

Williams Olefins Feedstock Pipelines, L.L.C.,

145 FERC ¶ 61,303 (2013)

In this case, Williams Olefins Feedstock Pipelines, L.L.C. (Williams) filed a petition for a declaratory order seeking a Commission decision that a pipeline to carry high-grade (95+ percent pure) ethane will not be subject to the Commission's jurisdiction under the Interstate Commerce Act. Williams contended that the purity liquid ethane would be used only as a feedstock to produce petrochemicals and would not be used for fuel or energy purposes. The Commission denied the petition and ruled that it would maintain jurisdiction over purity liquid ethane because it was a naturally-occurring hydrocarbon with thermal heat content capable of being burned and as such has current and future energy uses. The Commission noted that the ethane could be blended with low Btu natural gas to raise the gas to merchantable quality, and that a number of companies had plans to expand existing terminals to enable the exportation of low-ethane quality propane globally. The Commission rejected the argument that its jurisdiction turned on an applicant's assertion of the intended end-use of the ethane.

20131231 0247 FERC EDP (UNOFFICIAL) 12/31/2013

145 FERC ¶ 61,303
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Williams Olefins Feedstock Pipelines, L.L.C.

Docket No. OR13-29-000

DECLARATORY ORDER

(Issued December 31, 2013)

1. On August 6, 2013, Williams Olefins Feedstock Pipelines, L.L.C. (Williams) filed a Petition for Declaratory Order (Petition). Williams asks the Commission to find that its proposed Williams Bayou Ethane Pipeline project (Ethane Pipeline) will not be subject to the Commission's Interstate Commerce Act (ICA)¹ jurisdiction.
2. Williams states that the planned Ethane Pipeline project will deliver unbatched purity liquid ethane to petrochemical plants and storage facilities along a route from Orange, Texas, to Geismar, Louisiana. Williams estimates that the Ethane Pipeline will be in service by early 2014, and it states that the ethane it will transport will be used as a feedstock to produce ethylene, not as fuel.
3. As discussed below, the Commission denies the Petition.

I. Background

4. Williams explains that ethane is a natural gas liquid (NGL) component of the "wet" natural gas² produced at the wellhead and that during the multi-phase system of

¹ 49 U.S.C. app. §§ 1 *et seq.* (1988).

² Natural gas is composed of numerous hydrocarbons, but is in the main methane. The higher the methane concentration, the "drier" or "cooler" the natural gas. Natural gas with a high concentration of NGLs is considered "wet" or "hot" gas, because these NGLs, including ethane, have a high energy content. Wet gas essentially contains more NGLs than dry gas, and the NGLs can be stripped out and sold separately for use either as fuel or as a feedstock for plastics manufacturing. Prior to the 1960s, ethane and larger

(continued...)

treating the wet gas, various contaminants and other substances are removed, and methane is delivered into natural gas pipelines for ultimate delivery to natural gas consumers. According to Williams, the remaining raw mix generally consists of ethane, propane, butane, and natural gasoline. Williams states that the raw mix is delivered to large fractionation plants via NGL pipelines, trucks, or railroad facilities for separation into commercially-viable petroleum derivative products (e.g., purity ethane, propane, butane).

5. Williams emphasizes that these derivative products are processed, stored, and transported separately. In particular, states Williams, the distribution systems used to deliver ethane are configured to accommodate only deliveries of that feedstock to ethylene producers. Thus, maintains Williams, a purity ethane pipeline such as the Ethane Pipeline will not compete against pipelines shipping NGL raw mix or other components of the raw mix. Williams states that because of increasing demand from the petrochemical industry in recent years, a specific market for purity ethane market has developed. As a result, continues Williams, fractionation facilities have been configured to process and produce high-grade (95+ percent pure) liquid ethane, which then is sold as a primary feedstock for ethylene production.³

6. Williams explains that the Ethane Pipeline will be developed through a combination of leased capacity, existing Williams-owned capacity, new-build pipeline, and additional pump capability. Williams points out that the Ethane Pipeline will receive liquid ethane from storage facilities in the Mont Belvieu area and that it could have more than a dozen downstream receipt points, at which it can receive additional quantities of processed purity ethane for shipment. Williams emphasizes that the Ethane Pipeline will maintain ethane in its liquid phase, unmixed with any other NGL component, and in fact, adds Williams, the technical specifications of the Ethane Pipeline will preclude the shipment of any product other than purity liquid ethane.

7. Williams contends that the Commission has not addressed the jurisdictional question presented in this Petition as it applies to the transportation of purity liquid ethane. However, Williams argues that the Commission's determinations in cases

molecules typically were not separated from the methane component of natural gas, but simply burned along with the methane as a fuel. Today, however, ethane is most often used as a petrochemical feedstock after it is separated from the other components of natural gas.

