Gulf Central Pipeline Company
Order Dismissing Complaint and
Disclaiming Jurisdiction,
50 FERC ¶ 61,381 (1990), aff'd,
CF Industries, Inc. v. Federal Energy
Regulatory Commission, 925 F.2d 476 (1991)

In this proceeding, Gulf Central Pipeline Company (Gulf Central) filed a motion with the Federal Energy Regulatory Commission (Commission) to dismiss Farmland Industry, Inc.'s complaint concerning illegal rates on file at the Commission. Gulf Central alleged that the Commission lacked jurisdiction over the transportation of anhydrous ammonia by interstate pipeline. (Gulf Central Pipeline Company, 50 FERC ¶ 61,381 (1990), aff'd, CF Industries, Inc. v. Federal Energy Regulatory Commission, 925 F.2d 476 (1991)). Gulf Central is an interstate pipeline that transports only one commodity, anhydrous ammonia. 50 FERC ¶ 61,381 at 62,163-64). Gulf Central alleged in its motion that the Interstate Commerce Commission (ICC) has jurisdiction over the transportation of anhydrous ammonia. The Commission concluded that such jurisdiction properly vested in the ICC. (Id. at 61,381).

The Commission noted that this jurisdictional issue required it to interpret its authority under section 306 of the Department of Energy Organization Act of 1977 (DOE Act) (Pub. L. No. 95-91, 91 Stat. 565 (1977), 42 U.S.C. ¶ 7155 (1988)). That act transferred authority over the transportation of oil by pipeline to the DOE and to the Commission. Therefore, the issue was whether the transportation of anhydrous ammonia was in fact transportation of oil by pipeline. (50 FERC ¶ 61,381 at 62,163).

The Commission considered: (1) the historical regulation of Gulf Central, (2) the technical aspects of anhydrous ammonia addressing the chemical natural of that compound vis-a-vis hydrocarbon products such as crude oil, gasoline, kerosene, heating oils, diesel fuels and distillates, and (3) the statutory construction of the DOE Act including its legislative history. (Id. at 62,163-65).

The Commission concluded that the DOE Act's emphasis is on energy matters, and anhydrous ammonia is not in that category. Regulation by this Commission of an anhydrous ammonia pipeline does not achieve the goals of the DOE Act. Thus, the Commission disclaimed any jurisdiction over the pipeline transportation of anhydrous ammonia. (Id. at 62,167).

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[¶ 61,381]

Gulf Central Pipeline Company, Docket No. OR89-3-000

Order Dismissing Complaint and Disclaiming Jurisdiction

(Issued March 20, 1990)

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

On December 29, 1989, Gulf Central Pipeline Company (Gulf Central) filed a motion with the Commission to dismiss Farmland Industry Inc.'s (Farmland's) September 14, 1989 complaint on the grounds that the Commission lacks jurisdiction over the transportation of anhydrous ammonia by interstate pipeline. Gulf Central, an interstate pipeline that transports only anhydrous ammonia, simultaneously filed a petition for a declaratory order with the Interstate Commerce Commission (ICC) asking the ICC to assert jurisdiction over the transportation of anhydrous ammonia and Farmland's September 14 complaint under sections 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA).[1] The complaint alleges that Gulf Central's rates violate the ICA because they are unreasonably high and Gulf Central's terms and conditions of service are not fully set forth in its tariffs.[2]

Timely petitions for intervention were filed by the Association of Oil Pipelines (AOPL),[3] CF Industries, Inc. (CF Industries), and Transmonia, Inc. (Transmonia).[4] AOPL supported Gulf Central. Farmland and CF Industries replied to Gulf Central's motion arguing that jurisdiction is properly vested in the Commission and not in the ICC. On March 1, 1990, the ICC issued an order instituting the declaratory judgment proceeding requested by Gulf Central and making this Commission a party of record.[5] In response CF Industries filed a motion asserting the ICC's action was unlawful and requesting this Commission to affirm that it has jurisdiction over the transportation of anhydrous ammonia by pipeline.

