment for approximately 10 years and thus are part of the pipeline's historic operating conditions.

13. ConocoPhillips contends an additional relevant fact in determining the reasonableness of this request is found in Enterprise TEPPCO's automated inventory system, Transport4. ConocoPhillips states Transport4 lists propane inventory by origin, including Enterprise TEPPCO origin points such as Todhunter, Ohio (TDH), Lima, Ohio (LIM), and Mont Belvieu, Texas (WMB). ConocoPhillips states Transport4 also lists an origin abbreviated "MHK," that is, Marcus Hook, the meter facility where Enterprise TEPPCO measures ConocoPhillips' propane injected at Trainer. ConocoPhillips asserts this further acknowledges that the Trainer-Greensburg segment has eastern origin points, despite Enterprise TEPPCO's failure to reflect these origins in its tariff.

14. ConocoPhillips submits Enterprise TEPPCO cannot limit the use of its pipeline segment, connected to the Trainer refinery, to transportation under exchange agreements or backhaul arrangements, while refusing to transport propane in common carrier service. ConocoPhillips points to an analogous case where a federal court held that a carrier could not restrict use of a line to one type of traffic and deny requests for transportation generally.<sup>5</sup> ConocoPhillips argues Enterprise TEPPCO's common carrier duty and shippers' right to transportation upon reasonable request require that it provide service to the public that is not limited to transportation it sees fit to recognize.

15. ConocoPhillips submits that following the termination of the Exchange Agreement, if ConocoPhillips is not permitted to ship propane on Enterprise TEPPCO's pipeline from the Trainer refinery, access to this important source of fuel will be impeded. ConocoPhillips states that without transportation either by exchange/backhaul or from an origin point pursuant to the pipeline's common carrier duty, there will not be an effective way of transporting Trainer-produced propane to customers. ConocoPhillips states no propane truck loading facilities exist at the refinery, and, in any event, trucking or other modes of transportation cannot replace the large volumes of product moved on a pipeline. ConocoPhillips states consumers depend on propane for winter heating and other uses, and significant obstacles in bringing the Trainer refinery's propane production to the marketplace could have negative effects on the price and availability of much-needed fuel. In addition, ConocoPhillips claims that if the exchange is not continued and/or an origin point established by March 31, 2011, substantial disruption in refinery operations could result, impacting the delivery of propane and other refined products such as motor gasoline from the Trainer refinery to northeast markets.

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<sup>5</sup> *Interstate Stock-Yards Co. v. Indianapolis Union Ry. Co.*, 99 F. 472, 481-82 (1900).

16. ConocoPhillips contends there is an additional, independent reason why the current product movements from Trainer must be recognized in Enterprise TEPPCO's tariff, apart from ConocoPhillips' reasonable request to add Trainer as an origin for common carrier service. ConocoPhillips argues the current service provided under the Exchange Agreement and similar agreements with other shippers constitute FERC-jurisdictional transportation.

17. ConocoPhillips submits this service is a form of "backhaul," which is a widely recognized form of transportation by exchange where the transportation service is in a direction opposite the aggregate physical flow of product in the pipeline. ConocoPhillips states that typically, a backhaul is achieved when the transporting pipeline redelivers a shipper's product at a point upstream from the receipt point at which the shipper's product volumes were introduced into the pipeline's system. ConocoPhillips asserts the Commission's jurisdiction over such service has been recognized in both natural gas and oil pipeline cases where the exchange utilizes the pipeline's physical facilities to carry out the "backhaul."<sup>6</sup>

18. ConocoPhillips argues the exchange or backhaul at issue here depends directly on physical transportation service provided by the pipeline, and is thus unlike the exchange requested in *Western Refining Pipeline Co.*, 122 FERC ¶ 61,210, at P 14-16 (2008) (*Western I*). ConocoPhillips notes in that case, two entities, which were not and would not be customers or shippers on the pipeline, attempted to compel the pipeline to orchestrate an exchange-type of arrangement because they believed it would result in their receiving a higher price for their crude oil than if they actually had shipped it. ConocoPhillips states the Commission declined to direct the pipeline to permit the requested exchange, where "[t]he exchange is essentially a private contractual arrangement between the parties exchanging barrels, and thus there is no need to involve the pipeline at all." *Id.* P 16. By contrast, ConocoPhillips contends where a backhaul or exchange directly involves the pipeline's assets and facilities, it is not simply a private contractual matter, but depends on facilities and services regulated by the Commission.<sup>7</sup> ConocoPhillips argues here, as in *Mid-America* (and in contrast to *Western Refining*), the backhaul or exchange could not take place without the pipeline's physical assets, and the volumes in question are actually flowing on the pipeline. Thus, ConocoPhillips contends it is within the Commission's jurisdiction.

19. Because Enterprise TEPPCO's backhaul service under the Exchange Agreement directly facilitates and accomplishes the receipt and delivery of transported property,

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<sup>6</sup>Citing, *Williams Natural Gas Co.*, 59 FERC ¶ 61,306, at 62,119-30 (1992); *Mid-America Pipeline Co.*, 124 FERC ¶ 63,016, at P 1077-1079 (2008).

<sup>7</sup> Citing, *Mid-America Pipeline Co.*, 124 FERC ¶ 63,016 at P 1079 (*Mid-America*).