³ Throughout its Petition, Williams cites extensively to the affidavits of Daniel Lippe (Lippe Affidavit) and Keith W. Montgomery (Montgomery Affidavit), both of which are attached to the Petition.

involving other hydrocarbons and petroleum derivatives lead to the conclusion that the Commission's ICA jurisdiction does not apply to the Ethane Pipeline. According to Williams, the Commission has recognized that its ICA jurisdiction applies only to hydrocarbons used for fuel or energy purposes, but Williams emphasizes that the purity liquid ethane to be transported on the Ethane Pipeline will not serve any such purpose. In fact, asserts Williams, ethane's naturally-occurring high thermal content makes it unsuitable for fuel purposes. Moreover, continues Williams, because ethane currently is not commercially marketed for any fuel or energy application, energy markets will not be affected by the price of purity liquid ethane transported on the Ethane Pipeline. Therefore, Williams maintains that the Ethane Pipeline will function like those pipelines transporting non-fuel products, over which the Commission has disclaimed jurisdiction.

II. Public Notice and Interventions

8. Notice of the filing was issued on August 8, 2013, with interventions and protests due on September 6, 2013. Pursuant to Rule 214 of the Commission's regulations,⁴ all timely-filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not delay or disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

III. Williams' Arguments

9. Williams cites a number of Commission orders and judicial decisions reflecting Congressional intent that the Commission's ICA regulation of oil pipelines is light-handed.⁵ Williams further asserts that the Commission has held that its ICA jurisdiction applies to energy-use products, but that it does not apply to petrochemical feedstocks. Williams maintains that the question before the Commission in this proceeding is a question of first impression: whether the Commission's ICA jurisdiction applies to the unbatched, interstate pipeline transportation of purity liquid ethane that will be used entirely in non-energy applications.

⁴ 18 C.F.R. § 385.214 (2013).

⁵ Williams cites *Farmers Union Central Exch. v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978); *Plantation Pipe Line Co. v. Colonial Pipeline Co.*, 104 FERC ¶ 61,271, at P 22 (2003); *Williams Pipe Line Co.*, Opinion No. 154, 21 FERC ¶ 61,260, at 61,584 (1982) (footnote omitted) (ICA is a producer protection measure rather than a consumer protection measure).

10. Williams contends that two distinct lines of Commission and judicial precedent bear on this issue. Williams submits that the first line of cases supports the Commission's authority to regulate interstate pipeline shipments covering a range of naturally-occurring hydrocarbons, including various petroleum derivatives and NGLs. However, continues Williams, the second line of cases just as clearly establishes limits to the Commission's authority, recognizing that not all naturally-occurring hydrocarbons and petroleum derivatives shipped in interstate commerce are subject to the Commission's ICA regulation.

11. Moreover, states Williams, nothing in a Commission grant of the relief it seeks would encroach on the jurisdictional boundaries established in these earlier cases. Rather, continues Williams, it asks only that the Commission consider the "unique Ethane Pipeline" in the context of what has been acknowledged as the governing test for the Commission's ICA regulation: whether the product being transported serves an energy-related, as opposed to a feedstock, function. In other words, adds Williams, the test for determining the Commission's jurisdiction is not whether the product being shipped may be a natural hydrocarbon derivative.

12. Williams states that the Commission first addressed the energy use/feedstock distinction in *Gulf Central Pipeline Co.*⁶ According to Williams, the Commission reversed an earlier determination in that case in which it had asserted ICA authority over pipeline shipments of anhydrous ammonia, and the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's reversal, explaining that the legislative history of the Department of Energy Organization Act⁷ demonstrates a Congressional focus on energy policy and regulation when it transferred the ICA oil pipeline jurisdiction to the Commission. Williams adds that the court pointed out that Congress did not intend to vest the Commission with regulatory authority over non-energy products and that regulating the transportation of anhydrous ammonia would not advance any energy-related policy objective.⁸

13. Williams asserts that the Commission determined in subsequent decisions that products such as gasoline, kerosene, jet fuel, and heating oil are for energy use, while other products fall into the non-energy use category, including ethylene, polymer grade propylene, chemical grade propylene, and anhydrous ammonia. For example, continues

⁶ 50 FERC ¶ 61,381 (1990) (*Gulf Central*), *aff'd sub nom. CF Industries, Inc. v. FERC*, 925 F.2d 476 (D.C. Cir. 1991) (*CF Industries*).

⁷ 42 U.S.C. §§ 7101, *et seq.* (1988).

⁸ Williams cites *CF Industries, Inc.*, 925 F.2d at 479.