For the reasons set forth below the Commission has concluded that jurisdiction over the transportation of anhydrous ammonia by interstate pipeline properly rests with the ICC. Therefore Gulf Central's motion will be granted and Farmland's complaint will be dismissed by the Commission. A copy of this decision will be lodged with the ICC.

Discussion

The jurisdictional issue addressed by this order requires the Commission to interpret its authority under section 306 of the Department of Energy Organizational Act of 1977 (DOE Act).[6] The section "transferred to the Secretary [of the Energy Department] such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and member thereof as related to transportation of oil by pipeline."[7] Therefore the issue to be resolved is whether the transportation of anhydrous

[1] These sections require that all rates be just and reasonable and shall not be unduly discriminatory, that the terms and conditions of any rate be filed with the Commission, and establish the procedures for handling complaints filed against interstate pipelines to which the provisions of the ICA apply.

[2] While the Commission has noticed the complaint, it has not yet set the proceeding for hearing. Thus, the discovery requests filed by Farmland are inappropriate.

[3] Farmland opposed this intervention on the grounds that AOPL has no interest in this proceeding. The opposition will be denied in light of AOPL's status as a representative of the oil pipeline industry and the general interest the industry has in matters of the Commission's jurisdiction.

[4] In addition, on January 25, 1990, Gulf Central filed a motion pursuant to 18 C.F.R. § § 385.213(a)(2) and 385.101(e) to file additional comments in this proceeding. On February 9, 1990, CF Industries filed an answer to Gulf Central's motion. While the Commission's procedures would normally preclude both Gulf Central's January 25, 1990 motion and CF Industries' answer, the Commission has determined that the materials contained therein are helpful in resolving the jurisdictional issue raised by Gulf Central and that no delay will result if both of these additional filings are accepted. The Commission will therefore waive the provisions of 18 C.F.R. § 385.213 (1989) and accept Gulf Central's filing of January 25, 1990, and CF Industries' answer dated February 9, 1990.

A late motion for intervention was filed by IMC Fertilizer, Inc. on February 14, 1990. Because it will help explicate the issues involved, no party will be prejudiced, and there is no opposition to the motion, the motion for late intervention will be granted.

[5] Gulf Central Pipeline Company, No. 40371 — Petition for Declaratory Order, decision served March 1, 1990.

[6] *See* section 306 of Pub. L. No. 95-91, 91 Stat. 565 (1977), 42 U.S.C. § 7155.

[7] *Id.*

ammonia by interstate pipeline is the "transportation of oil by pipeline." The parties' arguments in this regard turn on (1) the Commission's past acceptance of Gulf Central's tariffs and its exercise of jurisdiction over those tariffs and related filings Gulf Central has made with the Commission, (2) the technical definitions of petroleum, oil, and petrochemicals, and (3) the application of those technical terms to the language of the statute and the relevant portions of the legislative history.

1. *Historical regulation of Gulf Central by FERC*

The Commission has regulated Gulf Central's tariff filings since the transfer of jurisdiction over oil pipelines from the ICC. The parties make a number of arguments based on filings made in a single proceeding pending at the time the DOE Act was enacted in 1977 and the transfer of jurisdiction occurred. The Commission has reviewed this material and the various Oil Board and Commission orders addressing Gulf Central's rate filings contained in the parties' filings. None of these filings or actions examined the jurisdictional issue addressed by this order and they simply reflect the orderly administration of tariff filings. The best that can be said from these activities is that the ICC considered anhydrous pipelines to be oil pipelines at the time that the transfer to the Commission occurred, and that the Commission has thereafter regulated anhydrous pipelines as a matter of course.[8] However, the DOE Act uses the phrase "transportation of oil by pipeline," and the phrase appears to have never been litigated before this Commission or the ICC, not withstanding the actual transfer of Gulf Central's dockets and tariffs to the Commission.[9] Jurisdiction is a matter that may always be reviewed by an administrative agency, and the Commission has elected to do so here.