ConocoPhillips asserts such movement of product falls squarely within the definition of "transportation" under Section 1(3)(a) of the ICA. Therefore, pursuant to Sections 6(1) and 6(7) of the ICA, ConocoPhillips submits Enterprise TEPPCO must amend its tariff to include its transportation of propane under the Exchange Agreement and similar exchange or backhaul agreements with other shippers.

20. ConocoPhillips requests the Commission (a) require Enterprise TEPPCO to list Trainer as an origin and publish initial tariff rates from this origin to all Enterprise TEPPCO destinations; (b) order Enterprise TEPPCO to include the transportation of propane under the Exchange Agreement and similar exchange or backhaul agreements with other shippers in its tariff; and (c) grant ConocoPhillips such other, different, or additional relief as the Commission may determine to be appropriate.

21. ConocoPhillips further requests the Commission consider the likelihood that Enterprise TEPPCO will cut off service as of April 1, 2011, unless the exchange is continued and/or an origin point established prior to that date - with resulting impacts on propane consumers as well as disruption of refinery operations and the delivery of other refined products such as motor gasoline from the Trainer refinery to northeast markets. Accordingly, ConocoPhillips asks that if the Commission has not otherwise acted to grant or deny relief in this proceeding by March 31, 2011, it take such action as is necessary to preserve the status quo pending resolution of the proceeding, including, for example, an order that Enterprise TEPPCO continue the injections of propane at Trainer, which have been occurring for over a decade, on the same basis as exists today until the parties resolve this matter.

### **Enterprise TEPPCO's Answer**

22. On December 22, 2010, Enterprise TEPPCO filed an answer to ConocoPhillips' complaint. Enterprise TEPPCO asserts the complaint lacks merit and therefore the Commission should dismiss it. Enterprise TEPPCO submits the Exchange Agreement between ConocoPhillips and Enterprise TEPPCO is a private commercial agreement to trade propane that does not constitute transportation under the ICA. Enterprise TEPPCO contends the Commission cannot force it to continue to participate in the Exchange Agreement or to include the terms of the agreement in its tariff. Even if the Exchange Agreement were held to constitute transportation, Enterprise TEPPCO argues it has no obligation to continue to provide such a service. Enterprise TEPPCO asserts it does not have any obligation to make Trainer an origin on its system for propane or to provide physical propane transportation from Trainer, since the ConocoPhillips refinery is located at the eastern terminus of a lateral that moves from west-to-east, and the Commission cannot require a pipeline to reverse the flow of its line.

23. Enterprise TEPPCO states it operates a refined products and natural gas liquids pipeline system. Enterprise TEPPCO states the natural gas liquids portion of the system transports propane (as well as lesser quantities of butane) from Mont Belvieu, Texas,

northward to Ohio, Pennsylvania and New York. Enterprise TEPPCO maintains it delivers propane only from southwest to northeast and not in the opposite direction. Enterprise TEPPCO states its pipeline divides at Greensburg, Pennsylvania. Enterprise TEPPCO states the mainline continues northward to destinations in New York, while a lateral line runs eastward from Greensburg across Pennsylvania (the Greensburg Lateral). Enterprise TEPPCO states the Greensburg Lateral delivers propane only from west-to-east and terminates at Twin Oaks and Marcus Hook, Pennsylvania where the pipeline connects to the Sunoco refinery and the ConocoPhillips Trainer refinery. Since the Greensburg Lateral delivers propane only from west-to-east, Enterprise TEPPCO states Twin Oaks/Marcus Hook is a destination specified in Enterprise TEPPCO's propane tariff, but is not an origin point.

24. Enterprise TEPPCO acknowledges it has been a party to the Exchange Agreement with ConocoPhillips for several years. Enterprise TEPPCO states under the Exchange Agreement, ConocoPhillips provides propane from its Trainer Refinery at Twin Oaks/Marcus Hook in exchange for propane provided by Enterprise TEPPCO at Mont Belvieu. Enterprise TEPPCO asserts the propane delivered by ConocoPhillips to the pipeline at Twin Oaks/Marcus Hook is not, and cannot be, physically delivered to Mont Belvieu, since the pipeline only flows in the opposite direction. Enterprise TEPPCO submits the propane delivered by ConocoPhillips becomes part of the pipeline's line fill, while ConocoPhillips receives different propane barrels at Mont Belvieu. Enterprise TEPPCO states under the terms of the Exchange Agreement, Enterprise TEPPCO pays ConocoPhillips a fee for every gallon of propane exchanged (the differential). Enterprise TEPPCO states the Exchange Agreement permits either party to terminate the contract by providing twelve-months notice. Pursuant to that provision, on March 25, 2010, Enterprise TEPPCO states it provided notice of termination of the Exchange Agreement effective March 31, 2011.

25. Enterprise TEPPCO contends the Exchange Agreement is a private contract to trade propane and is not "transportation" under the ICA. It asserts the ICA's definition of "transportation" does not refer to exchanges and the Commission has never required an oil pipeline to enter into an exchange agreement. It further argues the Commission has never claimed authority to regulate the purchase, sale and trading of oil, which is the essence of an exchange. Instead, Enterprise TEPPCO submits the Commission clarified in two recent cases that exchanges are not transportation and it cannot require a common carrier oil pipeline to provide them.