Williams, in *Texaco Petrochemical Pipeline, LLC*,⁹ the Commission stated that while ethylene is indisputably a hydrocarbon product, the agency lacks jurisdiction where such product is “shipped by an oil pipeline [and] not used for energy purposes.” Similarly, states Williams, in other cases, the Commission reached non-jurisdictional decisions, such as in *Sabine Propylene Pipeline, L.P.*¹⁰ and *Enterprise Lou-Tex Propylene Pipeline L.P.*¹¹ While acknowledging that purity liquid ethane is a naturally-occurring petroleum derivative and theoretically could be burned, Williams reiterates that an energy or fuel use is not the practical or commercial use of ethane, and for that reason, Williams argues that purity liquid ethane is similar to other non-fuel products over which the Commission has disclaimed jurisdiction.¹² Finally, states Williams, as was the case with other pipelines over which the Commission has disclaimed jurisdiction, the Surface Transportation Board will have jurisdiction, filling in any perceived regulatory gaps.

IV. Commission Analysis

14. Williams states that the Commission’s light-handed ICA jurisdiction should not apply to the Ethane Pipeline based on the Commission’s determinations in other cases involving the transportation of non-fuel hydrocarbons and petroleum derivatives.¹³ However, the level of scrutiny inherent in the Commission’s ICA jurisdiction is irrelevant to determining whether that jurisdiction applies to the interstate movement of a particular petrochemical. Generally, the Commission’s ICA jurisdiction applies where oil or petroleum products that can be used for energy purposes are moved in interstate commerce.

⁹ 107 FERC ¶ 61,151, at P 5 (2004) (*Texaco*).

¹⁰ 109 FERC ¶ 61,025, at P 11 (2004) (*Sabine*) (polymer grade propylene “is not used for energy purposes . . . [and therefore] . . . transportation . . . resides with the [Surface Transportation] Board.”).

¹¹ 111 FERC ¶ 61,068, at PP 11, 13 (2005) (*Enterprise*) (chemical grade propylene that would not substitute for any energy-related product and would not compete for pipeline capacity with energy-use hydrocarbons does not implicate FERC’s ICA jurisdiction).

¹² Lippe Affidavit PP 13, 15.

¹³ *Gulf Central*, 50 FERC ¶ 61,381; *Texaco*, 107 FERC ¶ 61,515; *Sabine*, 109 FERC ¶ 61,025; *Enterprise*, 111 FERC ¶ 61,068.

15. Williams claims that the Ethane Pipeline will function like those pipelines transporting products that are not used to generate energy, and over which the Commission has disclaimed jurisdiction. Williams asks the Commission to assess the purportedly “unique character” of the Ethane Pipeline by applying what Williams contends is the Commission’s traditional test: whether the product being transported serves in an energy-related, as opposed to a feedstock, function. Williams’ characterization of the Commission’s test is incomplete. Therefore, the Commission states this test somewhat differently, as follows: whether the product being transported is a naturally-occurring hydrocarbon that is used or can be used for energy-related purposes, as opposed to having only a non-fuel, feedstock function.

16. As discussed below, the Commission will not disclaim its jurisdiction over the transportation of purity liquid ethane because that NGL is a naturally-occurring hydrocarbon product with current energy uses and future undeveloped energy uses. Moreover, the Commission’s jurisdiction cannot be based on an applicant’s assertion of a product’s end use in the case of a product that has potential fuel and energy uses. Rather, the Commission considers both existing and potential energy uses.

17. It is undisputed that ethane is a naturally-occurring hydrocarbon.¹⁴ Moreover, purity ethane has a thermal heat content that has the capability of being burned and used for fuel and energy purposes. It is also widely known among natural gas local distribution companies that purity ethane is often blended with low Btu natural gas to raise the Btu content to merchantable quality specifications.¹⁵

18. Purity ethane also has current energy uses and future undeveloped energy uses. For example, a number of companies have submitted liquefied natural gas project proposals, with plans to expand existing terminals to enable the exportation of low-ethane quality propane globally.¹⁶ Additionally, in 2012, the United States became a net

¹⁴ Williams acknowledges that purity ethane is a naturally-occurring hydrocarbon. Petition at 10.

¹⁵ See, e.g., “*Infrastructure Projects Connect Marcellus Shale To Ethane, NGL Markets*,” The American Oil & Gas Reporter (2011).
<http://www.aogr.com/index.php/magazine/cover-story/infrastructure-projects-connect-marcellus-shale-to-ethane-ngl-markets>.

¹⁶ See “*The North American Gas Value Chain: Developments and Opportunities*,” Platts, September 2012 at 13.

exporter of liquefied petroleum gases (LPG), including ethane, for the first time.¹⁷ In its recent extended open season capacity offering on its new Bluegrass Pipeline Project, Williams touts access to not only petrochemical plants, but also storage facilities, fractionation, and export terminals. Current uses of ethane already apply ethane's high Btu content for energy uses.

