

Enterprise TE Products Pipeline Co. LLC

ORDER ACCEPTING TARIFF FILING

143 FERC ¶ 61,191 (2013)

Enterprise TE Products Pipeline Company LLC (Enterprise) filed FERC Tariff No. 55.28.0 in which they state that they plan to discontinue interstate mainline jet fuel and distillate services. Several parties filed protests in response but ultimately the Commission granted Enterprise's tariff because the Commission lacks jurisdiction over the abandonment of service by oil pipelines.

Although the interveners relied on the finding in *Amoco Pipeline Co.*, 83 FERC ¶ 61,156 in arguing that this is not a "complete abandonment of service," the Commission distinguished this case from *Amoco*. In *Amoco*, service was cancelled for certain points on Amoco's line but transport continued on others. Here Enterprise is cancelling the interstate movement of two specific products, which the Commission allows even if the line remains in use for other distinct products.

The protesters raised many economic concerns and claimed that Enterprise's reasons to terminate interstate transportation of distillates and jet fuel are not supported by any evidence. While this may be true the Commission found this argument to be irrelevant because a pipeline is not required to provide any justification before abandoning a service in its entirety. Once a complete abandonment of service is found "the analysis need go no further."

Although the Commission granted Tariff No. 55.28.0, it clearly rejects Enterprise's argument stating that "the Commission does not have jurisdiction over the complete mainline service abandonments at issue here as it relates to the settlement agreements." A complete abandonment of service is outside of the Commission's jurisdiction but the Commission has jurisdiction to remedy a situation where the abandonment violates an earlier agreement. However, since this case would have been examined under the ICA, any violations of an existing jurisdictional agreement must be raised under section 13(1) of the ICA.

143 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enterprise TE Products Pipeline Company LLC Docket No. IS13-265-000

ORDER ACCEPTING TARIFF FILING

(Issued May 31, 2013)

1. On May 1, 2013, Enterprise TE Products Pipeline Company LLC (Enterprise TEPPCO) filed FERC Tariff No. 55.28.0,¹ issued in lieu of 55.26.0 and 55.27.0, which were withdrawn, and cancelling 55.25.0. As discussed below, the Commission accepts Enterprise TEPPCO's tariff.

The Filing

2. On May 1, 2013, Enterprise TEPPCO filed FERC Tariff No. 55.28.0. The tariff states that Enterprise TEPPCO will cease to accept nominations for interstate transportation of distillates and jet fuel for both volume incentive rates and non-incentive rates on Enterprise TEPPCO's mainline system.² Enterprise TEPPCO states that its 14/16 inch mainline is now part of the ATEX Pipeline project that the Commission approved November 4, 2012 in Docket No. OR13-7-000, and will be reversed and refurbished to provide southbound delivery of ethane. Further, Enterprise TEPPCO states that given the limited existing demand for interstate distillate and jet fuel movements, it is not commercially feasible to undertake a substantial capital investment

¹ Enterprise TE Products Pipeline Company LLC, FERC Oil Tariff, Tariffs, Rates, Rules & Regs - RP, FERC No. 55.28.0, 55.28.0.

² Enterprise TEPPCO will continue to provide interstate service for jet fuel currently set forth under a separate tariff (FERC No. 58.0.0) from Lima, OH to the Cincinnati airport, as well as intra-state movements on its 20 inch mainline entirely within the state of Arkansas. Enterprise TEPPCO states in its transmittal letter that the jet fuel volumes to Cincinnati airport move solely on lateral lines and not on the 20 inch mainline.

to upgrade or to interrupt service on its 20 inch mainline, to accommodate these interstate movements.

3. Enterprise TEPPCO states that nominations for existing and anticipated distillate volume levels justify the expenditure required to accommodate distillate movements entirely within Arkansas. Enterprise TEPPCO states that certain intrastate movements of distillate from a refinery in El Dorado, Arkansas to terminals within the State of Arkansas will be the only movements of distillate that Enterprise TEPPCO proposes to make on the 20-inch mainline.

Notice, Intervention and Protests

4. On May 14, 2013, a motion to intervene and protest was filed by JP Energy ATT, LLC (JP Energy). On May 16, 2013, motions to intervene and protest were filed by Joint Protesters,³ Murphy Oil Co-Murphy Oil USA (Murphy Oil), WesPac Pipelines-Memphis LLC (WesPac), the Attorney General of the State of Arkansas, the Arkansas State Chamber of Commerce/Associated Industries of Arkansas, and Chevron Products Company. Motions to intervene were filed by the National Rural Electric Cooperative Association and Phillips 66 Company. The Commission grants interventions to all the above-referenced parties.

