

Tesoro Refining and Marketing Company

Tesoro Logistics Operations, LLC

ORDER GRANTING REQUEST FOR JURISDICTIONAL DETERMINATION AND
DISMISSING REQUEST FOR TEMPORARY WAIVER AS MOOT

135 FERC ¶ 61,116 (2011)

In this case, Tesoro Refining and Marketing Company and its affiliate Tesoro Logistics Operations, LLC (jointly Tesoro) filed a request that the Commission determine that five spur lines attendant to Tesoro's internal refinery operations were not subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA). The five spurs were private pipelines that supported Tesoro's Salt Lake City, Utah refinery operations, and no shippers other than Tesoro or its affiliates could use the lines. Further, Tesoro did not hold itself out as providing common carrier transportation on any of the spurs. One spur carrying crude oil connected a non-Tesoro entity's proprietary terminal to a Tesoro proprietary terminal. Two spurs also carrying crude oil connected a non-Tesoro entity's proprietary terminal (where interstate commerce ended) to a Tesoro tank farm. The final two spurs carried refined petroleum products from the Tesoro refinery to a non-Tesoro entity's proprietary petroleum products terminal where the product subsequently was routed to a Utah airport on an intrastate line and to an interstate line operated by that non-Tesoro entity (where interstate commerce began). The Commission held that none of the five spurs carried crude oil or refined petroleum liquids in interstate commerce and none was jurisdictional under the ICA. All five were supportive of and integral to Tesoro's refinery operations.

135 FERC ¶ 61,116
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.

Tesoro Refining and Marketing Company
Tesoro Logistics Operations, LLC

Docket No. OR11-4-000

ORDER GRANTING REQUEST FOR JURISDICTIONAL DETERMINATION AND
DISMISSING REQUEST FOR TEMPORARY WAIVER AS MOOT

(Issued May 5, 2011)

1. On February 8, 2011, Tesoro Refining and Marketing Company (Tesoro Refining) and Tesoro Logistics Operations, LLC (Tesoro Logistics) (collectively referred to as Tesoro) filed a request that the Commission determine that certain pipeline spurs that are part of Tesoro Refining's internal refinery operations are not subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA).¹ In the alternative, Tesoro requests that the Commission grant a temporary waiver of the ICA section 6 and section 20 tariff filing and reporting requirements for these facilities. Tesoro states that the pipeline spurs discussed in its request are presently owned by Tesoro Refining but that Tesoro Refining intends to transfer these facilities in the immediate future to its affiliate, Tesoro Logistics, as part of the formation of a Master Limited Partnership (MLP) and the transfer of assets to that MLP. For the reasons discussed below, the Commission finds that the pipeline spurs are not within the Commission's ICA jurisdiction. The alternative request for a temporary waiver of tariff filing and reporting requirements is dismissed as moot.

Background

2. Tesoro Refining is an independent refiner. It operates five refineries in the Western and Midwestern United States, and is a subsidiary of Tesoro Corporation, a public company listed on the New York Stock Exchange. Tesoro Corporation has recently announced its intent to form a publicly traded MLP and to transfer some of its assets to newly formed subsidiaries, including Tesoro Logistics, which will become part

¹ See the appendix for a diagram of the five spur lines at issue and their relationship to Tesoro's Salt Lake City refining operations and other facilities in the area.

of the MLP. The majority of the equity of the MLP will continue to be owned by Tesoro Corporation, and it will be under common management with Tesoro Refining, as an affiliate ultimately controlled by a common parent, Tesoro Corporation. Other investors will be offered minority limited partnership interests in the MLP, which will allow them to participate in its cash flow stream. However, a wholly owned subsidiary of Tesoro Corporation will be the sole managing general partner. As part of this reorganization, the MLP will provide logistics services under contracts with Tesoro Refining, allowing the companies' internal cash flow to be allocated among the subsidiaries.

3. One of the refineries that Tesoro Refining owns is located in Salt Lake City, Utah and has the capacity to run 58,000 barrels per day (bpd) of crude oil. The Salt Lake City refinery produces gasoline, diesel fuel, jet fuel, heavy fuel oils, and liquefied petroleum gas. In order to operate this refinery, Tesoro Refining uses several spur pipelines to bring crude oil to its refinery from pipeline hubs and to transport refined petroleum products from its refinery to a proprietary terminal for further distribution. These spur pipelines are part of Tesoro's internal refining operations, are used only to transport crude oil and products owned by Tesoro Refining and are used only to service Tesoro Refining's refinery. There are no other refineries or terminals adjacent to the Tesoro Refining, so these pipeline spurs are suitable only for supporting the Tesoro Refining refinery operations and they physically could not be used to support third party business. As part of the internal reorganization, Tesoro Refining plans to transfer these pipeline assets to its wholly owned subsidiary, Tesoro Logistics, which will later be moved into the MLP. Tesoro Refining would be the MLP's only customer for services related to the Salt Lake City assets at issue.