26. Enterprise TEPPCO asserts the seminal case on the issue of exchanges is *Western I*, 122 FERC ¶ 61,210, *reh'g denied*, 123 FERC ¶ 61,271 (2008) (*Western II*) (collectively, *Western*). Enterprise TEPPCO contends *Western* involved a crude oil pipeline that originated in Midland, Texas and flowed northward to destinations in northwest New Mexico. Certain producers in northwest New Mexico requested that the Commission direct *Western* to provide exchange or displacement services, in which

producers would deliver crude oil to the pipeline at the north end of the line in exchange for crude oil at the pipeline's southern origin point (in other words, in the opposite direction from the flow of the line). Enterprise TEPPCO states the Commission held that the producers had not "made a valid request for transportation service on Western."<sup>8</sup> Enterprise TEPPCO states the Commission explained that what the producers "characterize as an exchange service that the Commission must require Western to provide appears to be a private contractual arrangement that does not involve pipeline transportation."<sup>9</sup> Enterprise TEPPCO states the Commission further explained:

[S]ince there is no actual movement of oil, there is no transportation involved. The [requested] exchange is essentially a private contractual arrangement between the parties exchanging barrels, and thus there is no need to involve the pipeline at all, for there is nothing for the pipeline to do to make an exchange happen. ... The Commission fails to see how the [producers] can claim that the Commission's jurisdiction over oil pipelines is involved if the [producers] themselves recognize that no transportation would occur with such a transaction.<sup>10</sup>

Enterprise TEPPCO states on rehearing, the Commission upheld its prior order and reiterated that the pipeline's refusal to enter into an exchange was not "a failure ... to fulfill its common carrier duty of providing service upon reason request."<sup>11</sup>

27. Enterprise TEPPCO states in *Bridger Pipeline LLC*, 126 FERC ¶ 61,182 (2009), the Commission again addressed the issue of exchanges. Enterprise TEPPCO states in that case, the pipeline proposed to offer an exchange between two non-contiguous portions of its system. The Commission found that the proposed exchange was a "trade that occurs separately from the pipeline's jurisdictional transportation services," and did "not require a Commission tariff."<sup>12</sup> Enterprise TEPPCO states the Commission explained that in Western it had "declined to direct an oil pipeline to provide an exchange service in the opposite direction of the flow of a single-directional oil pipeline."<sup>13</sup>

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<sup>8</sup> *Western I*, 122 FERC ¶ 61,210 at P 14.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at P 16.

<sup>11</sup> *Western II*, 123 FERC ¶ 61,271 at P 12.

<sup>12</sup> *Bridger Pipeline LLC*, 126 FERC ¶ 61,182 at P 16.

<sup>13</sup> *Id.*

Enterprise TEPPCO states the Commission stated that, like the exchange sought by producers in *Western*, “the service proposed by Bridger can be accomplished in the market without the involvement of a pipeline. The two shippers merely trade crude oil in one location on a pipeline system for barrels of oil located elsewhere on the pipeline and then individually arrange for transportation with the pipeline for the traded volumes.”<sup>14</sup>

28. Enterprise TEPPCO contends like the pipeline in *Western*, Enterprise TEPPCO provides physical transportation service in the opposite direction from the requested exchange. Enterprise TEPPCO states it moves propane from Mont Belvieu northward to destinations in Ohio, Pennsylvania, and New York. Similarly, Enterprise TEPPCO states the Greensburg Lateral moves propane from Greensburg eastward to the terminus of the line at Twin Oaks/Marcus Hook. Thus, Enterprise TEPPCO asserts as with the proposed exchange in *Western*, here there is no actual physical movement of propane from the Trainer refinery to Mont Belvieu. Instead, Enterprise TEPPCO submits propane at one location is simply traded for propane at another location. Enterprise TEPPCO asserts the pipeline is not necessary for the exchange to occur, since ConocoPhillips could enter into a similar exchange with any willing counterparty with propane at Mont Belvieu. Thus, for the reasons set forth by the Commission in *Western*, Enterprise TEPPCO argues it is not providing ICA-jurisdictional transportation, but is simply engaging in a private contractual agreement to trade propane.

29. Enterprise TEPPCO states the Commission has made clear, “the preeminent function of an oil pipeline is to transport oil.”<sup>15</sup> Enterprise TEPPCO contends the test is whether the service in question is so essential to transportation that the carrier has a duty to provide it, or whether, instead, the service is merely a matter of convenience to shippers or other parties, without which adequate transportation service may still be provided. Enterprise TEPPCO argues whether a particular service is necessary and integral to the transportation function is determined by several factors, including (1) whether it involves physical pipeline transportation; (2) whether non-pipeline companies provide the same type of service; (3) how the service is treated in the industry; and (4) the nature of any charges assessed for the service. Enterprise TEPPCO submits that application of each of these factors in this case confirms that the Exchange Agreement does not constitute ICA-jurisdictional transportation.