5. JP Energy challenged the lawfulness of the proposed termination of transportation services for shippers transporting Ultra Low Sulfur Diesel (ULSD) and jet fuels other than those delivered to Memphis, Tennessee, specifically the proposed termination of these services to the Little Rock, Arkansas destination point. JP Energy asserts that the proposed discontinuation of service is discriminatory in that it singles out products and includes specific exemptions for identified destination points, to the exclusion of others. Further, JP Energy states that the proposed tariff filing affords no basis for either verifying or disputing Enterprise TEPPCO's stated reason for the discontinuation of service.

6. Joint Protesters allege that Enterprise TEPPCO is engaging in a classic bait and switch, and assert that the notification to stop accepting nominations as outlined in Tariff No. 55.28.0 and its plan to subsequently discontinue transportation service effectively nullifies the settlement agreement Enterprise reached with shippers in Docket No.

³ The Joint Protesters are Arkansas Oil Marketers Association, Inc.; CHS Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Growmark, Inc.; HWRT Oil Company, LLC; Louisiana Oil Marketers and Convenience Store Association; MFA Oil Company; Missouri Petroleum Marketers & Convenience Store Association; National Council of Farmer Cooperatives; Natso, Inc.; Petroleum Marketers Association of America; Southwest Airlines Co.; United Airlines, Inc.; and UPS Fuel Services, Inc.

IS12-203-000. Joint Protesters point out that the Enterprise TEPPCO agreed to maintain the rates agreed to in the settlement for two years. Further, Joint Protesters allege that the proposed tariff contradicts the representations that Enterprise TEPPCO's affiliate made to the Commission in Docket No. OR13-7-000 to gain approval of its plan to reverse its 14/16-inch pipeline and remove that line from refined products service. Joint Protesters state that they relied on Enterprise TEPPCO's representations that it would continue to provide distillate and jet fuel service on its system even after it reduced its capacity to its 20-inch line, and shippers relied on these statements both in evaluating settlement offers and signing the settlement agreement and in planning their operations.

7. Further, Joint Protesters assert that it appears Enterprise TEPPCO will stop accepting nominations to provide transportation service for jet fuel and/or distillates shipped under long-term contracts. Joint Protesters assert that the tariff would therefore upset the bargain negotiated by shippers and Enterprise TEPPCO. Alternatively, state Joint Protesters, if Enterprise TEPPCO plans to continue to provide service under these contracts, it will not have fully abandoned service on its pipeline and will be unduly discriminating against shippers without contractual agreements in violation of section 3(1) of the Interstate Commerce Act (ICA).

8. Joint Protesters assert that proposed Tariff No. 55.28.0 appears to be unjust and unreasonable, unduly discriminatory and preferential, and in contravention of section 1(4) of the ICA, which mandates that carriers must provide service upon reasonable request. Joint Protesters further assert that the changes appear to be arbitrary, and Enterprise TEPPCO's stated reasons for the changes are not supported by any evidence or the current operations of the pipeline. Joint Protesters allege that the changes appear to be unduly discriminatory and preferential, especially to the extent Enterprise TEPPCO is proposing to eliminate service to shippers who have historically used and paid for its common carrier system in favor of undisclosed shippers and/or affiliates in response to a recently announced diluent-quality natural gasoline service being orchestrated by Enterprise TEPPCO's parent company.

9. Further, assert Joint Protesters, by retaining intrastate service, the changes discriminate between similarly situated shippers without adequate basis in contravention of Section 3(1) of the ICA. Joint Protesters state that because Enterprise TEPPCO is and will remain fully capable of providing the services it proposes to cancel, and will in fact continue providing those services on certain parts of its pipeline, its refusal to accept nominations for these services is contrary to Section 1(4) of the ICA. Joint Protesters also assert that Enterprise TEPPCO has not justified its contentions that continuing to provide interstate distillate and jet fuel service would not be economic. Finally, Joint Protesters state that Enterprise TEPPCO's refusal to accept nominations for certain distillate and jet fuel services will severely limit the supply options for consumers of these products, potentially raising the price of diesel and jet fuel supply and the prices of

commodities that depend on reliable access to these products for manufacture, transport, or cultivation.

