UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Sinclair Oil Corporation
(Complainant)
v.

ChevronTexaco Pipeline Company
(Respondent)

Docket No. OR03-6-000

ORDER ON COMPLAINT

(Issued December 17, 2003)

1. On August 5, 2003, Sinclair Oil Corporation (Sinclair) filed a complaint against ChevronTexaco Pipeline Company (Chevron)[1] together with a motion request for privileged treatment of documents and information. Chevron filed an answer to the complaint and requested dismissal of the complaint and also requested the Commission to deny Sinclair's request for privileged treatment.[2] On October 9, 2003, Sinclair filed a Motion of Summary Disposition of its complaint against Chevron, and Chevron filed an answer to Sinclair's motion. For the reasons set forth, we deny Chevron's motion for dismissal of the complaint and Sinclair's Motion for Summary Disposition, and will set the matter for hearing.

Sinclair's Complaint

2. Sinclair seeks a determination that a pipeline in the Salt Lake City area that Chevron owns, operates and uses to transport jet fuel to the Salt Lake City

[1] In its answer, Chevron asserts that the correct corporate name is Chevron Pipe Line Company, but that it does conduct certain business under the name Sinclair used.

[2] Sinclair filed an answer to Chevron's answer to the complaint, and Chevron moved to file its response to Sinclair's filing.

International Airport (the airport pipeline) is employed in the interstate transportation of jet fuel and is therefore subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA). Sinclair requests the Commission to order Chevron to file an initial tariff for the transportation of jet fuel in interstate commerce on the airport pipeline pursuant to Section 342.2(a) of the Commission's Rules and Regulations and pay reparations as to all charges imposed on Sinclair that have exceeded just and reasonable rates.

3. Sinclair states that it produces jet fuel at a refinery that it owns and operates in Sinclair, Wyoming. Sinclair has a contract to supply jet fuel for an airline's operations at the Salt Lake Airport.[3] Sinclair ships jet fuel it produces in its Wyoming refinery through the Pioneer Pipeline, which delivers the jet fuel to the Pioneer Products Terminal in North Salt Lake, Utah that is owned by an affiliate of Pioneer Pipeline. The Sinclair jet fuel is then transported from the Pioneer Products Terminal through a Chevron manifold to the airport pipeline that delivers it directly to the airport. Sinclair describes the manifold as a measuring device that directs petroleum products into one or more terminals or pipelines. In this case, the Chevron manifold directs gasoline and diesel fuel to a Chevron pipeline that transports those products in a northerly direction to Idaho and Washington, and directs the jet fuel into the airport pipeline for transport to the Salt Lake Airport. That pipeline is less than six miles long. The airport pipeline delivers the jet fuel to the Airport Group International, Inc. terminal at the Salt Lake Airport, which serves a number of airlines, including Sinclair's customer airline.

4. On June 19, 2003, Chevron cancelled an intrastate tariff governing shipments on its airport pipeline, that was in effect with the Utah Public Service Commission (PSC) for at least the past ten years. Claiming that the Utah PSC no longer had jurisdiction over that pipeline, Chevron issued a "non-jurisdictional rate sheet" which doubled the rate it had previously charged for shipments on that line.

5. On July 21, 2003, Sinclair wrote to Chevron and requested that Chevron publish a tariff with the Commission covering this transportation from the Chevron manifold to the Salt Lake City Airport. Chevron responded that it did not intend to publish an interstate tariff for this pipeline and subject it to FERC rate regulation under the ICA. Moreover, Chevron stated that beginning on or after August 1, 2003,

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[3] Sinclair has requested that confidential treatment be accorded to certain material. Chevron objected to the request but would accord confidential treatment as to the name of Sinclair's customer and the amount of jet fuel it refuels. The name of the airline will not be used in this order.

it would refuse to accept Sinclair's tenders for movements on the airport pipeline unless Sinclair provided Chevron with a monthly certification that all the volumes tendered for shipment are intrastate movements.