30. Enterprise TEPPCO asserts an exchange does not involve physical transportation. Instead, an exchange simply requires two parties who agree to trade product at different locations. Enterprise TEPPCO submits the entire purpose of an exchange is to avoid

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<sup>14</sup> *Id.*

<sup>15</sup> *Tipco Crude Oil Co. v. Shell Pipe Line Corp.*, 19 FERC ¶ 61,105, at 61,198 (1982).

physical transportation. Enterprise TEPPCO contends the Exchange Agreement here is no different. Enterprise TEPPCO states ConocoPhillips provides propane to the pipeline at the eastern terminus of the Greensburg Lateral in exchange for propane provided by Enterprise TEPPCO at Mont Belvieu. Enterprise TEPPCO states the propane is not physically moved from the Trainer facility to Mont Belvieu, and ConocoPhillips does not allege otherwise. Instead, ConocoPhillips claims the propane delivered to the pipeline moves westward to Greensburg and ultimately is delivered to points in Pennsylvania and/or New York. Enterprise TEPPCO argues ConocoPhillips' claim of east-to west propane transportation on the Greensburg Lateral is simply wrong. However, Enterprise TEPPCO asserts even if ConocoPhillips were correct that the propane it delivers to Enterprise TEPPCO at Trainer moves westward to Greensburg that would not show that the exchange involves physical transportation, since even ConocoPhillips does not allege that any propane is physically moved back to Mont Belvieu. In sum, Enterprise TEPPCO contends the Exchange Agreement is not transportation, because there is no physical movement of propane from Twin Oaks/Marcus Hook to Mont Belvieu.

31. Enterprise TEPPCO asserts that a second crucial factor involves whether the service at issue is offered by companies other than pipelines. Enterprise TEPPCO submits services offered by non-pipeline companies are generally not jurisdictional transportation under the ICA.<sup>16</sup> Enterprise TEPPCO argues there is nothing inherent in the nature of an exchange that requires the pipeline to offer it. Indeed, exchanges are commonly entered into by companies other than pipelines as an alternative to physical transportation.

32. Enterprise TEPPCO states ConocoPhillips nevertheless contends the Exchange Agreement “depends directly on physical transportation service provided by the pipeline,” which it claims distinguishes this case from the exchange at issue in *Western*. Enterprise TEPPCO asserts the Exchange Agreement does not depend at all upon physical transportation. Moreover, Enterprise TEPPCO states nothing prohibits ConocoPhillips from entering into a similar exchange agreement with parties other than the pipeline. Enterprise TEPPCO states there are numerous parties that own propane at Mont Belvieu, and exchanges between Mont Belvieu and other locations occur every day. Enterprise TEPPCO states all that is required here is that another party at Mont Belvieu be willing to trade for propane at or near Trainer.

33. Enterprise TEPPCO states there is no reason to believe ConocoPhillips cannot find a party willing to exchange propane at Mont Belvieu for propane at Trainer. Enterprise

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<sup>16</sup>See *TE Products Pipeline Company, LLC*, 131 FERC ¶ 61,277, at P 12 (2010) (“the fact that [certain terminalling] services are provided by non-jurisdictional entities supports the conclusion that they are not integral or necessary for jurisdictional transportation”).

TEPPCO argues contrary to ConocoPhillips' claim that it lacks transportation alternatives; the Trainer refinery has several viable transportation options. Enterprise TEPPCO states the Trainer refinery is located on the Delaware River and can barge product to Philadelphia, New York and other markets. It is also connected by pipeline to the Sunoco Refinery at Marcus Hook, which has a propane truck loading rack that ConocoPhillips has used on numerous occasions. Enterprise TEPPCO states both the ConocoPhillips and Sunoco refineries also have rail connections that ConocoPhillips also used on many occasions. Enterprise TEPPCO contends it is therefore not unreasonable to assume that a party other than Enterprise TEPPCO might be willing to exchange with ConocoPhillips at the right price. Indeed, Enterprise TEPPCO states under the current Exchange Agreement, Enterprise TEPPCO pays ConocoPhillips for every gallon of propane exchanged, a fact that suggests that Trainer is a desirable location to have product.

34. Enterprise TEPPCO submits the Commission also emphasized the importance of "industry practice" in determining whether a service is transportation-related.<sup>17</sup> Enterprise TEPPCO states exchanges are common throughout the oil industry and are frequently conducted by entities that are not FERC-jurisdictional pipelines. Moreover, Enterprise TEPPCO states numerous non-jurisdictional entities provide exchange services without filing FERC tariffs. Clearly, Enterprise TEPPCO contends industry practice does not support ConocoPhillips' position that the Exchange Agreement is transportation under the ICA. Enterprise TEPPCO argues that given the prevalence of exchanges throughout the oil industry, it would radically depart from a traditional understanding of the Commission's jurisdiction if the Commission began to regulate the purchase, sale and trading of oil through the mechanism of exchanges.

35. Enterprise TEPPCO argues the conclusion that the Exchange Agreement does not constitute FERC jurisdictional transportation is further supported by the fact that ConocoPhillips pays no transportation charges. Instead, it is Enterprise TEPPCO that pays ConocoPhillips under the agreement. Enterprise TEPPCO asserts if transportation were occurring, the pipeline would receive payment.

