

Lion Oil Trading & Transportation, Inc.

Magnolia Pipeline Company

El Dorado Pipeline Company

ORDER DENYING REQUEST FOR WAIVER

140 FERC ¶61,118 (2012)

In this case, the Commission takes the uncommon step of denying a request of an oil pipeline that the Commission temporarily waive sections 6 and 20 of the Interstate Commerce Act (ICA). Section 6 requires oil pipelines that provide jurisdictional service to file with the Commission, among other things, rates, fares and charges. Section 20 of the ICA requires such a pipeline to submit annual and special reports to the Commission.

Lion Oil Trading & Transportation, Inc., Magnolia Pipeline Company and El Dorado Pipeline Company (collective The Lions Companies) filed a request with the Commission for waiver of sections 6 and 20 of the ICA. Apparently as a financing arrangement for its crude oil and refined petroleum assets, The Lions Companies, one year before filing the instant waiver request with the Commission, entered into an agreement with J. Aron & Company (J. Aron) pursuant to which J. Aron would acquire and hold title to the crude oil and refined petroleum assets and then resell them to The Lions Companies. The Lions Companies did not petition the Commission for a declaratory order pre-approving the arrangement with J. Aron, and they did not hold a pre-filing conference with Commission Staff. The Commission denied the request for waiver because The Lions Companies did not own all the crude oil and refined petroleum assets in question, and thereby failed to meet one of the four criteria for waiver.

140 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Lion Oil Trading & Transportation, Inc.
Magnolia Pipeline Company
El Dorado Pipeline Company

Docket No. OR12-13-000

ORDER DENYING REQUEST FOR WAIVER

(Issued August 9, 2012)

1. This order addresses a request for temporary waiver of the filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act (ICA)¹ filed by Lion Oil Trading & Transportation, Inc. (Lion Oil Trading), Magnolia Pipeline Company (Magnolia), and El Dorado Pipeline Company (El Dorado) (collectively the Lion Companies) with respect to the Lion Companies' crude oil and refined products pipeline system. For the reasons discussed below, the Commission denies the Lion Companies' request for waiver.

Background

2. The Lion Companies are owners and operators of a gathering and transportation system (Lion System) that moves crude oil and refined products in interstate commerce. The Lion System is located in southern Arkansas and northern Louisiana and is used to gather and supply feedstock to the El Dorado refinery and to deliver refined products from the refinery. The El Dorado refinery is owned by Lion Oil Company (Lion Oil). The Lion Companies are wholly-owned subsidiaries of Lion Oil.

¹ Section 6 of the ICA requires interstate oil pipelines to file rates, fares, and charges for transportation on their systems, and also to file copies of contracts with other common carriers for such traffic. Section 20 of the ICA requires annual or special reports from carriers subject to the ICA collected by the Commission. These requirements are reflected in 18 C.F.R. Parts 341 and 357 of the Commission's regulations.