6. Sinclair stated that Chevron reiterated to it that unless Sinclair certified that the jet fuel volumes tendered on behalf of Sinclair for delivery to the Salt Lake Airport were intrastate in nature, Chevron would not accept the tendered volumes for shipment on the airport pipeline. Sinclair states that since the airport pipeline was the only pipeline capable of delivery of jet fuel to the Salt Lake Airport, it was forced to comply with Chevron's demand, and it furnished the demanded certification that Chevron had given to it.

7. Sinclair asserts that at the time Sinclair places the overwhelming majority of the jet fuel it produces at its Wyoming refinery into the Pioneer Pipeline in Sinclair, Wyoming, this jet fuel is destined for delivery to its customer airline at the Salt Lake City Airport. Therefore, it claims, at the time when Sinclair delivers jet fuel to Pioneer Pipeline, Sinclair necessarily intends that it be delivered to an airline customer at the Salt Lake Airport. There are simply no other markets or customers for that jet fuel.

8. Sinclair states that it has a contract to supply the airline at the Salt Lake City Airport with jet fuel, and it desires to continue supplying that airline with jet fuel. Sinclair argues that Chevron's actions have interfered with Sinclair's ability to use the airport pipeline to fulfill its contract.

9. Sinclair asserts that the shipment of jet fuel on the airport pipeline is interstate commerce, since the airport pipeline is a "link in an interstate chain of movement." Sinclair contends that Chevron cannot lawfully claim that it has removed that pipeline from interstate commerce while continuing to provide the very same transportation service in intrastate commerce.

10. Sinclair argues that Chevron cannot refuse to accept interstate shipments on the airport pipeline while continuing to accept intrastate shipments using the very same facilities that had been used in the past for interstate shipments, and Chevron's action is patently discriminatory and illegal under the ICA.

11. Sinclair requests the Commission to direct Chevron to publish a tariff for the airport pipeline for the transportation of interstate commerce, and to award Sinclair appropriate refunds, reparations and damages.

Chevron's Answer

12. Chevron asserts that the Commission does not have the jurisdiction over its intrastate pipeline providing transportation to the Salt Lake Airport and is without legal authority to provide the relief requested by Sinclair, which is to order Chevron to initiate interstate transportation and to file a tariff for interstate service on its airport pipeline.

13. Chevron presents a somewhat different factual description than the description in the complaint.

14. Chevron states that it owns and operates two pipeline systems that originate at its Salt Lake Station. One is the Salt Lake Products System which provides transportation from the Salt Lake area to commercial destinations in Idaho and Washington State and to military destinations in those states as well as Utah. Chevron has maintained FERC rates for this pipeline system for decades. The other is the pipeline at issue here, the pipeline from the Salt Lake Station to the Salt Lake Airport. Access to both these pipelines is gained through the same manifold at Chevron's Salt Lake Station. The manifold is capable of receiving product from pipelines connected to the Pioneer Products Terminal and five Salt Lake City area refineries.

15. Chevron argues that the Pioneer Products Terminal is not connected to the Chevron manifold in the manner described in Paragraph 24 of Sinclair's complaint which states that the "jet fuel is discharged from the Pioneer Products Terminal through a manifold operated by Chevron to the Chevron airport line." Chevron states that Pioneer Pipeline has a pipeline from the Pioneer Products Terminal to the Chevron manifold at Salt Lake Station. Products from the Pioneer Products Terminal, including jet fuel, may go into either the airport pipeline, or the Salt Lake Products system for transportation to Idaho or Washington.

16. Chevron states that since at least 1991 Sinclair has been shipping jet fuel on the airport pipeline. During that time, until June of this year, the only rate for the airport pipeline was established in Utah PSC No. 59, which went into effect March 1, 1986 with a rate of 19 cents. That tariff and rate remained in effect until June of this year, so for at least 12 years Sinclair has been shipping under an intrastate tariff and at the same rate. During that time, Chevron billed Sinclair using the intrastate tariff rate and the billings clearly referred to the intrastate tariff. Sinclair never requested Chevron to file an interstate tariff until this year.