36. Enterprise TEPPCO asserts even assuming, for the sake of argument, that the Commission considered the Exchange Agreement as involving a transportation service, it cannot require Enterprise TEPPCO to continue to participate in the agreement either on an ongoing basis or to maintain the "status quo," as ConocoPhillips suggests. Enterprise TEPPCO states as the Commission has made clear, "[t]he fact that other oil pipelines may offer exchange transportation services does not compel [a pipeline] to offer such

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<sup>17</sup> See *Tipco Crude*, 19 FERC at 61,198; *TE Products Pipeline Company, LLC*, 131 FERC ¶ 61,277 at P 12.

services.”<sup>18</sup> Enterprise TEPPCO asserts a pipeline’s obligation to provide service under Section 1(4) is limited to what it holds itself out to provide. Moreover, Enterprise TEPPCO asserts it is well settled the ICA does not authorize the Commission to prohibit a pipeline from abandoning service. Enterprise TEPPCO contends to the extent the exchange of product between Trainer and Mont Belvieu were to be considered transportation (which for the reasons discussed above, it clearly is not), it is unquestionably a distinct service from the physical south-to-north and west-to-east transportation provided by Enterprise TEPPCO. Enterprise TEPPCO asserts the Commission must permit it to cease offering that service if it wishes. Enterprise TEPPCO submits a pipeline can no more be required to provide an exchange service than it can physical transportation service.

37. Enterprise TEPPCO states ConocoPhillips also argues that the Commission should require Enterprise TEPPCO to amend its tariff to add Trainer as an origin point and to provide physical transportation to all Enterprise TEPPCO destinations. Enterprise TEPPCO states the Commission held previously on numerous occasions that it has no jurisdiction over a pipeline’s decision regarding the direction of flow on its line.<sup>19</sup> Enterprise TEPPCO asserts the fact that the propane delivered by ConocoPhillips is “commingled” with other propane on the line does not mean that Enterprise TEPPCO is providing east-to-west transportation from Trainer. Enterprise TEPPCO submits ConocoPhillips does not deliver the propane to the pipeline to ship it to Greensburg or any other point in Pennsylvania or New York. Instead, Enterprise TEPPCO states ConocoPhillips delivers product to the pipeline at Twin Oaks/Marcus Hook in exchange for propane at Mont Belvieu. Enterprise TEPPCO asserts the propane delivered by ConocoPhillips becomes part of the pipeline’s propane line fill. Enterprise TEPPCO states by definition, line fill is commingled with the product moved by shippers on the line; however, that does not make the mere receipt of line fill by a pipeline transportation under the ICA.

38. Enterprise TEPPCO submits that for ConocoPhillips to deliver the Exchange Agreement line fill, it must pump the propane into the line. Enterprise TEPPCO states since Twin Oaks/Marcus Hook is the eastern terminus of the Greensburg Lateral, the product will necessarily move westward at least some distance as it is pumped in. Enterprise TEPPCO argues that the pumping of propane into the line, however, simply

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<sup>18</sup> *Western II*, 123 FERC ¶ 61,271 at P 12.

<sup>19</sup> *See Holly Refining & Marketing Co. v. Plains All American Pipeline, L.P.*, 127 FERC ¶ 61,074, at P 12-14 (2009); *Rocky Mountain Pipeline System LLC*, 126 FERC ¶ 61,301, at P 10 (2009); *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,077 (1999); *ARCO Pipe Line Co.*, 66 FERC ¶ 61,159, at 61,313 (1994).

involves the delivery of line fill to the pipeline; it is not transportation and does not create a common carrier/shipper relationship.

39. Enterprise TEPPCO disputes ConocoPhillips' further contention that physical transportation takes place because the automated logistics system used by Enterprise TEPPCO, known as Transport4, lists Marcus Hook as an origin. Enterprise TEPPCO asserts Marcus Hook is shown as an origin in the Transport4 computer system simply as a matter of convenience to keep track of the barrels delivered by ConocoPhillips to Enterprise TEPPCO under the terms of the Exchange Agreement. In fact, Enterprise TEPPCO states only ConocoPhillips can access the Transport4 screen showing Marcus Hook as an origin. Enterprise TEPPCO contends the reference to Marcus Hook in Transport4 does not mean that Enterprise TEPPCO provides physical propane transportation from that location to Mont Belvieu or anywhere else.

### **Interventions and Comments**

40. A motion to intervene and comments in support of the complaint was filed by Texas Liquid Partners, LLC (TLP). TLP is engaged in the purchase and sale of wholesale propane, serving approximately 350 customers in 25 States. TLP states it sells between 100-150 million gallons of propane at wholesale annually, approximately 75 percent of which is shipped and sold off of the integrated Enterprise TEPPCO pipeline system. As a past shipper of propane on the Enterprise TEPPCO interstate pipeline system, a prospective shipper on that system in the future, and a wholesale provider of propane service that relies upon the Enterprise TEPPCO integrated pipeline system to effectuate approximately 75 percent of its sales of propane, TLP asserts it has a substantial interest that may be directly affected by Commission action in this proceeding.

41. TLP agrees with and supports ConocoPhillips' complaint against Enterprise TEPPCO because the unlawful refusal of Enterprise TEPPCO to provide common carrier transportation service to ConocoPhillips, as alleged in the complaint, would seriously and adversely impact the security and reliability of propane deliveries to TLP and into Northeast markets, would serve to increase the cost of propane supplies to TLP and other similarly situated wholesalers of propane, and could negatively affect both the price and availability of propane for consumers served by TLP that depend upon propane for winter heating and other critical needs.