2. *Technical considerations*

While the arguments on the technical structure of the oil pipeline industry are complex, they are made in the context of certain facts that are not disputed by the parties. These facts include that Gulf Central is an interstate pipeline that handles only one commodity, anhydrous ammonia. Anhydrous ammonia is a dehydrated chemical compound consisting of one nitrogen atom and three hydrogen atoms (NH3), and is used primarily as agricultural fertilizer, and as a feedstock for producing other chemicals.[10] Unlike hydrocarbon fuel products (gasoline, heating, oil, etc.), anhydrous ammonia has few, if any, energy producing attributes, and it is not transported in a common pipeline system (i.e., shipped in batch form) with such other products. Moreover, a review of Gulf Central's tariffs confirms it handles no organic hydrocarbon products such as crude oils, gasoline, kerosene, jet fuel, diesel fuel, heating oils, other distillates and oil products, or hydrocarbon-based[11] petrochemicals. These are the types of petroleum products[12] that are handled in liquid form by pipelines that are, as a matter of common usage, consid-

[8] Both Farmland and CF Industries argue that the Commission has asserted jurisdiction over the rates of anhydrous pipelines, and Gulf Central's in particular, for over 12 years, and that a disclaimer of jurisdiction at this point is inappropriate. Regarding this assertion, the correspondence provided by CF Industries in its answer of February 9, 1990, suggests that the ICC assumed that jurisdiction over anhydrous ammonia pipelines should be transferred to this Commission. It is also clear from the materials attached to CF Industries's February 9, 1990 filing that CF Industries questioned, even if it did not formally challenge, the transfer of jurisdiction over anhydrous ammonia to this Commission, and clearly reserved the argument that anhydrous ammonia was not a petrochemical. Gulf Central took the opposite position and argued that the transfer of jurisdiction to this Commission was appropriate. *See* the correspondence contained in tabs A through J of CF Industries's February 9, 1990 motion. At the present time, the parties have reversed their respective positions. Thus their arguments on the issue are of limited value.

[9] The Commission documents cited in Tabs C and D of CF Industries's February 9, 1990 motion were filed by the Commission's employees and reflect the institutional momentum that would normally follow from the initial transfer of jurisdiction. Moreover, all but three of the individual FERC orders contained in CF Industries's January 16, 1990 Motion in Opposition to Gulf Central's Motion for Summary Disposition are Oil Board or Director Letter orders. One is an Initial Decision that was in turn mooted by a short Commission order, and the third was a 1988 Commission order upholding the rejection of a Gulf Central tariff. None of these documents contain the type of critical examination conducted here.

[10] The ICC has asserted jurisdiction over phosphate pipelines in *Ashley Creek Phosphate Company v. Chevron Pipe Line Company*, Docket No. 40131, decided January 31, 1989. As in the case of anhydrous ammonia, agricultural fertilizer is the end use of the phosphate transported through the pipeline.

[11] In this context hydrocarbon-based means a chemical compound containing a hydrocarbon molecule, such as methane or butane.

[12] Technically all hydrocarbon liquid or gas products are "petroleum products" but in common usage the term means oil or hydrocarbon products derived from oil, usually through a refining process. *See* 4 R.D. Langenkamp, *Handbook of Oil Industry Terms and Phrases* 203 (1984); 1 *McGraw-Hill Dictionary of Science and Engineering* 607 (1984).

ered "oil" pipelines, i.e., pipelines that handle a range of liquid products that are derived from oil, condensate, and natural gas, and are used for heating or transportation purposes.[13]

The parties in fact agree that Gulf Central does not transport oil in the conventional sense of the term.[14] Gulf Central is not, therefore, a conventional oil pipeline as the term is used as a matter of operating practice in the petroleum industry. A review of FERC oil pipeline tariffs indicates there is a clear practical distinction between pipelines transporting organic, hydrocarbon based liquid products and those that transport liquid products that are not based on organic compounds, a fact that is reflected in their respective measurements of volume. Oil pipelines transporting organic, hydrocarbon based products state all volumes, including those for petrochemicals, in barrels, while the volumes of anhydrous ammonia pipelines are stated in tons. Anhydrous ammonia pipelines also operate within substantially different pressure and heat ranges and use electric compressors because, unlike oil and gas pipelines, the commodity itself cannot be used for compressor fuel. In other words, whatever ambiguity there may be about the regulatory status of anhydrous ammonia pipelines and those that are oil pipelines in the conventional sense of the term, this ambiguity is not reflected in the engineering aspects of their operations.