17. Chevron states that in June 2003 it contacted the Utah PSC to inquire about the procedures for changing the rate under the existing intrastate tariff on the airport pipeline. The Utah PSC then informed Chevron that it had determined that it did not have rate regulatory authority over petroleum products pipelines. Chevron decided to cancel the Utah tariff on the airport pipeline, and to replace it with a non-jurisdictional rate sheet setting forth both the rate and the rules and regulations.

18. Chevron states it informed its shippers of its decision, and then on June 30, 2003, Chevron sent another letter to the airport pipeline shippers, with a new non-jurisdictional rate sheet increasing the rate from 19 cents to 35 cents. Thereafter, events transpired as described in Sinclair's complaint. Chevron states that based upon Sinclair's certification that it was shipping intrastate volumes on the airport pipeline, it scheduled Sinclair's shipments for August and made the scheduled shipments to date.

19. Chevron contends since the inception of the transportation on the airport pipeline, Chevron has held it out only for intrastate transportation. Until June of this year, the only rate for transportation on the airport pipeline has been the one filed with the Utah PSC. Chevron states that it has never included the airport pipeline rate in any tariff filed with the Commission. No shipper ever notified Chevron that it wanted to make interstate shipments on the airport pipeline or requested an interstate rate prior to Sinclair's demand in July.

20. Chevron argues that the Commission does not have the authority to order a carrier to undertake or continue to provide interstate transportation on a physically intrastate facility. Chevron also argues that ICA Section 13(4) cited by Sinclair[4] does

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[4] Section 13(4) of the ICA provides as follows:

> Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation or practice causes undue or unreasonable advantage, preference or prejudice as between persons or localities on the one hand and interstate or foreign commerce on the other hand or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce … which is hereby forbidden and declared to be unlawful, it shall prescribe the [intrastate] rate, fare or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference,

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not provide the Commission with the authority to order Chevron to provide interstate transportation as Sinclair argues in its complaint. Chevron contends that Section 13(4) gives the Commission the authority to change intrastate rates under certain conditions, but it does not expand the Commission's authority to allow it to order the provision of a new service, that of interstate transportation, as Sinclair requests.

21. Chevron contends that Sinclair's assertion in the complaint that it intended that its jet fuel shipped on Pioneer Pipeline should go to the airline at the Salt Lake Airport was never conveyed to Chevron. Moreover, Chevron asserts that Sinclair's description of the manner in which Sinclair's jet fuel is transported on Chevron's airport pipeline, which goes to Sinclair's intent, is not correct. In the complaint, Sinclair states that its airport customer notifies it by fax of the quantity of jet fuel it will need the next month and that Sinclair uses this information to schedule its shipments on the airport pipeline. Chevron states that Sinclair does not nominate its shipments with Chevron. Chevron states that the Airport Group International, located at the Salt Lake Airport, is the entity which notifies Chevron of the amount of jet fuel Chevron should ship on behalf of Sinclair in the coming month.

22. The Airport Group International terminal serves a number of airlines and also provides Chevron with nominations for shippers other than Sinclair. Chevron contends that because Chevron receives the nominations for transportation on the airport pipeline from the terminal at the airport, and not from the shippers on the pipeline, as far as Chevron is aware, the decision to ship a specific quantity of jet fuel on Sinclair's behalf could very well be made by the terminal or by Sinclair's customer at the airport after the jet fuel has arrived at the Pioneer Products Terminal.

23. Chevron also asserts that it understands that the jet fuel that Sinclair ships to the Pioneer Products Terminal is placed in a common tank at the terminal, where it may be commingled with other shippers' jet fuel. Product in that tank can be sold as stove fuel or No. 1 diesel fuel as well as jet fuel. From that common tank, the product may eventually be shipped on one or both of Chevron's pipelines either as jet fuel or it may be sold into the market for non-aviation uses. Distribution into the local area occurs using Pioneer Products Terminal's truck racks.