19. Purity ethane also has future energy uses. Enterprise Products Partners LP (EPP) has announced plans to build a new LPG terminal with an in-service target date of the fourth quarter of 2015. The new terminal and the expansion of the existing Houston Ship Channel terminal will produce an aggregate capacity of 15-16 million bbl/month of low-ethane propane. The supply for the export terminals will come from designated LPG pipelines and EPP's fractionation and storage complex in Mont Belvieu, Texas.¹⁸ In addition, The Williams Companies, Inc. announced that it is exploring with Boardwalk Pipeline Partners, LP (Boardwalk) the development of a new export LPG terminal on the Gulf Coast to provide customers access to international markets.¹⁹ The Commission anticipates that these propane projects will rely on blending ethane with propane to meet global use requirements. Against this background, it is evident that purity ethane has future energy uses. Thus, purity ethane is a naturally-occurring hydrocarbon that is used or can be used for energy-related purposes.

20. The Commission also rejects Williams' assertions that purity ethane is akin to anhydrous ammonia, polymer grade propylene, or chemical grade propylene, all products over which the Commission has disclaimed jurisdiction. In *Gulf Central*, the Commission declined to exercise jurisdiction over an anhydrous ammonia pipeline, distinguishing anhydrous ammonia from 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

¹⁷ See *U.S. Exports of liquefied petroleum gases projected to continue through 2040*, EIA, May 2013.

¹⁸ See "EPP to build US Gulf Coast LPG export terminal," *Oil & Gas Journal*, (October 2013), <http://www.ogj.com/articles/2013/10/epp-to-build-us-gulf-coast-lpg-export-terminal.html>.

¹⁹ See "Speed to Market Connecting Utica, Marcellus NGLs to Petchem, Export," Williams (2013), <http://co.williams.com/feature/speed-to-market-connecting-utica-marcellus-nngls-to-petchem-export/>.

oil derivatives”).²⁰ Thus, the Commission has in the past considered ethane to be a fuel subject to its jurisdiction. In that case, the Commission noted that ammonia has no heating value when compared to various hydrocarbon petrochemicals, including ethane.²¹ In contrast, it is unquestionable that ethane has a thermal heat content and has the capability of being burned and used for fuel and energy purposes.

21. Likewise, ethane is distinguishable from polymer grade propylene and chemical grade propylene is not used for energy purposes, but rather for the production of plastics.²² Similarly, the Commission determined that chemical grade propylene is not used for energy purposes, and consequently disclaimed jurisdiction.²³ As discussed, however, ethane has a variety of current and future energy uses, including being added to low Btu natural gas to increase its heat content and being used in low ethane propane for export for international use. In fact, these cases compel a result contrary to that requested by Williams, instead highlighting the appropriateness of the Commission asserting jurisdiction over ethane pipelines.

22. Moreover, the Commission has exercised and maintained its ICA regulatory authority over a number of ethane transportation projects currently approved and under construction.²⁴ Due to the thermal heat content and current and future uses of ethane as a fuel, the Commission will continue to exercise its jurisdiction over the interstate transportation of liquid purity ethane.

23. Finally, the Commission will not disclaim jurisdiction over interstate ethane transportation based on an applicant’s assertion of the intended end-use of the ethane. Notably, Williams does not have title to the ethane in its pipeline; therefore it cannot be certain of the ultimate disposition of the ethane. Moreover, Williams will deliver some portion of the ethane to storage tanks from which the ethane may be delivered for various

²⁰ *Gulf Central*, 50 FERC ¶ 61,381, at 62,166 (citing 1 D.L. Katz, *et al.*, *Handbook of Natural Gas Engineering, Table 1A – Physical Constants of Hydrocarbons*, at pp.708-709 (1959)).

²¹ *Id.*

²² *See Sabine*, 109 FERC ¶ 61,025, at P 608.

²³ *See Enterprise*, 111 FERC ¶ 61,068, at PP 9-11.

²⁴ *Enterprise Liquids Pipeline, LLC*, 144 FERC ¶ 61,083 (2013); *Sunoco Pipeline, L.P.*, 142 FERC ¶ 61,087 (2013).

energy purposes.²⁵ Consequently, the Commission does not believe that it should base its jurisdiction on purported intended uses that could change rapidly and result in a balkanized ethane pipeline system (i.e., some ethane pipelines are FERC-jurisdictional and others are not). Accordingly, the Commission concludes that it has jurisdiction over the interstate transportation of purity ethane. It is unquestionably a naturally-occurring hydrocarbon that is used for current energy purposes and will be used for future purposes. Thus, the Commission denies Williams' request that it disclaim jurisdiction in this case.

The Commission orders:

The Petition is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ See "*Speed to Market Connecting Utica, Marcellus NGLs to Petchem, Export*," Williams (2013), <http://co.williams.com/feature/speed-to-market-connecting-utica-marcellus-ngls-to-petchem-export/>; Petition at 1.