4. One of the five spur lines at issue is the spur line from a proprietary terminal that Plains All American Pipeline, L.P. (Plains) owns to a proprietary tank farm that Tesoro owns. Crude oil is delivered from interstate pipelines operated by Frontier Pipeline Company and SLC Pipeline LLC into the Plains proprietary terminal near Salt Lake City, Utah. Tesoro has connected a 16-inch spur line that runs approximately five miles from the Plains proprietary terminal to Tesoro's own proprietary tank farm in Salt Lake City. This tank farm is currently owned by Tesoro Refining, but will be transferred to Tesoro Logistics as part of the MLP reorganization. Tesoro receives crude oil from this spur line and places it in storage tanks at the proprietary tank farm. Tesoro eventually transports that crude oil to its refinery. The Tesoro proprietary terminal is located less than five miles from the Plains proprietary terminal and about a mile from the Tesoro refinery. All of the crude oil that is transported in the spur line is owned by Tesoro, and the only possible destination for the crude oil transported in the spur line is Tesoro's Salt Lake City tank farm and refinery.

5. Two of the other five lines are spur lines from a proprietary terminal that Chevron Products Company (Chevron) owns in Salt Lake City, Utah to the Tesoro proprietary tank farm. Crude oil is delivered from a Chevron Pipe Line Company interstate pipeline

into the proprietary Chevron Products crude terminal in Salt Lake City, Utah. Tesoro has connected two crude oil spur lines that it owns to the Chevron terminal. Tesoro uses those crude oil spur lines to transport crude oil to its proprietary tank farm. The spur lines span a distance of less than five miles between the Chevron proprietary terminal and the Tesoro proprietary tank farm. All of the crude oil that is transported from the Chevron crude oil terminal is owned by Tesoro, and the only possible destination of that crude oil is the Tesoro tank farm and refinery.

6. The final two spur lines are two Tesoro petroleum product spur lines from the Tesoro refinery to the Chevron petroleum products terminal. These lines transport diesel fuel and gasoline from the refinery that Tesoro operates to a proprietary petroleum products terminal that Chevron owns near Salt Lake City, Utah. The petroleum products, after being received into the Chevron products terminal, are subsequently routed to the Utah International Airport on a Utah intrastate pipeline, and to an interstate pipeline that Chevron Pipe Line Company operates from Utah to Idaho and Washington. The two Tesoro petroleum product spur lines are less than five miles long. The only origin point of these spur lines is Tesoro's Salt Lake City Refinery. All of the petroleum products transported in these two spur lines are owned by Tesoro Refining.

7. Tesoro has not filed tariffs with the Commission for these five spur lines because Tesoro has always considered these lines to be an integral part of the Tesoro Salt Lake City refinery over which the Commission does not have jurisdiction.

Tesoro's Request

8. Tesoro requests that the Commission determine that it does not have jurisdiction over the spur lines at issue in this proceeding. Tesoro asserts that these spur lines are an integral part of the Tesoro refinery operation. Tesoro submits that the lines are simply short connections between interstate pipelines and the Tesoro proprietary tank farm and refinery. Tesoro states that they cannot possibly be used by any third party because they either originate or terminate at the Tesoro refinery and tank farms; nor, of course, would any third party have occasion to or wish to use these spur lines. Furthermore, Tesoro contends that these spur lines either receive petroleum or deliver petroleum to proprietary terminals.

9. Tesoro argues that the Commission has held that terminal facilities into which crude oil or petroleum products are delivered are not subject to its jurisdiction under the ICA. Tesoro states that in *TE Products Pipeline Company, LLC*, the Commission held that a terminal at the end of a TEPPCO interstate pipeline system was not jurisdictional.² Tesoro notes that the Commission stated that “[a] service is subject to the ICA and the

² *TE Products Pipeline Company, LLC*, 130 FERC ¶ 61,257 (2010) (*TE Products*).

Commission's jurisdiction only if it is 'integral' or 'necessary' to the transportation function."³ The Commission then found that the terminalling service,

which involves loading propane or butane onto trucks or tanker cars, and the odorization service, a safety measure which involves the addition of a chemical to propane to provide a distinctive smell so that end users can detect leaks if propane is used for heating or cooking, are neither necessary or integral to the transportation of the propane or similar petroleum products.⁴

10. Tesoro states that on rehearing the Commission held that "jurisdictional transportation is completed when the product enters the terminal facilities and these facilities are not integral or necessary to the transportation function."⁵ The Commission further stated that "[i]t is also important to note that throughout the industry and on TEPPCO's system, other entities provide the same or similar terminalling services as TEPPCO and they do not have FERC tariffs on file."⁶

11. Tesoro argues that the Commission's holding in the *TE Products* case is directly applicable to the Tesoro spur lines and necessarily means that the spur lines are not jurisdictional. Tesoro states that applying the *TE Products* holding to the facts of this case, the Commission's jurisdiction over crude oil transportation terminates when the crude oil is delivered to the Plains and Chevron terminals. Thereafter, the further transportation of the crude oil in Tesoro spur lines from those terminals to a Tesoro tank farm is outside the Commission's jurisdiction.