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prejudice, discrimination or burden. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding.

24. Chevron also argues that since jet fuel is involved, it is subject to processing after it leaves the refinery. Thus, only after being certified as jet fuel is the product transported from the Pioneer Products terminal to Chevron's Salt Lake Station through a separate filtration system for jet fuel, and up a line used for jet fuel. Chevron contends that this establishes that the interstate movement of the jet fuel has ended, and the subsequent movement on the airport pipeline is intrastate commerce.

25. Chevron also asserts that since the Pioneer Products Terminal is connected by pipeline with more than one Salt Lake City refinery, and is capable of receiving jet fuel that has been refined in Salt Lake as well as jet fuel that was refined in other states, Chevron would not have any way of being certain if the jet fuel Sinclair shipped on its airport pipeline originated at the Sinclair refinery, or was acquired from a Salt Lake refinery via exchange or purchase.

26. Chevron requests the Commission to summarily dismiss Sinclair's complaint on the basis that the Commission does not have jurisdiction over Chevron's intrastate airport pipeline and does not have the legal authority under the ICA to grant the relief Sinclair has requested.

Sinclair's Answer to Chevron's Answer

27. On September 4, 2003, Sinclair filed an Answer to Chevron's Answer to Sinclair's Complaint. Sinclair stated that since Chevron had included "a request that the Complaint be dismissed," it was submitting an answer to Chevron's Answer. The Commission's Rules of Practice and Procedure, § 385.213(a)(2) do not permit answers to answers. Accordingly, we will not consider Sinclair's September 4, 2003 filing as part of the record.[5]

Sinclair's Motion for Summary Disposition

28. On October 9, 2003, Sinclair moved for summary disposition. Sinclair asserts that the undisputed facts now before the Commission establish that the Chevron pipeline that is the subject of the Complaint is an interstate carrier, and its operator is required by Sections 1(4) and 13(4) of the ICA, to file an interstate tariff with the Commission.

[5] Chevron moved for leave to file a response to Sinclair's answer. Since that filing is not part of the record, Chevron's motion is moot.

29. In its motion it reiterates much of the assertions in its complaint. However, included in the motion is a much more detailed description of the procedure of how the jet fuel that Sinclair sells to its airline customer is delivered to that customer. That description is based on the answering affidavit of Peter M. Johnson, that was attached to Sinclair's September 4, 2003 Answer, which is not a part of the record. The description includes the treatment of the jet fuel when it is at the Pioneer Products Terminal. The motion then reiterates Sinclair's argument why the jet fuel transported on the airport pipeline on its behalf must be considered as being in interstate commerce.

Chevron's Answer to Motion for Summary Disposition

30. On October 24, 2003, Chevron filed its answer to Sinclair's motion.

31. Chevron argues that Sinclair has not established that the Commission has jurisdiction over the relief requested and if anything, the Commission should summarily dismiss the complaint. However, Chevron also asserts that, contrary to Sinclair, there are disputed issues of fact, so summary disposition under Rule 217(b) cannot be granted. Chevron notes that Sinclair has not included any of the certificates Sinclair has furnished to Chevron since July, 2003, "attesting that its movements on the airport pipeline are intrastate."[6] In addition Chevron contends that Sinclair's assertion that Chevron agrees with Sinclair's statement about the handling of the jet fuel at the Pioneer Product Terminal, including its treatment and storage time is not an accurate statement. Chevron argues that not only are there contradictions in Sinclair's own description of how the jet fuel is handled, [7]but Chevron is not in a position to assess the validity of Sinclair's factual assertions at this time, and only through the discovery process will Chevron be in a position to determine their correctness.

