

Dixie Pipeline Company

ORDER FOLLOWING TECHNICAL CONFERENCE

140 FERC ¶ 61,127 (2012)

In this case, Dixie Pipeline Company (Dixie) filed to revise its tariff provisions that govern prorationing capacity at injection points on its pipeline; the pipeline segment of interest carries propane from Texas through the southeast United States to North Carolina. One company intervened and protested. It shipped propane from Mont Belvieu, Texas to destination points east of Hattiesburg, Mississippi. Under Dixie's existing prorationing program, in times of constraint, capacity at injection points west of Hattiesburg, Mississippi (i.e. Mont Belvieu, Texas) would be allocated based on a shipper's historical injection volumes at those origin points. Dixie's proposal was to change the prorationing program such that, in times of constraint, a shipper's historical injection volumes at points of origin could not be used for movements east of that destination point. The Commission rejected Dixie's proposed prorationing program because the intervenor was the primary if not the only shipper adversely affected by the proposal. The Commission was persuaded that Dixie's proposal unduly prejudiced or disadvantaged the intervenor.

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140 FERC ¶ 61,127
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.

Dixie Pipeline Company

Docket No. IS12-88-000

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued August 15, 2012)

1. On December 15, 2011, Dixie Pipeline Company (Dixie)¹ filed FERC Tariff No. 99.1.0, proposing to cancel FERC Tariff No. 99.0.0 and modify language relating to Injection Capacity Allocation under Item 70, “Proration.”
2. Dow Hydrocarbons and Resources LLC (DHR) filed a motion to intervene and a protest asking the Commission to reject FERC Tariff No. 99.1.0. DHR contended that Dixie’s proposal would discriminate against DHR, while providing a competitive advantage to an affiliate of Dixie’s.
3. In an order issued January 13, 2012, the Commission accepted and suspended FERC Tariff No. 99.1.0 to become effective August 16, 2012, subject to the outcome of a technical conference.² The technical conference was convened February 28, 2012. Following the technical conference, the parties filed comments and reply comments.³
4. As discussed below, the Commission rejects FERC Tariff No. 99.1.0.

¹ Dixie is now a limited liability company and has changed its name to Dixie Pipeline Company LLC.

² *Dixie Pipeline Co.*, 138 FERC ¶ 61,022 (2012).

³ Dixie; DHR; and Blossman Gas, CHS, Inc., Ferrellgas, L.P., and the National Propane Gas Association (together Propane Group) filed initial and reply comments following the technical conference.

I. Background

5. Dixie's pipeline system extends from Mont Belvieu, Texas, to Apex, North Carolina, with numerous interim origin and destination points.⁴ Dixie stated that it primarily transports propane, but that it also transports ethane and refinery grade propylene between certain points. Dixie further stated that its current tariff requires it to allocate capacity during periods of constraint based on each shipper's historical movements and that it calculates injection and withdrawal capacity separately, although it bases each calculation on a 12-month historical period. Dixie explained that it uses this allocation methodology because shippers primarily ship propane and that, because it maintains significant propane line fill and storage on the system, it does not require shippers to withdraw the exact amounts that they deliver in any particular month.

6. In its protest, DHR stated that it primarily ships propane on Dixie's system from Mont Belvieu, Texas, to Erwinville, Louisiana, where the propane then is transported via another pipeline to The Dow Chemical Company's (Dow Chemical) chemical and plastics manufacturing facility near Plaquemine, Louisiana. According to DHR, the propane serves as a feedstock in the manufacture of various chemicals. DHR also stated that, during some winter months when the demand for propane for home heating increases, it has transported propane via Dixie's pipeline system from Mont Belvieu to Hattiesburg, Mississippi, for sale in that market.