3. *Statutory construction*

While there is a clear practical distinction between oil and anhydrous ammonia pipelines, most parties[15] rely on much of the same legislative history of the DOE Act to support their arguments (1) whether Gulf Central is involved in the "transportation of oil," and (2) whether the transportation of anhydrous ammonia is encompassed in that phrase. A review of the legislative history indicates that Congress clearly intended that the transportation of some petrochemicals would be included within the Commission's jurisdiction. The relevant language from the Conference Reports states:

> It is the intent of the conferees that the term "transportation of oil by pipeline" shall include pipeline transportation of crude and refined petroleum and petroleum by-products, derivatives or petrochemicals.[16]

In light of this language, the parties debate whether anhydrous ammonia should be considered a petrochemical within the meaning of the DOE Act. Gulf Central argues that: (1) anhydrous ammonia is not a petrochemical as it contains no hydrocarbons and it is not used as a fuel or energy source; (2) testimony by then ICC Chairman Stafford indicates that anhydrous ammonia pipelines were viewed by the ICC as distinct from oil pipelines; and (3) only energy concerns were addressed by the transfer of oil pipeline regulation from the ICC to FERC.[17] Citing numerous dictionary and petroleum texts, Farmland and CF Industries argue that the ordinary meaning of petrochemical includes anhydrous ammonia and that pipeline transportation of that product therefore falls within this Commission's oil pipeline jurisdiction.

As a matter of common usage within the petrochemical industry, anhydrous ammonia is considered a petrochemical because it is derived from petroleum refinery gas or from natural gas.[18] However, while anhydrous ammonia may be considered a petrochemical within the chemical industry because it is a commercial product of petroleum and natural gas, the chemical definition of "petrochemical" can be more narrowly construed, and there is some ambiguity in the use of the term even within the petrochemical industry. The term is sometimes limited to organic compounds and petroleum products that actually contain hydrocarbons. Moreover, not all by-products of the oil and gas industries are considered petrochemicals.[19]

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[13] For example, the Texas Eastern Products Pipeline tariff series establishes rates, terms and conditions for petroleum products (gasoline, kerosene, diesel fuel, petroleum distillate, and motor fuels) aromatic gasoline, blended stock gasoline using a Benzene additive, butanes, propane (both in liquid rather than gaseous form), and petrochemical feedstocks. The Commission has previously ruled that carbon dioxide (CO2) pipelines are not subject to the Commission's Natural Gas Act jurisdiction because they do not transmit "natural gas" that is used for heating purposes. *See* Cortez Pipeline Company, *supra*, at n. 23.

[14] *See* Farmland's Answer in Opposition to the Motion of Association of Oil Pipelines Leave to Intervene at p. 5.

[15] These include Gulf Central, AOPL, Farmland, and CF Industries.

[16] S. Conf. Rep. No. 367, 95th Cong., 1st Sess. at p. 69 (1977); *See also* H.R. Conf. Rep. No. 539, 95th Cong., 1st Sess. at p. 69 (1977).

[17] *See* Gulf Central Motion to Dismiss at pp. 10-13.

[18] The *Concise Chemical Dictionary*, contains the following relevant definitions. Petrochemical is a "chemical present in or derived from natural gas or crude petroleum by physical refining or chemical reaction." Refining is "petroleum treatment to make special products." Chemical reaction is the "interaction of substances in which the identity of the materials is altered chemically." 3 H. Bennet *Concise Chemical Dictionary* 798,891, and 231 respectively (1974).