12. Tesoro contends that the same factors lead to the conclusion that the two petroleum product spur lines from the Tesoro refinery to a Chevron products terminal are similarly outside the Commission's jurisdiction. Tesoro submits that the Tesoro refinery itself, where the petroleum product spur lines originate, is certainly outside the Commission's jurisdiction. In addition, Tesoro contends that the proprietary Chevron products terminal where the two spur lines terminate is similarly outside the Commission's jurisdiction since, according to the *TE Products* case, terminalling services are non-jurisdictional.

³ *Id.* P 13.

⁴ *Id.* P 14.

⁵ *TE Products Pipeline Company, LLC*, 131 FERC ¶ 61,277, at P 12 (2010).

⁶ *Id.*

13. Tesoro asserts that the petroleum industry has never considered it necessary to file tariffs for the short pipeline spurs that transport crude oil into their tank farms or for the short pipeline spurs that they use to transport their products to proprietary terminals. Tesoro submits that some amount of pipe will always be necessary for refinery operations that have not and could not be held out for common carrier service. Tesoro asserts that requiring a tariff filing for these types of pipelines would likely require a large number of additional tariff filings throughout the industry which would not protect any consumer of pipeline services. Therefore, Tesoro requests that the Commission find that the spur lines are ancillary facilities to Tesoro's Salt Lake City refinery over which the Commission does not exercise jurisdiction under the ICA.

14. Tesoro states that if the Commission finds that any of the Tesoro spur lines are within its jurisdiction, then Tesoro requests that the Commission grant a temporary waiver from tariff filing and reporting requirements for these spur lines. Tesoro asserts that under its "Special Permissions" policy, the Commission has granted interstate pipelines temporary waivers of the tariff filing and reporting requirements of the ICA when the facts presented demonstrated that maintenance of the ICA requirements were not necessary to protect any third party. Tesoro submits that this showing has been made when the pipeline at issue was not being used, or likely to be used, for the transportation of petroleum for any unaffiliated third party.

15. Tesoro contends that the Commission has granted these waivers to pipelines where (i) all of the petroleum to be transported is owned by the pipeline or an affiliate of the pipeline; (ii) no unaffiliated third party has requested transportation service over the pipeline; (iii) no unaffiliated third party is likely to request transportation service over the pipeline; and (iv) there is no opposition to the waiver request. Tesoro submits that these conditions are satisfied for each of the five pipeline spurs.

Discussion

16. In its request, Tesoro asks that the Commission find that five spur lines that are part of Tesoro's Salt Lake City refining operation are not within the Commission's jurisdiction. Three of the spur lines take crude oil from either the Chevron or Plains terminals and transport it to Tesoro's tank farm for subsequent delivery to Tesoro's Salt Lake City refinery. The two other spur lines transport diesel and gasoline from Tesoro's Salt Lake City refinery to a Chevron products terminal. The petroleum products are then subsequently transported on either intrastate or interstate pipelines.

17. Based on an application of the *TE Products* case, the Commission finds that the five spur lines do not transport crude oil or petroleum products in interstate commerce and are therefore not within the Commission's jurisdiction. The five spurs are private pipelines that are only used to support Tesoro's Salt Lake City refining operations. No shippers other than Tesoro or its affiliates can use these lines and Tesoro has not held itself out as providing common carrier transportation on these lines. With respect to the

three spur lines transporting crude oil to Tesoro's tank farm, the Commission's jurisdiction ends when the crude oil enters the Chevron or Plains terminals after delivery from other interstate pipelines. With respect to the spur lines delivering gasoline and diesel, Commission jurisdiction does not begin until the petroleum products enter an interstate pipeline connecting to Chevron's terminal. Accordingly, the Commission grants Tesoro's request and finds that the five spur lines are not within the Commission's ICA jurisdiction. Since the Commission is granting Tesoro's primary request, it need not address the alternate request that the Commission grant a temporary waiver of the tariff filing and reporting requirements under sections 6 and 20 of the ICA.

The Commission orders:

(A) The Commission lacks jurisdiction over the five spur lines discussed in this order.

(B) Tesoro's alternative request for temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the ICA is moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX

Configuration of Pipelines Serving Tesoro's Salt Lake City Refinery Operations