7. DHR contended that FERC Tariff No. 99.1.0 would restrict its current ability to transport propane on the Dixie system to destinations east of Erwinville during the winter months. According to DHR, if the proposed revision is adopted, its historical volume will be based only on its propane movements from Mont Belvieu to the Erwinville delivery point. DHR argued that it would be the only shipper affected in this manner and that it would have limited ability to compete for propane sales when prices in the Hattiesburg propane market make it an attractive alternative to the use of propane as a feedstock for Dow Chemical's facility.

II. Positions of the Parties

A. Initial Comments

1. Dixie

8. Dixie argues that the change to its injection capacity rules is in the best interests of the pipeline and shippers as a whole and is fully consistent with the Commission's

⁴ A map of Dixie's system is included in Attachment A to its Initial Post-Technical Conference Comments (March 19, 2012).

regulations and the requirements of the Interstate Commerce Act (ICA).⁵ Dixie emphasizes that the Commission has stated that there is no single best method for allocating pipeline capacity in periods of excess demand for the capacity and that pipelines should have some latitude in developing capacity allocation procedures specific to their systems.⁶ Dixie asserts that the proposed revision to its allocation policy is objective, neutral, and fair to all shippers because it will remedy a specific situation that allows DHR to benefit at the expense of all other shippers.

9. Dixie explains that its system has sufficient capacity during most of the year to accommodate both traditional long-haul shipments and DHR's short-haul movements. However, Dixie contends that, when propane demand peaks during the winter months, shippers at Mont Belvieu want to inject more volumes than can be moved through the initial segment of the line, so the Mont Belvieu origin point requires injection allocation.⁷ Dixie also emphasizes that its current policy bases injection allocation at Mont Belvieu on each shipper's share of historical volumes, regardless of the destination or distance of the transportation, and that this methodology confers on DHR an undue preference.

10. Dixie states that its shippers traditionally have moved propane from origins in Texas and Louisiana to destinations across the Southeast from Mississippi to North Carolina. However, continues Dixie, during the winter when propane demand increases at the Hattiesburg trading hub, DHR uses its volume history based on short-haul movements to obtain a significant portion of the capacity to Hattiesburg. Dixie contends that this has created capacity constraints that unduly restrict other shippers during the peak demand periods. For example, adds Dixie, in February 2010, DHR controlled 50 percent of the available Mont Belvieu injection capacity, which allowed it to switch from its traditional Erwinville destination so that it could sell propane in the Hattiesburg market.

⁵ 49 App. U.S.C. § 1, *et seq.*

⁶ Dixie cites *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999); *Total Petroleum, Inc. v. Citgo Products Pipeline, Inc.*, 76 FERC ¶ 61,164, at 61,947 (1996)).

⁷ Dixie explains that the capacity of each segment of its system generally increases from west to east between Mont Belvieu and Demopolis, Alabama. Thus, states Dixie, the initial segment between Mont Belvieu and Sulphur, Louisiana, has less capacity than the segments between Sulphur and Demopolis. Further, Dixie states that the capacity of each segment east of Demopolis progressively decreases until the pipeline terminates at Apex, North Carolina. Dixie also asserts that, under ordinary operating conditions, Mont Belvieu is the only origin point to have been put on injection allocation during the last several years.

11. Dixie maintains that DHR's control of the capacity may discourage traditional long-haul shippers from moving product on the system because they cannot obtain sufficient capacity during the winter season. According to Dixie, because those shippers are responsible for a greater share of barrel-miles and revenue, Dixie itself would be harmed significantly if those shippers leave the system. Further, states Dixie, all shippers would be harmed because the pipeline's costs would be spread over a smaller number of barrel miles, thereby increasing rates.

12. Dixie also claims that its current prorating procedure gives DHR the ability to influence the propane price at the Hattiesburg marketing hub. Dixie explains that the price of propane at Hattiesburg during certain winter months can be significantly higher than the price at Mont Belvieu. Dixie contends that, if DHR is no longer able to apply its entire historical allocation to movements to Hattiesburg during the winter, it is likely to nominate a smaller, more realistic volume to its normal Erwinville destination.