[19] Some other traditional by-products of oil and gas production include carbon dioxide (CO2), sulphur,

There is also some conflict in the authorities. For example, the McGraw-Hill *Petroleum Products Handbook* lists carbon, hydrogen, and sulphur as petrochemicals.[20] The McGraw-Hill *Dictionary of Science and Engineering* applies the term to *organic chemicals* "made from feedstocks derived from petroleum or natural gas, for example ethylene, butadien, most large scale plastics and resins, and petrochemical sulphur."[21] Anhydrous ammonia is defined as a feedstock in this latter source and, based on that source, would appear to be excluded from the definition of the organic-based petrochemicals. In this regard, it should be noted that the Random House dictionary definition of petrochemical cited in CF Industries's February 9, 1990 motion lists only organic petrochemicals as examples of that term and does not list anhydrous ammonia.[22] In light of this ambiguity it is plausible to conclude that the cited language from the Conference Reports refers only to *hydrocarbon* petrochemicals as the type of petrochemicals that are handled by pipelines that are "oil" pipelines in the conventional sense.[23]

The Commission concludes that there is sufficient ambiguity in the term "petrochemical" that the Commission's jurisdiction is more appropriately determined by examining the overall purposes of the DOE Act and acting in a manner that facilitates the purposes of that Act. This is more likely to lead to a rational public administration than a hypertechnical analysis of the term "petrochemical." Section 306 of the DOE Act transferred oil pipeline regulation from the ICC to FERC in 1977. The legislative history establishes that the purpose of the Act was to provide more coordinated and systematic regulation of energy resources. The Senate Report notes that before creation of the DOE, regulation of energy prices was fragmented among the Federal Power Commission (gas and electric), the Federal Energy Agency (oil), the Nuclear Regulatory Commission (nuclear), and Energy Research and Development Administration. The Report then states that "[t]he price and availability of each of the various energy sources the bill would address [nuclear, oil, gas, and electric] is determined independently of the other, even though those sources compete to meet our natural energy demands, and are often substitutes for one another...."[24] The Senate Report also asserts that "the transfer [of oil pipeline] regulation would facilitate decision with regard to the important energy source...."[25]

There are numerous other references to energy policy, and efficiency in the various legislative reports accompanying the DOE Act. However, the theme of competition among energy resources, and the means of transporting them, is particularly relevant in defining the Commission's mission and the scope of its jurisdiction in the instant case. The Commission concludes that Congress appears to have allocated regulatory control over different types of pipelines formerly subject to the ICC's jurisdiction based on (1) the competitiveness of the energy products that a pipeline transports, and (2) the primary mode of transportation competition that a particular type of pipeline faces. For example, the legislative history of the DOE Act indicates that the ICC retained control over coal slurry pipelines, even though

(Footnote Continued)

carbon, hydrogen, oxygen, nitrogen, hydrogen sulfide, sulphur dioxide, helium and carbon monoxide. Helium, nitrogen, oxygen, hydrogen, and carbon dioxide may or may not be petrochemicals depending on the context and the source. The sulfides appear to be consistently treated as petrochemicals. If anhydrous ammonia is considered subject to the Commission's jurisdiction, then each of these other traditional products, if transported in liquid form, would be subject to the Commission's oil pipeline regulation even though most have little, if any, energy producing attributes.

[20] *See Navajo Freight Lines Inc. v. Steere Tank Lines, Inc.*, 98 MCC 447 (1965) at p. 450, n. 3.

[21] *Supra*, at p. 607. The Elsevier *Petroleum Handbook* discusses petrochemicals as derived from the distillation of crude oil or the separation of natural gas and natural gas liquids. The examples include only hydrocarbon compounds such as ethylene, butalynes, amylenes, naphtha, butane, and propane. These are products that move by petroleum pipeline and are considered oil derivatives rather than refined petroleum or petroleum by-products. 6 Elsevier *Petroleum Handbook* 587 (1983).

[22] *See* Tab K of CF Industries's February 9, 1990 filing.

[23] This interpretation is supported by ICC Chairman Stafford's 1977 testimony, which indicates that the ICC believed that oil, petrochemical, and anhydrous ammonia represented distinctly different types of commodities at the time the DOE Act was passed even if their transportation was generically considered as performed by "oil pipelines." In other words, even within the ICC's traditional nomenclature there was some lack of precision in the use of technical terms. *Department of Energy Organization Act: Hearings on S. 826 Before the Sen. Committee on Governmental Affairs*, 95 Cong. 1st Sees. 750 (1977).

[24] S. Rep. 95-164, 1st Session, 91st Congress, at p. 4 (1977).