42. On January 6, 2011, Enterprise TEPPCO filed an answer to the motion to intervene and comments of TLP. Enterprise TEPPCO urges the Commission to reject the motion to intervene. Enterprise TEPPCO argues TLP failed to show that it will be "directly affected" in any way by the outcome of the complaint brought by ConocoPhillips. Enterprise TEPPCO asserts TLP does not claim to be a current shipper on Enterprise TEPPCO. Instead, TLP indicates it purchases propane at various destinations on the Enterprise TEPPCO pipeline system. Enterprise TEPPCO asserts

nothing about the outcome of this case will affect TLP's ability to purchase propane transported on the Enterprise TEPPCO pipeline system. Enterprise TEPPCO submits the termination of the Exchange Agreement between Enterprise TEPPCO and ConocoPhillips will not change the transportation service offered by Enterprise TEPPCO, nor will it eliminate any of the destinations at which TLP claims to purchase propane.

43. Enterprise TEPPCO contends TLP's assertion that propane purchases are effectuated through the Exchange Agreement are not supported. Enterprise TEPPCO argues to the extent TLP purchases propane at one of the destinations on the Enterprise TEPPCO pipeline, it is because a shipper nominated propane for transportation to those destinations. Enterprise TEPPCO submits that such shipments will not be affected by the termination of the Exchange Agreement.

#### **ConocoPhillips' and Enterprise TEPPCO's Supplemental Answers**

44. On January 6, 2011, ConocoPhillips filed an answer in opposition to Enterprise TEPPCO's motion to dismiss its complaint. ConocoPhillips reiterates many of the arguments made in its original complaint and asserts there are facts in dispute that, at the very least, require a hearing and preclude dismissal. ConocoPhillips asserts that Enterprise TEPPCO's claim that the pipeline does not flow east to west is contradicted by a slide presentation that indicates that the Greensburg Lateral features a Wintertime Flow East to West of 18,000 barrels per day and a Wintertime Bi-directional flow of 25,000 barrels per day.<sup>20</sup>

45. On January 20, 2011, Enterprise TEPPCO filed an answer to ConocoPhillips also reiterating many of the same arguments it previously made in its answer to the complaint. Enterprise TEPPCO also specifically addresses the new information concerning the Greensburg Lateral raised by ConocoPhillips in its supplemental answer. Enterprise TEPPCO states that ConocoPhillips claims the Greensburg Lateral is bi-directional and refers to a presentation purportedly made by Enterprise TEPPCO's predecessor, TE Products Pipeline Company LLC, showing that the Greensburg Lateral can (or at one time did) make bi-directional movements. Enterprise TEPPCO submits the presentation cited by ConocoPhillips fails to support its claim. While the Greensburg Lateral is physically capable of making bi-directional movements, Enterprise TEPPCO asserts it does not transport propane from east to west on the Greensburg Lateral, and has never done so for any shipper. Enterprise TEPPCO asserts neither the Trainer refinery nor the Twin Oaks/Marcus Hook destinations have ever been origins for propane shipments, and it has never billed a shipper transportation charges for such movements.

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<sup>20</sup> Attachment 1 to January 6, 2011 Answer, slide labeled "0678 Greensburg to Philadelphia."

46. Enterprise TEPPCO argues that even if the delivery of propane by ConocoPhillips at Twin Oaks/Marcus Hook were held to constitute an east-to-west transportation service, the Commission cannot require Enterprise TEPPCO to continue to provide that service or to include Trainer as an origin in its tariff. Enterprise TEPPCO contends the Commission has specifically held that a pipeline providing bi-directional flow may chose to cancel service in one direction and only provide service in the other direction.<sup>21</sup>

47. On February 4, 2011, ConocoPhillips filed a reply to the January 20, 2011 answer of Enterprise TEPPCO. ConocoPhillips alleges that based on various discussions with TEPPCO scheduling personnel, propane moves both from west to east and from east to west throughout the year, while butane moves from west to east in the fall and winter.<sup>22</sup> ConocoPhillips also alleges that an examination of Form 6 shows that over 4 million barrels of propane originated in Pennsylvania. ConocoPhillips contends that, presumably, the approximately 1.5 million barrels that ConocoPhillips injects into the system from Trainer, as well as the volume injected by the Sunoco Refinery at the same location, constitute a large portion of the propane injected in Pennsylvania. As such, ConocoPhillips submits that Enterprise TEPPCO is transporting, moving and delivering propane originated in Pennsylvania to places in Pennsylvania and the northeast.

48. On February 8, 2011, Enterprise TEPPCO filed an answer to the February 4, 2011 answer of ConocoPhillips. Enterprise TEPPCO states that ConocoPhillips asserts that its previous assertions regarding direction of flow, movement and deliveries of propane are somehow undermined by the volumes shown at the States of Origin and Delivery as reported in its 2009 Form 6 Report. Enterprise TEPPCO states that ConocoPhillips asserts that Enterprise TEPPCO is reporting significantly higher volumes of propane being received in Pennsylvania, and therefore according to ConocoPhillips it is therefore clear that Enterprise TEPPCO is transporting in Pennsylvania. Enterprise submits that

[w]hile it does not agree that the previously reported volumes are even close to making it “clear” that west to east transportation of propane is occurring in Pennsylvania, upon reviewing the February 4 Answer Enterprise TEPPCO has discovered that the volume information reported for Pennsylvania was inadvertently double-counted, and it is therefore promptly filing to correct the erroneous Form 6. The correctly reported

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<sup>21</sup> *ARCO Pipe Line Co.*, 66 FERC, at 61,313 (no authority to review pipeline proposal to abandon southbound service while continuing to provide northbound service, since “the services on the northbound and southbound routes are two distinct services”).