13. Dixie observes that DHR claims that it has not attempted to purchase another shipper's supply of propane to take advantage of a pricing margin at Hattiesburg, but does acknowledge that it has sold propane at Hattiesburg to take advantage of increased winter demand there. However, Dixie also asserts that DHR's control of a significant amount of injection capacity on Dixie at Mont Belvieu gives DHR the ability to require other shippers there to sell product to it at a discount.

14. Moreover, continues Dixie, DHR also argues that, when it has sold propane at Hattiesburg, the Hattiesburg propane price already had increased due to normal market dynamics there and that DHR's supply of additional volumes into Hattiesburg would have caused the market price for propane in Hattiesburg to be lower than it otherwise would have been. Dixie concedes that this might be the case if DHR were shipping the full amount of its capacity allocation, but Dixie also points out that DHR has admitted that it has chosen to ship less propane than it could have shipped during times when Dixie's system was on allocation.

15. Dixie emphasizes that the proposed new policy does not deny DHR or any other shipper the ability to make longer-haul movements. Further, states Dixie, the new policy would not prevent DHR from using its historical allocation to obtain sufficient capacity to move product to its traditional Erwinville destination. Dixie states that its proposed change is not unduly discriminatory even if it would treat certain historical shippers differently based upon the distance of their previous propane movements. Dixie maintains that it is not unduly discriminatory to treat shippers differently if they are not similarly situated. Dixie points out that the Commission has approved prorating policies that distinguish between different types of shippers on the basis that each

shipper's entitlement to capacity depends on the shipper's "own decisions to ship or not ship."⁸

16. Dixie's response to DHR's claim that the revised rule would prevent DHR from injecting any propane at Mont Belvieu for delivery to Hattiesburg even if Dixie had capacity available between Erwinville and Hattiesburg is that whether there is available capacity between Erwinville and Hattiesburg is irrelevant because Erwinville is not an origin point on the pipeline. Thus, continues Dixie, even if there were capacity between Erwinville and Hattiesburg, injection capacity at Mont Belvieu still could be constrained if there were insufficient capacity on the initial segment of the line between Mont Belvieu and Sulphur.

17. Finally, Dixie challenges DHR's claim that the proposed policy may confer an unreasonable preference on Dixie's affiliates. Dixie emphasizes that the rules in its tariffs apply equally to all shippers. Indeed, continues Dixie, the other main shipper whose capacity allocation to Hattiesburg would be reduced by the proposed tariff change is Dixie's affiliate, Enterprise Products Operating, L.P. (EPOLP), which also makes short-haul movements to west-of-Hattiesburg destinations, although its west-of-Hattiesburg shipments are not as large as DHR's.

2. DHR

18. DHR explains that Dow Chemical uses a sophisticated computer model, as well as market information, to determine the feedstock slate that will allow it to achieve the maximum profit from the operation of its plants. Therefore, continues DHR, if propane is an unfavorable feedstock, one option is for it to sell the propane into the Hattiesburg market. DHR states that its propane shipments on Dixie's system have decreased each year beginning in 2007, in part because the increasing availability of shale gas has made ethane the preferable feedstock. In addition, DHR states that the money it has paid to Dixie for transportation of propane is far greater than the profit it has earned from selling propane in Hattiesburg.

19. DHR argues that Dixie has not shown that DHR has forced other shippers to sell propane to it at Mont Belvieu at a discount. In fact, states DHR, it is not possible to purchase propane at Mont Belvieu at a discount from the market price because Mont Belvieu is the largest physical propane trading center in the world, and shippers are unlikely to sell propane there at a discount.

⁸ Dixie cites *e.g.*, *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004).