[25] *Id.* at p. 35. *See* Gulf Central's motion at pp. 9-11 for a fuller explication of the goals of the act. For example, one statutory goal is "to promote the interests *of consumers* through the provision of an adequate and reliable supply of energy at the lowest reasonable cost." Another is to foster and assure competition among parties engaged in the supply of *energy* and *fuels.*

these are energy related, because coal slurry pipelines compete primarily with railroads and not with gas and oil pipelines.[26] In other words, regulatory control was retained by the agency that could best evaluate the impact on energy costs of the relative transportation prices of these two intensely competing modes. Moreover, at the time the DOE Act was passed the price of coal was not regulated and the price for that fuel at its source does not seem to have been a matter of concern to Congress, and concern was limited to the relative impact of transportation prices on the energy consumer.[27]

In contrast, the sale and transportation costs of both gas and oil were regulated to varying degrees at the time the DOE Act was passed and these products are frequently direct substitutes at the burner tip. They may in some instances compete for the same pipeline capacity, and relative sale and transportation costs of oil and pipelines can have a direct impact on the competitive relationship of these two commodities. Moreover, even those products that are transported by oil pipeline but are not used for heating purposes, use oil pipeline capacity. The costs and revenues attributable to oil products used in general transportation not only have an impact on the transportation public in general, but depending on how an oil pipeline's costs are allocated among its products, may affect the relative price of heating fuels as well. Regulation of gas and oil pipelines by this Commission enables a single regulator to examine these complex competitive relationships, and their relative impact on energy prices.

By comparison, anhydrous ammonia is not a fuel source, but primarily an agricultural product, and the transportation cost of this product has little implication for the price of energy resources. This is reflected in a practical commercial distinction between pipelines handling products with energy producing attributes, and those handling products without energy producing attributes, such as anhydrous ammonia. Neither the sale of anhydrous ammonia nor the operations of that type of pipeline have an impact on energy prices, the central concern reflected in the statement in the Senate Report, and retaining jurisdiction in this Commission will not facilitate decision making with respect to that important energy [i.e. oil] source.

Finally, in past practice both FERC and the ICC have construed chemical terms in light of the broader regulatory purposes with which the agencies are charged. For example, in *Navaho Freight Lines Inc.*, the ICC considered helium to be within the definition of petrochemicals "to simplify as much as possible the burden on the petroleum industry in its selection of motor carriers with proper commodity authority as well as to allow carriers of petroleum products to offer comprehensive service to the industry."[28] The ICC reached this conclusion even though helium was not listed as a petrochemical in the sources it reviewed, thereby expanding the term "petrochemical" beyond its normal usage to achieve an administratively efficient result.[29] In *Cortez Pipeline Co.*,[30] this Commission issued a declaratory order stating that a proposed CO_2 pipeline was not subject to the Commission's jurisdiction under the NGA. The Commission noted that the term "natural gas" can include any gas occurring naturally, including helium and carbon dioxide. After stating that Congress did not attempt to resolve the ambiguity in the term "natural gas," the Commission concluded that Congress was referring to gas with sufficient hydrocarbons to have heating value since heating was the matter of statutory concern. The Commission therefore resolved this jurisdictional issue by applying the purpose of the NGA.

Both *Navaho* and *Cortez* indicate that, in determining jurisdiction when a highly technical question is involved, the broader legislative goals of the governing statute should be used to resolve any ambiguity. In the case of the DOE Act those concerns are clearly energy related. Energy markets are not impacted by the pipeline transportation of anhydrous ammonia; that commodity does not compete with gas or oil for heating use, nor does it compete with oil or gas for capacity in the same pipeline facilities. Ammonia has no heating value when compared to the hydrocarbon petrochemicals transported by oil or gas pipeline, and which are generally considered to be fuels (*e.g.*, ethane, propane, butanes, pentanes, or other products in the paraffin, olefin, and aromatic series of gas and oil derivatives).[31] This feature dem-

[26] *See* S. Rept. 95-164, *supra*, at pp. 16 and 18.

[27] The market price of steam coal is a function of its production cost and the relative price of gas and oil. In other words, the price of coal of given heating value tracks the cost of oil and gas rather than the opposite.