3. The Lion Companies state that they do not transport crude oil or refined products for traditional third parties on the Lion System. The Lion Companies submit that no unaffiliated shippers have requested transportation on the Lion System, nor do the Lion Companies anticipate receiving any requests from unaffiliated shippers to use the Lion System in the future. The Lion Companies state that all crude oil carried on the Lion System is destined for the El Dorado refinery as there are no other outlets for such crude oil. The Lion Companies states that all movement of refined products on the Lion System is from the El Dorado refinery to the products pipeline system owned by Enterprise Product Partners L.P. (Enterprise). The Lion Companies submit that no other refineries are served by transportation on the Lion System and there are no downstream interconnections to take crude oil off of the Lion System.
4. The Lion Companies state that historically all of the crude oil and refined products transported on the Lion System were owned by the Lion Companies or an affiliate. On April 29, 2011, Lion Oil and Lion Oil Trading executed a Master Supply and Offtake Agreement (Agreement) with J. Aron & Company (J. Aron). Under the Agreement, J. Aron acquires and holds title to the crude oil and refined products on the Lion System and agrees to resell the crude and refined products, subject to certain conditions, to Lion Oil at prices that include specified spreads.
5. The Lion Companies state that the Agreement is intended to serve as an alternative to traditional asset-based financing for Lion Oil's initial purchase of hydrocarbon working capital inventories, as well as purchases of crude oil and sale of refined products on an ongoing basis. The Lion Companies submit that the Agreement is not a transportation agreement under which the Lion Companies provide service to J. Aron. Rather, by selling the crude and refined products to J. Aron and having the right, subject to satisfaction of applicable conditions, to repurchase such crude and refined products, Lion Oil and Lion Oil Trading use the Agreement as an alternative to conventional financing arrangements, which enables them to avoid bearing significant expenses that they otherwise would incur to procure crude oil.
6. The Lion Companies state that J. Aron does not bear the ultimate costs for the transportation of crude oil or refined products on the Lion System. The Agreement provides that to the extent J. Aron incurs any charges to transport crude oil or refined products, an affiliate of Lion Oil Trading reimburses J. Aron for such charges. The Lion Companies state that this includes reimbursement for the cost of transporting refined products on third party pipelines as well as any future charges for transportation on the Lion System. Lion Oil also has the responsibility to pay all taxes incurred with respect to ownership of crude oil and refined products shipped on the Lion System, including all federal, state and local taxes other than J. Aron's income taxes.
7. The Lion Companies state that the Agreement is not a transportation agreement under which the Lion Companies provide service to an unaffiliated shipper. Instead, as an alternative to traditional asset-based financing, the Agreement is a comprehensive

inventory purchase and sale arrangement through which J. Aron holds title to inventory, allowing Lion Oil and Lion Oil Trading to focus on the business of procuring, shipping, storing, refining and marketing crude oil and refined products in a cost-effective manner.

Request for Waiver

8. The Lion Companies state that under the Commission's "Special Permissions" policy, it has often granted interstate pipelines temporary waiver of the filing and reporting requirements of sections 6 and 20 of the ICA. The Lion Companies state that the Commission granted these waivers to pipelines when the factual circumstances showed that the filing and reporting requirements of the ICA were not necessary to protect the interests of an unaffiliated shipper.

9. The Lion Companies state that the Commission grants these waivers where: (1) the pipelines (or their affiliates) own 100 percent of the throughput on the line; (2) there is no demonstrated third-party interest in gaining access to or shipping on the line; (3) no such interest is likely to materialize; and (4) there is no opposition to granting the waivers.

10. With respect to the first element to support such a waiver, the Lion Companies assert that although the throughput on the Lion System is not titled in the name of the Lion Companies or their affiliates, there are no traditional third-party shipper interests to protect here and thus no potential harm to the public interest in granting the waiver. The Lion Companies state that the party that does hold title to the throughput, J. Aron, has been engaged by Lion Oil and Lion Oil Trading to hold title. The Lion Companies maintain that the Agreement with J. Aron is not a transportation agreement with an unaffiliated shipper, but rather a commercial arrangement that serves as an alternative to a traditional financing and for which Lion Oil pays fees and other compensation to J. Aron.

11. The Lion Companies next assert that the second, third, and fourth criteria traditionally shown by pipelines seeking a waiver are fully satisfied here. The Lion Companies state that there is no demonstrated third-party interest in gaining access to the Lion System. The Lion Companies states that no such interest is likely to materialize because there is no interconnection or offtake for crude oil shipped on the Lion System. The Lion Companies state that all crude oil moved on the system is used to meet the requirements of production at the El Dorado refinery, and all refined products shipped on the El Dorado products pipelines are shipped for the benefit of Lion Oil and its affiliates. Finally, the Lion Companies do not anticipate any opposition to granting the waivers.

12. The Lion Companies submit that granting the temporary waivers requested will relieve the Lion Companies from the burden of complying with regulations that exist to protect the interests of an unaffiliated third-party shipper in circumstances where no such

interest exists. The Lion Companies assert that if the Commission were to deny the requested waivers and require the Lion Companies to file a tariff, it is not clear how the Lion Companies could comply. The Lion Companies submit that even if the Commission were to consider J. Aron as a traditional third-party shipper, J. Aron is ultimately reimbursed by an affiliate of Lion Oil Trading for transportation on the Lion System and third-party pipeline systems. The Lion Companies contend that it would be exceedingly difficult for the Lion Companies to propose a rate at which it would provide service to third parties. They also state such a requirement would at a minimum require the Lion Companies and J. Aron to substantially revise their complex commercial arrangement. The Lion Companies argue that the effect of denying a waiver at this time would be to impose a substantial regulatory and commercial burden on both the Lion Companies and J. Aron, without any corresponding benefit to the public.