20. DHR next contends that Dixie also has failed to support its claims that DHR has sold propane in Hattiesburg at a premium or driven up the price in Hattiesburg. Further, continues DHR, Dixie has not shown that DHR's allocation of injection capacity at Mont Belvieu actually has increased the price of propane at Hattiesburg. Rather, argues DHR, the factors that cause rising propane prices in Hattiesburg generally begin with unusually cold winter weather. DHR also points out that Dixie has stated that propane produced in Louisiana typically is sufficient to satisfy demand at Hattiesburg and points east, and further, that, during winter months, demand at Hattiesburg and points east requires all of the propane produced in Louisiana, plus some additional volumes from Mont Belvieu.

21. DHR states that another shipper may, for a variety of economic reasons, purchase propane from DHR in Hattiesburg. DHR also points out that, if it had not shipped propane to Hattiesburg, that shipper might have shipped more propane to Hattiesburg itself and earned the margin on those additional shipments. However, DHR emphasizes that it cannot force another shipper to buy propane from it at a premium above the Hattiesburg market price. DHR claims that, when it has not shipped its full propane allocation, that failure has not driven up the market price for propane in Hattiesburg. Additionally, DHR explains that it ships only the amount of propane to Hattiesburg that it is able to sell there, so it cannot cause the price to rise.

22. DHR maintains that Dixie has not shown that, without its proposed revision, long-haul shippers will leave its system or that it would be harmed by such departures. Additionally, DHR emphasizes that Dixie has failed to show that any so-called alternative methods of transportation, such as rail, are viable options. According to DHR, there is no alternative common carrier pipeline available to long-haul shippers. DHR also asserts that capacity constraints on the Dixie system west of Baton Rouge are not a new phenomenon, and these constraints have not caused traditional long-haul shippers to leave Dixie's system.

23. DHR counters Dixie's assertion that the current prorating policy is unfair to the long-haul shippers. DHR contends that the policy is fair to long-haul shippers because it is based on historical usage and is consistent with other approved prorating policies. DHR suggests that Dixie's concern is based on the fact that Dixie's owner and operator is a long-haul shipper that will gain by preventing DHR from shipping propane to Hattiesburg during periods of injection allocation at Mont Belvieu.

24. Additionally, DHR maintains that the Commission has rejected arguments similar to Dixie's when it has considered other proposed prorating policy revisions. For example, states DHR, in evaluating a comparable tariff filing by Platte Pipe Line Company (Platte), the Commission found that, "[c]laims by Platte that its competitive position will suffer or even that it seeks to protect consumers are irrelevant to common

carriage on oil pipelines under the ICA.”⁹ Further, states DHR, the Commission rejected Platte’s attempt to justify its revised prorationing policy on a desire to eliminate alleged capacity brokering on its system and possible harm to its own competitive position if shippers elected to use other transportation options.¹⁰ DHR emphasizes that Dixie has failed to demonstrate that its proposed tariff revision satisfies its duty under ICA section 1(4) “to provide and furnish transportation upon reasonable request therefore, and . . . make reasonable rules and regulations with respect to their operation . . .”¹¹

25. DHR also argues that Dixie has not provided a sufficient operational justification for the proposed tariff revision. DHR explains that the Commission has approved unusual prorationing policies only where carriers were seeking to prevent significant operational problems on their systems.¹² DHR explains that Dixie’s data responses show that injection allocation at Mont Belvieu has occurred infrequently since DHR became a full-year shipper in 2007. Specifically, DHR points out that, during the past five years, Dixie’s common carrier system was on injection allocation from Mont Belvieu east only on four occasions: January 2009, February 2009, February 2010, and January 2011. Moreover, continues DHR, its own propane shipments from Mont Belvieu have declined each year since it became a full-year shipper on Dixie’s system.

26. DHR responds to Dixie’s speculation that, if DHR cannot make longer haul shipments from Mont Belvieu to markets east of Erwinville, such as Hattiesburg, DHR might nominate a significantly smaller amount of propane from Mont Belvieu to Erwinville during the winter. DHR asserts that such speculation is based on a faulty

⁹ DHR cites *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 104 (2010) (*Suncor*) (citing *Williams Pipe Line Co.*, Opinion No. 154, 21 FERC ¶ 61,260, at 61,584 (1982) (stating, “[o]il pipeline rate regulation is not a consumer-protection measure. It probably was never intended to be.”).