[28] *Navaho Freight Lines Inc. v. Steere Tank Lines, Inc.*, 98 MCC 477 (1965) at p. 450. *See also* the discussion in Gulf Central's motion at pp. 12-13 of the functional approach that the ICC used generically in trucking certificates.

[29] *Id.*, n. 3.

[30] *Cortez Pipeline Company*, 7 FERC ¶ 61,024 (1979).

[31] *See* 1 D.L. Katz. *et al.*, *Handbook of Natural Gas Engineering*, Table 1A-Physical Constants of Hydrocarbons, at pp. 708-709 (1959).

onstrates that anhydrous ammonia is not a competitive fuel source with such other products and that regulation of its transportation has no practical implication for energy matters.

4. *Conclusion*

Given the foregoing there is no practical reason why the Commission should exercise jurisdiction over anhydrous ammonia pipelines as the operation of those pipelines has little, if any, impact on the prices of fuels used in the transportation or heating markets. The potential impact of the rates in question is on the agricultural and the chemical industries, and by analogy with the jurisdiction over coal slurry pipelines, is more appropriately regulated by the ICC. The ICC has jurisdiction over the transportation of anhydrous ammonia by rail, the other major transport of that commodity, and provides a forum to compare the relative impact of pricing by those two modes, as well as the competitive impact, if any, of other modes of transportation of anhydrous ammonia, such as by barge and truck. The ICC's experience in analyzing the relative prices and costs of these different modes should insure a thorough examination of rate matters involved in the interstate transportation of anhydrous ammonia. Moreover, since the ICC has previously assumed jurisdiction over the pipeline transportation of phosphate, a fertilized commodity, there would seem to be no impediment to the ICC's regulation of another commodity used for that purpose if the agency charged with a certain energy related regulation determines that its historical assertion of jurisdiction is inappropriate.

In light of the DOE Act's emphasis on energy matters, continued regulation of an anhydrous ammonia pipeline by the Commission will not achieve the goals of that Act. Therefore the Commission will disclaim jurisdiction over the transportation of anhydrous ammonia and grant the motion to dismiss the complaint.

The Commission orders:

(A) Gulf Central's motion is granted and the complaint in the instant case is dismissed.

(B) The Commission disclaims all present and future jurisdiction over the regulation of Gulf Central and other pipelines, the exclusive function of which is the transportation of anhydrous ammonia in interstate commerce.

(C) All timely motions for intervention in this proceeding are granted and Farmland's opposition to the intervention of AOPL is denied.

(D) The motion for late intervention by IMC is granted, provided that no late intervening party shall be permitted to pursue further issues other than those contained in that party's motion for intervention.

(E) A copy of this order shall be lodged with the Interstate Commerce Commission.

[¶ 61,382]

Newport Electric Corporation, Docket No. EC90-9-000

Order Approving Merger

(Issued March 20, 1990)

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

On January 2, 1990, as amended on February 13, 1990, Newport Electric Corporation (Newport), a wholly owned subsidiary of NECO Enterprises, Inc. (NECO), an exempt public utility holding company, filed an application under section 203 of the Federal Power Act (FPA)[1] for Commission authorization to dispose of its jurisdictional facilities. The proposed disposition of facilities by Newport is part of an overall transaction by which Newport will merge with and become a wholly owned subsidiary of Eastern Utility Associates (Eastern).[2] Newport's wholly owned subsidiary, Newport Power, Inc. (Newport Power), which holds a partnership interest in the Ocean State Power Project (Ocean State), will also be acquired by Eastern as part of the transaction.[3]

[1] 16 U.S.C. § 824b (1988).

[2] On February 13, 1990, Newport filed with this Commission a copy of a revised Purchase Agreement which amended Eastern's filing with the Securities and Exchange Commission (SEC). By the amendment to the SEC filing Eastern, *inter alia*, proposed to effectuate the merger by way of a reverse subsidiary merger, in which Eastern will acquire Newport by forming a special purpose, wholly owned subsidiary which will be merged with and into Newport, resulting in Newport becoming a wholly owned subsidiary of Eastern.

[3] Newport Power, formerly NECO Power, Inc., was formed in August 1987 by NECO for the purpose