10. WesPac states that the proposed tariff is in direct contradiction to the terms of its Transportation Agreement (TA) with Enterprise. WesPac cites Section 10.3 of the TA agreement in asserting that Enterprise TEPPCO cannot, without WesPac's consent, seek to alter the character of the services provided under the Agreement or reduce the term of the agreement. WesPac points out that with the proposed tariff filing, Enterprise TEPPCO is altering the character of services provided to WesPac (i.e., discontinuation of service). WesPac states that since Enterprise TEPPCO has failed to receive the consent of WesPac to alter the character of the services it provides, it has breached its agreement, and Enterprise TEPPCO should comply with the terms of the Agreement.

11. Murphy Oil asserts that the proposed tariff filing violates the "filed rate" doctrine, the parties' agreement, and the principle of judicial estoppel. Further, Murphy Oil states that Enterprise TEPPCO is not proposing an abandonment of service. Murphy Oil points out that the proposed tariff violates Enterprise TEPPCO's settlement agreement in Docket No. IS12-203-000, which is currently pending Commission approval. Murphy Oil states that by cancelling the services for which the settlement established rates, Enterprise TEPPCO violates its settlement agreement obligations.

12. Further, Murphy Oil states that the proposed tariff would violate the 2006 TA between Murphy Oil and Enterprise TEPPCO. Murphy Oil also states that it relied on Enterprises' assurances that it would continue to provide service of refined products from the Gulf Coast to the Midwest on the 20-inch mainline. Murphy Oil asserts that the proposed tariff filing does not constitute abandonment, since Enterprise TEPPCO would continue to provide interstate service, and those services that Enterprise TEPPCO seeks to cancel are sufficiently similar to those it would continue. Murphy Oil states that the proposed tariff would violate ICA 1(4) because Enterprise TEPPCO would be arbitrarily denying Murphy Oil's reasonable request for service. Finally, Murphy Oil asserts that the proposed tariff would violate ICA 3(1) because Enterprise TEPPCO would be giving undue and unreasonable preferences to some shippers, while denying such preferences to other shippers.

13. Murphy Oil also argues that failure to provide a service that in essence is still occurring, even by means of various intra-state movements, is a violation of the common carrier provisions of the ICA, and that selectively allowing shipments from certain origins and to certain destinations violates the anti-discrimination provisions of the ICA.

14. The Arkansas Attorney General (AAG) filed in support of protests that relate to the proposed termination of services to destination points located in Arkansas. Specifically, AAG asserts that the proposed tariff filing fails to provide and furnish

transportation upon reasonable request, constituting an unreasonable practice or regulation, and is unduly discriminatory in violation of the ICA Sections 1(4), 1(6), and 3(1). The AAG states that the proposed cessation of transportation service for the identified fuels would have a significant, damaging effect on the markets in Arkansas that are currently served by Enterprise TEPPCO, and changes in the supply patterns for those fuels has a direct impact on the commerce, industry, and consumer welfare of Arkansans.

15. The Arkansas State Chamber of Commerce/Associated Industries of Arkansas stated that the proposed tariff filing would disrupt a steady supply of fuel to the Little Rock Air Force Base, disrupt a steady supply of fuel to the Bill and Hillary Clinton National Airport, and create a gap between the supply of ULSD and its demand in Central Arkansas and surrounding areas. Specifically, these protesters state that the disruption threatens the military presence in the state, due to intermittent fuel shortages or outages. Protesters assert that there has been insufficient time and opportunity to make significant supply chain modifications necessary to fill the ULSD gap.

16. Chevron argues that Enterprise TEPPCO's continued acceptance of distillates for shipment to Chevron is absolutely crucial to the continued operations of the retail outlets served by Chevron in the Louisiana market area, and the volume of distillates cannot be transported by rail or intrastate pipeline. Further, Chevron asserts that there are no commercial or operational arrangements in place that might provide an alternative via barge or trucks. Chevron asserts that they and other distillate shippers have borne the cost burden for the pipeline's operations in the past and it is unduly discriminatory to terminate the necessary distillate service while authorizing Enterprise TEPPCO to profit from using the freed-up capacity to move diluent-quality natural gas volumes produced by its affiliates. Chevron also echoes the arguments of protesters above.