¹⁰ DHR cites *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 109 (2010).

¹¹ 49 App. U.S.C. § 1(4).

¹² DHR cites *Enbridge Pipelines (North Dakota) LLC*, 132 FERC ¶ 61,274, at P 25 (2010) (accepting revised prorationing procedure on “Enbridge North Dakota’s pipeline system [which] has been in continual prorationing since February 2006 and recent dramatic increases in crude oil production in the Williston Basin are expected to continue for the next several years”); *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 7 (2006) (accepting revised prorationing procedure on a common carrier that had been subject to prorationing continually for several consecutive months and had been experiencing significant changes in delivery patterns).

premise, especially if DHR wants to preserve its historical usage pattern to Erwinville. DHR explains that, by shutting DHR out of the seasonal propane market at Hattiesburg, Dixie eliminates that as a factor in DHR's monthly decision-making, and there is no reason to assume that it will not elect instead to direct that same number of propane barrels to Erwinville for consumption or storage at Plaquemine. DHR adds that, if its injections at Mont Belvieu remain unchanged, other shippers would not gain any additional injection capacity at Mont Belvieu. At the same time, continues DHR, there may be less propane available to serve the Hattiesburg market because any additional barrels of propane that DHR could have moved to Hattiesburg under Dixie's current injection capacity allocation policy would remain in Erwinville.

27. Additionally, DHR argues that any other long-haul shipper on the Dixie system has the same opportunity as DHR to build up its historical volumes to take advantage of the current injection capacity allocation policy. DHR explains that a traditional long-haul shipper's historical volume will be less than DHR's if it shipped a smaller number of propane barrels and/or only shipped propane during certain months of the relevant 12-month period. DHR contends that the traditional long-haul shipper's historical volume is a result of its business model, not an inherent unfairness in Dixie's current capacity allocation policy.

28. DHR claims that Dixie's proposed tariff revision is not just and reasonable because it is anti-competitive. DHR states that it will not have shipped propane to Hattiesburg during the winter of 2011/2012 because of the relatively warm weather in the Southeastern U.S. Therefore, continues DHR, under the proposed tariff revision, it would not be able to ship propane on Dixie to Hattiesburg during subsequent winters based on its historical shipments to Erwinville. DHR further asserts that the proposed revision will eliminate a competitor to the long-haul shippers (including a Dixie affiliate) selling propane in Hattiesburg. DHR suggests that some of the long-haul shippers may have agreed to a plan to eliminate a third competitor, in violation of section 1 of the Sherman Act.¹³

29. DHR states that ICA section 3(1)¹⁴ requires common carriers to provide service to shippers without undue discrimination or preference. DHR rejects Dixie's claim that the proposed tariff revision is facially neutral and fair to all shippers, arguing that the revision will uniquely impact DHR.

30. DHR points out that it asked Dixie to provide a hypothetical example of each shipper's earned injection allocation at Mont Belvieu for delivery to Hattiesburg and

¹³ 15 U.S.C. § 1.

¹⁴ 49 App. U.S.C. § 3(1).

points east had the revised allocation procedure been effective in February 2012. DHR states that Dixie claimed that the proposed tariff revision would not confer a net benefit on its affiliate; however, it failed to show that the proposed tariff revision would not be unduly discriminatory as applied to DHR. DHR asserts that a cursory review of the data Dixie provided could lead to the conclusion that Dixie's affiliate might be able to ship almost the same number of barrels to Hattiesburg during future winters (beginning with the winter of 2011/2012) under the proposed tariff revision as it has shipped under the current tariff. However, continues DHR, Dixie's affiliate actually will be able to ship significantly more to Hattiesburg because the short-haul destination to which Dixie's affiliate ships will not be under injection allocation to Hattiesburg and points east.