13. The Lion Companies therefore request that the Commission grant temporary waivers of the tariff filing and reporting requirements under sections 6 and 20 of the ICA and Parts 341 and 357 of the Commission's regulations, subject to the obligation to: (1) maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines; and (2) make such books and records available to the Commission or its authorized agents upon request. Further, the Lion Companies recognize that they must report any changes that may alter the Commission's determination including, but not limited to: (1) increased accessibility of other pipeline or refiners to its facilities; (2) changes in the ownership of the facilities; (3) changes in the ownership of the crude oil shipped; and (4) shipment tenders or requests for service by any person.

Public Notice and Interventions

14. Public notice of the Lion Companies' request for waiver was issued on May 24, 2012, providing that interventions, comments and protests be filed no later than June 6, 2012. A motion to intervene and comments in support of the waiver were filed by J. Aron. J. Aron also argues that its taking title to certain crude oil and refined products as part of the commercial arrangements underlying the waiver request should not trigger the filing and reporting requirements of ICA sections 6 and 20. No other pleadings were filed.

Discussion

15. Since first being applied in *Sinclair Oil Corporation*,² the Commission has granted requests for temporary waiver of the filing and reporting requirements of its regulations

² 4 FERC ¶ 62,026 (1978) (*Sinclair*)

and of sections 6 and 20 of the ICA when four criteria are met.³ First, the pipelines requesting temporary waivers (or their affiliates) must own 100 percent of the throughput on the line. Second, there is no demonstrated third-party interest in gaining access to or shipping upon the line. Third, there is no likelihood that such third-party interest will materialize. Fourth, there is no opposition to granting the waivers.

16. The Commission denies the Lion Companies' request for waiver because they do not satisfy the first criteria of the waiver test, i.e., that the pipelines or their affiliates must own 100 percent of the throughput on the line. By their own admission, the Lion Companies state that "the throughput on the Lion System is not titled in the name of the pipelines or their affiliates. . ."⁴ The Lion Companies' arguments that the arrangement with J. Aron is not a traditional transportation agreement, there are no third party interests to protect, and the public interest is not harmed are unavailing. J. Aron is not an affiliate and there is no way of construing it as an affiliate. The fact that J. Aron is receiving interstate transportation requires compliance with the provisions of the ICA.

17. In their pleading, the Lion Companies requested expedited action so that they could receive regulatory certainty.⁵ The Commission notes that while the Agreement between the Lion Companies and J. Aron took effect April 29, 2011, the Lion Companies did not file the instant request until May 8, 2012. The Lion Companies have therefore not been in compliance with the ICA and Commission regulations for over a year. Moreover, there are informal and formal procedures (e.g., Staff pre-filing conference, petition for declaratory order) available at the Commission that could have provided the Lion Companies the regulatory certainty of whether the instant request satisfied the waiver criteria.⁶ Thus, the regulatory and commercial burden of substantially revising the complex arrangement between the Lion Companies and J. Aron due to a denial of the waiver is based on the failure of the Lion Companies to use the appropriate procedures

³ See, e.g., *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995) (*Hunt*); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995) (*Ciniza*); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159 (2005) (*Enbridge*); and *Whiting Oil and Gas Corp.* 131 FERC ¶ 61,263 (2010).

⁴ The Lion Companies Request at 10.

⁵ The Lion Companies Request at 12.

⁶ See *Kenai Pipeline Co.*, 138 FERC 61,034 at n.5 (2012) (advising that, on a prospective basis, parties seeking to remove uncertainty (including uncertainty over FERC jurisdiction) should submit a petition under section 385.207 of the Commission's regulations).

prior to the execution of the Agreement. Given the circumstances, including their failure to meet the criteria required for such waivers, the Lion Companies have not shown good cause for waiver of the ICA and the Commission's regulations.

The Commission orders:

The Lion Companies' May 8, 2012 request for waiver is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.