<sup>22</sup> February 4, 2011 reply of ConocoPhillips at 3, citing Hunderuk Affidavit at P 7.

volumes of receipts in Pennsylvania will show that *no* volumes are received in Pennsylvania by Enterprise TEPPCO for transportation under a tariff.<sup>23</sup>

### **Discussion**

49. ConocoPhillips and Enterprise TEPPCO have been parties to the Exchange Agreement for a number of years that requires ConocoPhillips to provide propane from its Trainer Refinery at Twin Oaks/Marcus Hook, Pennsylvania in exchange for propane provided by Enterprise TEPPCO at Mont Belvieu, Texas. The latest version of the Exchange Agreement is dated April 1, 2005, and pursuant to its terms at paragraph 8 was terminated by Enterprise TEPPCO to become effective March 31, 2011. ConocoPhillips' complaint alleges Enterprise TEPPCO is providing jurisdictional transportation pursuant to the Exchange Agreement. ConocoPhillips asserts it requested to continue service under the agreement but Enterprise TEPPCO has refused. ConocoPhillips submits that to fulfill the ICA obligation to provide service upon reasonable request, the Commission should order Enterprise TEPPCO to list Trainer as an origin in its tariff and publish rates to all destination points on the Enterprise TEPPCO system. ConocoPhillips also requests that the Commission require Enterprise TEPPCO to reflect the transportation of propane under the Exchange Agreement, as well as similar agreements with other shippers, in its tariff.

50. There are two issues raised by the complaint. First, is whether the services provided by Enterprise TEPPCO pursuant to the Exchange Agreement constitute jurisdictional oil pipeline transportation which the Commission can order Enterprise TEPPCO to continue. A second issue is whether ConocoPhillips has made a reasonable request for transportation service that Enterprise TEPPCO unlawfully refused. Even if jurisdictional transportation is not being provided under the Exchange Agreement, if Enterprise TEPPCO is providing east to west transportation on the Greensburg Lateral, then ConocoPhillips' request to ship propane from Trainer, as an origin, after the termination of the agreement on March 31, 2011, would constitute a reasonable request for transportation under the ICA. The Commission reviewed the Exchange Agreement, the pleadings and exhibits of the parties, and the applicable precedent, and finds that although the services provided under the Exchange Agreement are provided by Enterprise TEPPCO, an oil pipeline subject to the Commission's jurisdiction, they do not constitute transportation within the meaning of the ICA and applicable Commission precedent and therefore, are non-jurisdictional. Further, since Enterprise TEPPCO is not providing east to west transportation on the Greensburg Lateral and is not holding itself out as providing such services, ConocoPhillips could not have made a reasonable request

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<sup>23</sup> Enterprise TEPPCO February 8, 2011 Answer at 2-3.

for transportation service pursuant to the ICA. The Commission will discuss the details of its decision below.

51. An examination of the Exchange Agreement shows it is a contract between ConocoPhillips and Enterprise TEPPCO for trading of propane at different locations without the need for physical transportation that is typical in the oil industry. The Exchange Agreement shows that ConocoPhillips will deliver propane from its Trainer refinery to the Twin Oaks/Marcus Hooks point on Enterprise TEPPCO's system and Enterprise TEPPCO will deliver an equal volume to ConocoPhillips's account at Mt. Belvieu, Texas. The Exchange Agreement does not state, nor has ConocoPhillips alleged anywhere, that it pays transportation charges pursuant to Enterprise TEPPCO's tariff. Enterprise TEPPCO states ConocoPhillips does not pay transportation charges under the Exchange agreement and, in fact, pursuant to the agreement, Enterprise TEPPCO pays ConocoPhillips a per gallon differential for the propane for summer and winter periods. Further evidence from the contract reveals the Exchange Agreement is not transportation because Enterprise TEPPCO's allotted a certain amount of in system storage space at no cost to ConocoPhillips to facilitate the movement of the propane to the Twin Oaks/Marcus Hook point. This is in contrast to paragraph 6 of the Exchange Agreement where, in consideration for the exchange, ConocoPhillips agreed to ship butane for certain months and certain volumes from the Texas Gulf Coast to Marcus Hook pursuant to Enterprise TEPPCO's tariff. Thus, it appears the Exchange Agreement constituted an integrated business transaction involving both jurisdictional and non-jurisdictional services. Moreover, in contrast to the usual procedure of the shipper having title and risk of loss when transportation is provided, section 9 of the Exchange Agreement states that "[t]itle to, and risk of loss of, Product delivered to the Delivery Point shall pass from Shipper to TEPPCO at the flange connecting TEPPCO and Shipper's pipelines at the Refinery." The Commission does not find that it is credible for ConocoPhillips to claim the propane exchange constituted jurisdictional transportation without pointing to any such indicia in the agreement, while the other part of the contract concerning butane transportation specifically referred to transportation pursuant to Enterprise TEPPCO's tariff.