3. Propane Group

31. Propane Group supports Dixie's proposed tariff change and submits that it is in the best interests of Dixie's shippers as a whole. Propane Group states that its members traditionally have moved propane from origins in Texas and Louisiana to destinations across the Southeast from Mississippi to North Carolina and that they have used the Dixie system for decades. Propane Group describes its members as mostly long-haul shippers that use the Dixie system primarily in the high demand winter months. However, Propane Group states that its members recently have experienced interruptions in service, which Propane Group believes is caused by DHR tying up capacity during the winter months when that capacity is most needed.

B. Reply Comments

1. Dixie

32. Dixie asserts that it is not attempting to restrict capacity brokering; therefore, *Suncor* does not require the Commission to reject the proposed rule.¹⁵ Further, Dixie accepts DHR's explanation that it ships propane to Erwinville primarily to supply its affiliate's petrochemical plant rather than to build up a volume history that will permit it to ship propane to Hattiesburg during periods of peak demand. Nevertheless, continues Dixie, DHR currently has the ability to use its control over injection capacity to restrict the ability of the traditional long-haul shippers to move their product to Hattiesburg and points east. Moreover, adds Dixie, when DHR does not use its full allocation, it adversely affects other shippers.

¹⁵ Dixie cites *Suncor Energy Marketing Inc.*, 132 FERC ¶ 61,242, at P 104 (2010) (rejecting proration policy that sought to eliminate brokering, which the Commission held was permissible under the ICA).

33. Dixie is not persuaded by DHR's claim that it has not forced shippers to sell propane to it at a discount at Mont Belvieu or to buy propane from it at a premium above the Hattiesburg price. Dixie states that the winter price differential between Mont Belvieu and Hattiesburg can exceed the transportation rate between those two locations so that a shipper such as DHR that controls capacity on Dixie is able to earn a profit by purchasing propane at Mont Belvieu and selling it for more at Hattiesburg (even at the prevailing Mont Belvieu and Hattiesburg prices). Thus, continues Dixie, shippers that cannot obtain sufficient capacity cannot earn these profits and may be forced to purchase propane from shippers such as DHR that control the capacity. Dixie also challenges DHR's assertions that there is no evidence that: (1) traditional long-haul shippers will leave the system if the new rule is not accepted; (2) those shippers have no viable alternatives to Dixie; or (3) Dixie has not shown that it would be harmed by their departures. Dixie acknowledges that it had periods of capacity constraint before DHR became a shipper and that it has been able to avoid prorationing during several recent winter months, likely because of warmer weather.

34. Dixie next addresses DHR's argument that the proposed rule change would not necessarily give traditional long-haul shippers any greater access to capacity because there is no reason to assume that DHR will not direct the same volumes into the Erwinville delivery point for consumption or storage at Dow Chemical's plant. On the contrary, states Dixie, if DHR is no longer able to apply its entire historical allocation to winter movements to Hattiesburg, it is likely to ship only that amount of propane needed for feedstock at the Dow Chemical plant.

35. Dixie argues that DHR is not eliminated as a competitor from the Hattiesburg market because it can always choose to ship propane to Hattiesburg and build up a volume history like any other shipper. Further, Dixie denies that the proposed rule is intended to uniquely impact DHR or that it will benefit a Dixie affiliate.

36. Dixie also rejects DHR's allegation that the proposed change is discriminatory because it does not affect certain short-haul movements that begin at origin points located between Mont Belvieu and Hattiesburg (e.g., at Sulphur, Anse La Butte, or Grangeville, Louisiana) and end at Hattiesburg or points east of Hattiesburg. Dixie emphasizes that the capacity constraint occurs on the initial segment between Mont Belvieu and Sulphur, so that shippers moving propane from Hattiesburg to points east do not contribute to the capacity constraint.