Answer

17. Enterprise TEPPCO filed its answer on May 21, 2013. Enterprise states that under the ICA the Commission has no authority to prevent an oil pipeline from abandoning a service.⁴ Enterprise TEPPCO notes that in this case, it is cancelling distinct services in their entirety. Further, Enterprise rebuts protesters' arguments that suggest that because Enterprise TEPPCO operates a batched system, none of the commodities transported constitute a distinct service; Enterprise TEPPCO notes that this argument is directly contrary to the Commission's decision in *Mid-America*.⁵ Enterprise TEPPCO notes that

⁴ Enterprise TEPPCO Answer at 9 (citing *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984)).

⁵ Enterprise TEPPCO Answer at 13 (citing *Mid-America Pipeline Co., LLC*, 131 FERC ¶ 61,012 (2010)).

though it will continue to provide distillate and jet fuel movements on lateral lines other than the mainline, this does not confer jurisdiction on the Commission to review the abandonment of all mainline interstate service. Enterprise TEPPCO states that interstate transportation is a distinct service from intrastate transportation, which is outside of the Commission's jurisdiction.

18. Enterprise TEPPCO also addresses the arguments made regarding the settlement agreement in Docket No. IS12-203-000, pointing out that the settlement agreement makes clear that "any change in Enterprise TEPPCO's operations" is "not covered by this Settlement Agreement."⁶ Rather, Enterprise states that the settlement agreement establishes certain settlement rates, which constitute the applicable ceiling rates for certain services. Enterprise asserts that nothing in the settlement agreement requires Enterprise TEPPCO to continue providing interstate distillate and jet fuel transportation service. Further, Enterprise TEPPCO notes that it provided notice to shippers on March 22, 2013 of its intent to cancel the distillate and jet fuel services, prior to the filing of the settlement agreement on April 3, 2013.

19. Enterprise states that private agreements, such as the ones with Murphy Oil and WesPac, are not under Commission jurisdiction, and do not as a matter of law grant the Commission authority over Enterprise TEPPCO's abandonment of service. Enterprise TEPPCO asserts that private party contracts regarding non-jurisdictional issues are for the courts to decide.

Discussion

20. The Commission will accept Enterprise TEPPCO's tariff, effective June 1, 2013. The Commission lacks jurisdiction over the abandonment of service by oil pipelines.⁷ As such, the Commission has no jurisdiction to require an oil pipeline to continue to provide a service that it wishes to cancel in its entirety.⁸ In its proposed tariff filing, Enterprise TEPPCO makes it clear two distinct services—jet fuel and distillates—are to be entirely discontinued for interstate mainline service. The Commission determines this to be a

⁶ See Settlement at III.D.3(a).

⁷ *Plantation Pipe Line Co. v. Colonial Pipeline Co.*, 104 FERC ¶ 61,271, at P 28 (2003) (citing *Williams Pipe Line Co.*, Opinion No. 154, 21 FERC ¶ 61,260, at 61,690 n.217 (1982), *reh'g denied*, Opinion No. 154-A, 22 FERC ¶ 61,086 (1983)).

⁸ *Mid-America Pipeline Co., LLC*, 131 FERC ¶ 61,012, at PP 23, 27 (2010).

complete abandonment of service, and as such, the Commission does not have jurisdiction to prevent such an action by Enterprise TEPPCO.⁹

21. In *Amoco*, the Commission ruled that cancelling service for select points on Amoco's line, while continuing to transport on others, was not a complete abandonment of service.¹⁰ Here Enterprise TEPPCO is cancelling two specific product movements for interstate service—jet fuel and distillates. The Commission has made it clear that each distinct product (ULSD, jet fuel, etc.) can be cancelled even if the line remains in use for other distinct products.¹¹

22. The Commission rejects arguments raised in the protests that the continuation of intra-state transportation of distillates is, in essence, a limited continuation of interstate transport. Not only are intrastate movements beyond the jurisdiction of the Commission, these again are distinct services separate from the interstate movements proposed to be cancelled by Enterprise TEPPCO. If, as here, a pipeline seeks to completely abandon interstate service, the Commission cannot force a pipeline to provide such service, regardless of the existence of intrastate movements.