52. ConocoPhillips asserts the Exchange Agreement constitutes transportation because its propane moves westward to destinations in New York and Pennsylvania and because Marcus Hook is listed as an origin point in Enterprise TEPPCO's automated logistics system. As Enterprise TEPPCO stated, Marcus Hook is only listed as an origin point as a convenience to track ConocoPhillips's barrels of propane and only ConocoPhillips has access to such listing on its automated logistics system. An examination of Enterprise TEPPCO's tariff shows that points near the Trainer refinery are destination points and not origin points. Enterprise TEPPCO is a single direction pipeline that transports propane from the southwest to the northeast. The tariff confirms this and nothing ConocoPhillips presented supports its contention that propane can move from points near its Trainer refinery westward. Enterprise TEPPCO recognizes that the propane delivered by

ConocoPhillips at Trainer is pumped into the pipeline system for line fill and such pumping can create some incidental westward movement. However, the Commission finds such pumping does not constitute transportation on behalf of ConocoPhillips since, as ConocoPhillips itself recognizes, it is physically impossible to accomplish a delivery from Trainer to Mt. Belvieu in the opposite direction of the flow of the pipeline. What occurs between ConocoPhillips and Enterprise TEPPCO is a paper rather than physical transaction. The fact that ConocoPhillips' propane may benefit Enterprise TEPPCO's system and may be used to make deliveries to customers in New York and Pennsylvania does not mean Enterprise TEPPCO provides transportation service to ConocoPhillips. Any use of the line fill to accomplish propane deliveries is transportation on behalf of other customers who are separately paying rates pursuant to Enterprise TEPPCO's tariff. ConocoPhillips' compensation for its benefits to the system is the equivalent volumes it receives at Mt. Belvieu and the differential payment for the propane received at Trainer.

53. ConocoPhillips attempt to analogize the Exchange Agreement to a backhaul in the natural gas industry is also unavailing. While the Commission's natural gas regulations at 18 C.F.R. § 284.1(a) (2010) include backhaul and exchange in the definition of transportation, the definition of transportation in section 1(3) of the ICA does not. Moreover, unlike the Exchange Agreement here, which involves no physical movement of volumes and a differential payment to ConocoPhillips, a shipper transporting gas by backhaul on a natural gas pipeline will pay a tariff rate for the transportation of the gas, and the backhaul volumes will be taken into consideration in developing the pipeline's rates. ConocoPhillips makes no claim that it pays or previously paid for propane transportation pursuant to the Exchange Agreement.

54. The Commission's finding that the Exchange Agreement does not constitute jurisdictional transportation is consistent with *Western* and *Bridger* cases. In both of those cases the Commission found an exchange agreement in the opposite direction of the flow of the pipeline or on non-contiguous segments of a pipeline do not constitute jurisdictional transportation. Such agreements are simply private contractual agreements to trade oil, or in this case, propane. The fact that an oil pipeline engages in such a contract does not make it a jurisdictional issue. These agreements are common in the oil industry, are not exclusive to oil pipelines, and are a way to trade without relying on physical transportation. The Commission also found that because an oil pipeline engages in certain activities or provides certain services, and even may include rates for such services in its tariff as a convenience to shippers, does not make the activities or services jurisdictional.<sup>24</sup>

55. While the exchange agreement is not jurisdictional transportation, there is still the issue of whether ConocoPhillips has been denied transportation service upon reasonable

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<sup>24</sup> See *TE Products Pipeline Company, LLC*, 131 FERC ¶ 61,277 at P 12.

request. This issue was raised in the supplemental answer where ConocoPhillips asserted that a slide presentation shows there is east to west service on the Greensburg Lateral. This would not replace the Exchange Agreement because even ConocoPhillips recognizes it is not possible to ship propane from the Trainer refinery to Mt. Belvieu. Rather, it would allow ConocoPhillips to ship propane on its own from the Trainer Refinery to points in Pennsylvania and New York.

56. The Commission finds that Enterprise TEPPCO is not offering east to west service on the Greensburg Lateral, and, therefore, ConocoPhillips could not have made a valid request for service. As Enterprise TEPPCO stated, this presentation was made by its predecessor, TE Products Pipeline, but Enterprise TEPPCO does not offer any such east to west service. An examination of the tariff also confirms there is no listing of origin points in the vicinity of the Trainer refinery that would allow east to west movements of propane. Aside from the slide presentation, no evidence has been presented which would support ConocoPhillips' contention that Enterprise TEPPCO is, in fact, offering east to west service on the Greensburg lateral, or any other part of the system for that matter. Further, even if Enterprise TEPPCO were offering east to west or bi-directional service on the Greensburg lateral, it could cancel or abandon such service at anytime. As long as a pipeline completely abandons a service, there is no issue of discrimination because all shippers receiving the service are subject to the abandonment.<sup>25</sup>

57. Accordingly, since the Exchange Agreement is not jurisdictional, and ConocoPhillips did not make a valid request for transportation which was unreasonably denied, there is no basis for the Commission granting the relief requested by ConocoPhillips and its complaint is therefore dismissed.

58. Finally, on a procedural matter, we deny TLP's motion to intervene because it does not have an interest directly affected by the complaint. TLP is not affected by the Exchange Agreement or ConocoPhillips' ability to ship on the system. Moreover, as Enterprise TEPPCO has stated, since TLP appears to be receiving propane through other shippers, such shipments would be unaffected.

The Commission orders:

- (A) ConocoPhillips' November 30, 2010 complaint is dismissed.

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<sup>25</sup>*ARCO Pipe Line Co.*, 66 FERC at 61,313 (no authority to review pipeline proposal to abandon southbound service while continuing to provide northbound service, since "the services on the northbound and southbound routes are two distinct services").

(B) TLP's motion to intervene is denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.