2. DHR

37. DHR emphasizes that Dixie's proposal is not intended to remedy an operational problem on its system. DHR points out that Dixie chose to adopt historical throughput-based prorationing policy and that its current injection capacity allocation policy is working as intended by honoring a shipper's historical volumes for allocation

purposes. DHR maintains that any Dixie shipper can secure a greater allocation of the injection capacity at Mont Belvieu by building up its own historical volumes.

38. DHR again alleges that Dixie is seeking to control shipping during periods of constraint by eliminating DHR as a competitor. DHR emphasizes that, if it continues to inject the same amount of propane at Mont Belvieu, but ships all of the volumes to Erwinville (because it is precluded from shipping propane to Hattiesburg), other shippers would not gain any additional injection capacity at Mont Belvieu. DHR contends that it cannot control Mont Belvieu injection capacity because no shipper controls that capacity.

39. DHR also challenges Dixie's claim that DHR has the ability to drive up the market price of propane in Hattiesburg because it shipped less propane than its allocation during certain months when the system was on injection allocation. DHR explains that various factors may influence its decision to ship to Hattiesburg, including the actual wholesale demand for propane in Hattiesburg, offers from EPOLP to sell it propane in Louisiana after the original nominations are made, and unexpected plant problems or changes in the favored feedstock.

40. DHR again points to the system constraints that occurred before it became a shipper, fewer injection allocations at Mont Belvieu, and its declining shipments on Dixie in recent years. Moreover, adds DHR, some of Dixie's allegations, such as competitive risk to its system, are not even relevant to common carrier pipelines under the ICA.

41. Finally, DHR states that Dixie has failed in its attempt to demonstrate that its proposed revision would not be unduly discriminatory or preferential as required by ICA section 3(1)¹⁶ by alleging that its affiliate, EPOLP, also would be adversely affected by the proposed change. DHR argues that the short-haul destination to which EPOLP ships would not be subject to injection allocation, and in any event, Erwinville is not an origin on the pipeline. Therefore, continues DHR, not only would Dixie's affiliate still be able to ship all of its Mont Belvieu injection allocation to Hattiesburg and points east, EPOPL also would be able to ship to Hattiesburg (or points east) a significant portion of the propane that DHR would have shipped to Hattiesburg, but for the proposed tariff revision (assuming that DHR does not nominate that amount of propane to Erwinville).

3. Propane Group

42. Propane Group maintains that DHR's comments raise questions as to the nature of its own operations and whether they should be subject to the Commission's jurisdiction. Propane Group cites DHR's explanation of the process that goes into its shipping decisions. According to Propane Group, if DHR determines that one of the feedstocks

¹⁶ 49 App. U.S.C. § 3(1).

available to Dow Chemical, such as propane, is unfavorable, it can choose from among a variety of options (or a combination thereof), including: (1) selling into the Mont Belvieu market; (2) selling to other petrochemical companies directly; (3) storing for later consumption; (4) selling into the Louisiana market; or (5) selling into the Hattiesburg market.

43. Propane Group observes that DHR stated that it has an eight-inch proprietary pipeline from Mont Belvieu with a capacity of approximately 62,000 bpd that supplies the Dow Chemical facility. Further, states Propane Group, DHR has stated that it prefers to use that line because it is more expensive to ship propane on Dixie than it is to move to Erwinville by other means. In fact, continues Propane Group, DHR has an extensive pipeline network in the U.S. Gulf Coast, operating over 3,000 miles of pipeline, as well as having storage accessible in the Erwinville/Plaquemine area.