23. Several protesters have asserted that Enterprise TEPPCO's reason for complete abandonment of these services was not "justified," raising economic and commercial concerns to support barring Enterprise TEPPCO from canceling these two interstate movements. While the Commission does not address or discount these arguments, a pipeline is not required to provide a financial justification, or any justification, before abandoning a service in its entirety. Once the Commission determines, as it has here, that a distinct service is indeed being cancelled in its entirety, the analysis need go no further. There is no legal basis that supports the Commission's directing the provision of a service solely based on economic need because ultimately it is the oil pipeline's choice what services it will offer.

24. Two final arguments raised by protestors involve external agreements and what effect, if any, these have on the propriety of Enterprise TEPPCO's proposed cancellations of service. The first argument involves a settlement agreement currently before the Commission in Docket No. IS12-203-000. Protestors argue that language in the settlement agreement stating that distillate and jet fuel rates shall not change for two

⁹ *Id.* P 25.

¹⁰ *Amoco Pipeline Co.*, 83 FERC ¶ 61,156 (1998).

¹¹ *Mid-America Pipeline Co., LLC*, 131 FERC ¶ 61,012, at PP 23-27 (2010).

years requires Enterprise TEPPCO to maintain distillate and jet fuel service (not just rates) for such shipments for the two year period, in essence serving as a waiver of rights by Enterprise TEPPCO and preventing the pipeline from cancelling the service.¹²

25. Enterprise TEPPCO raises several arguments against such an interpretation of the settlement agreement. Enterprise TEPPCO first claims that language in the settlement agreement does not support the claim that Enterprise TEPPCO waived its ability to completely abandon the shipment of distillate and jet fuel. Enterprise TEPPCO also notes that parties to the settlement agreement were on notice prior to the filing of the agreement that Enterprise TEPPCO intended to cancel the services in question. Enterprise TEPPCO points out that the Commission does not have jurisdiction over abandonment regardless of the settlement agreement referencing the services being abandoned.

26. Concerning jurisdiction, Enterprise TEPPCO is incorrect in stating that the Commission does not have jurisdiction over the complete mainline service abandonments at issue here as it relates to the settlement agreement. At the time of the settlement agreement, the Commission had authority to regulate the rates and terms for shipment of distillate and jet fuel on Enterprise TEPPCO. While an abandonment of service is beyond the Commission's jurisdiction, if that abandonment alters an earlier agreement concerning jurisdictional service, the Commission has jurisdiction to appropriately remedy the situation.¹³ The Commission has jurisdiction over matters that relate to the interpretation of jurisdictional settlements and tariffs of the companies which the Commission regulates.¹⁴

27. While the Commission does possess jurisdiction to review whether an abandonment of service would violate the settlement agreement, the present proceeding is not the proper forum for such a review of the external settlement and contracts cited by protesters. In *Sunoco, Inc.*, the Commission stated that concerns whether an abandonment would violate an existing settlement agreement should be raised by all parties in the abandonment proceedings.¹⁵ However, unlike *Sunoco* which was decided

¹² See, e.g., Joint Protestors Protest at 12-14.

¹³ *Transcontinental Gas Pipe Line Corp. v. FERC*, 485 F.3d 1172, 1176 (D.C. Cir. 2007) (citing *Office of the Consumers' Counsel v. FERC*, 808 F.2d 125 (D.C. Cir. 1987)).

¹⁴ *Sunoco, Inc. v. Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,252 (2002).

¹⁵ *Id.* at 61,892, see also *Sunoco, Inc. v. Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,176, at 61,659 (2003).

under the Natural Gas Act, the ICA does not require affirmative Commission approval of an abandonment. Therefore the Commission does not possess the authority to, as a potential equitable remedy, prevent or delay the abandonment of service of an oil pipeline. As such, the Protestors' claims are misplaced. In cases examined under the ICA, arguments that an abandonment of service may violate an existing jurisdictional agreement are outside the scope of an abandonment proceeding, and instead are properly raised under section 13(1) of the ICA for violation of the settlement agreement.

28. Finally, Murphy Oil and WesPac argue that abandonment of these services violates certain TAs between those entities and Enterprise TEPPCO. Protests are not, however, the proper method for arguing a strictly contractual dispute between the parties, which, insofar as they are purely contractual, are generally matters for the courts.

29. Consistent with the above findings, Enterprise TEPPCO's FERC Tariff No. 55.28.0 is accepted, effective June 1, 2013.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.