32. Sinclair also argues that since Chevron considers its airport pipelines only as intrastate pipelines, it cannot be required to handle interstate shipments. Thus, it contends that neither ICA Section 1(4) or 13(4) is a basis for asserting Commission jurisdiction over that pipeline.

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[6] Chevron Answer at 4.

[7] Chevron refers to differing statements in the affidavits it submitted as to when the jet fuel is tested after its arrival at the Pioneer Product Terminal, one saying within 24 hours, and the other 36 hours.

33. Chevron requests the Commission to deny Sinclair's motion for summary disposition granting the requested relief, and instead the Commission should dismiss the complaint.

Discussion

34. The instant case turns on whether Sinclair's shipment of jet fuel on the Airport Pipeline is interstate commerce, and is "a link in an interstate chain of movements." It must be recognized that jet fuel is produced by others at Salt Lake City refineries and is transported to the Salt Lake City Airport on the airport pipeline. Clearly, that transportation is intrastate transportation and is not within the Commission jurisdiction. Thus, Sinclair's request must be limited to only shipments of jet fuel on its behalf on the airport pipeline.

35. Sinclair asserts that shipment of its jet fuel are in interstate commerce. Chevron argues that the airport pipeline has always been considered as handling only intrastate commerce. Chevron argues that whatever Sinclair may intend when it starts the movement of jet fuel refined in its Wyoming refinery, the reality is that the airport pipeline has always been considered an intrastate pipeline.

36. Decisions cited by both parties[8] have turned on how the "goods were handled." In this case there are conflicting descriptions of how the jet fuel is handled when it reaches Salt Lake City, and how it is handled until it is delivered to the airport pipeline for transport to the airport. Accordingly, we will set this matter for hearing before an Administrative Law Judge (ALJ) so that there will be a complete record on which the Commission may make a determination. Moreover, in view of Sinclair's assertions in the complaint that because of "the hostile confrontational position taken by Chevron in communications with Sinclair," use of alternative dispute resolution

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[8] Among the decisions are Atlantic Coastline Co. v. Standard Oil of Kentucky, 275 U.S. 257 (1927); Texas Refinery and Marketing v. SFPP, L.P., 81 FERC ¶ 61,388 (1997); SFPP, L.P., 86 FERC ¶ 61,022 (2000); Northville Dock Pipe Line Corp. and Consolidated Petroleum Terminal, Inc., 14 FERC ¶ 61,111 (1981); Determination of Jurisdiction Over Transportation of Petroleum and Petroleum Product by Motor Carriers Within a Single State, 71 M.C.C. 17 (1957); Atlantic Pipe Line Co., 47 I.C.C. Val. Rep. 541 (1937); Jet Fuel by Pipeline Within the State of Idaho, 311 I.C.C. 439 (1960); Interstate Energy Co., 32 FERC ¶ 61,294 (1985); and Department of Defense v. Interstate Storage and Petroleum and Pipeline Corp., 353 I.C.C. 397 (1977).

procedures provided are not likely to have any success, we will not utilize the formal settlement procedures.[9] The ALJ should determine whether the shipments of jet fuel on behalf of Sinclair are interstate commerce, and if they are, whether Chevron can refuse to accept them for transport on the airport pipeline on the grounds that the pipeline is limited to intrastate commerce.

The Commission orders:

(A) Pursuant to the authority of the Interstate Commerce Act, particularly sections 13(1) and 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by Sinclair's complaint.

(B) Pursuant to Section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2002), the Chief Judge shall designate a Presiding Judge for the purpose of conducting a hearing. The Presiding Judge is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

(C) An administrative law judge, to be designated by the Chief ALJ, shall convene a pre-hearing conference in this proceeding, to be held approximately 15 days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(D) Sinclair's motion for summary disposition is denied.

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[9] The ALJ can also determine the extent of confidentiality that is appropriate, since Chevron objects to Sinclair's request for confidential treatment except as to the names of Sinclair's customers and the amount of jet fuel it refines.

(E) Chevron's motion to dismiss the complaint is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.