44. Propane Group contends that the Commission should investigate the nature of DHR's pipeline network. Propane Group states that the "essential character" of the transportation establishes the determination as to whether a transportation service is interstate or intrastate in nature.¹⁷ Further, states Propane Group, the Commission's general policy is that all interstate-related product movements are to be considered jurisdictional unless the facts reflect a sufficient break in the continuity of transportation such that a shipper does not have a fixed and persisting intent to move product in interstate commerce.¹⁸ In particular, continues Propane Group, where a pipeline or other facility is simply a "link in the chain of interstate transportation," the interstate character of transportation will not be broken.¹⁹ Propane Group asks the Commission to order DHR to show cause why it should not be required to file tariffs and rates governing this transportation, especially given its status as a competing pipeline to Dixie.

45. Propane Group asserts that DHR's interest in Dixie shipments is subservient to its petrochemical operations and does not deserve special protection. According to Propane Group, DHR's decisions regarding the shipment of propane on Dixie are entirely by-products of its decisions as to how to maximize the profit of its affiliated petrochemical plants so the change in Dixie's proration policy will not harm DHR. By

¹⁷ Propane Group cites *Atl. Coast Line R.R. Co. v. Standard Oil Co.*, 275 U.S. 257, 268 (1927); see also *Baltimore & Ohio Southwestern R.R. Co. v. Settle*, 260 U.S. 166 (1922).

¹⁸ Propane Group cites *Texaco Ref. & Mktg., Inc. v. SFPP, L.P.*, 80 FERC ¶ 61,200 (1997), order denying reh'g, 81 FERC ¶ 61,388 (1997).

¹⁹ Propane Group cites *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 522 (1911).

contrast, continues Propane Group, the current allocation policy adversely affects shippers whose primary business requires the long-haul shipment of propane on Dixie. Propane Group maintains that the Commission has a duty to ensure that pipelines treat all shippers fairly, which Propane Group believes includes protecting long-haul shippers from undue preferences requested by short-haul shippers. Finally, states Propane Group, DHR's claims that long-haul shippers may have violated the Sherman Act through unspecified "arrangements" with EPOLP are unsupported and should be dismissed.

Commission Analysis

46. The tariff section at issue in this proceeding currently provides as follows: "Injections at Hattiesburg and origin points West of Hattiesburg will be allocated based on Shipper's historical volume at those origins. Injections at origin points East of Hattiesburg will be allocated based on Shipper's historical volume at those origins." This clearly allows a shipper's injection history from Mont Belvieu to be applied in calculating its allocation of available injection capacity at Mont Belvieu in periods of prorationing. There appears to be no genuine question that DHR has established its injection allocation by complying with Dixie's tariff in all respects. It does not in itself amount to any preference that is undue because all shippers had the right to ship in such a manner as to obtain an historical injection allocation based on their shipments.

47. The proposed tariff revision provides as follows: "During periods of injection allocation, a Shipper's historical volume to a specific destination will not be able to be used for movements east of that destination; provided however, for purposes of injection allocation, both the Hattiesburg destination and all destinations east of Hattiesburg will be considered as one destination." Despite Dixie's claims to the contrary, it appears that Dixie's proposal to revise its current prorationing methodology retroactively undermines the prior allocation history of a particular shipper, and DHR is the primary, if not the only, shipper that would be impacted adversely by the application of the proposed revision to Dixie's tariff.

48. ICA section 3(1) provides in part as follows:

It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, . . . or any particular description of traffic . . . or to subject any particular person, company, . . . or

description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . .²⁰

49. The Commission acknowledges that it affords pipelines considerable latitude in developing methods for allocating pipeline capacity in periods of excess demand for the capacity.²¹ However, Dixie's proposal attempts to expand that latitude beyond the limitations established in the ICA by unjustly subjecting DHR to "undue or unreasonable prejudice or disadvantage."

50. Dixie bears the burden of proof to demonstrate that its proposal is just and reasonable and not unduly discriminatory. It has not met that burden here. The focus of its post-technical conference comments is its claim that the current injection prorationing methodology gives DHR an unfair preference. Specifically, Dixie asserts that the current methodology allows DHR to rely on its shipments from Mont Belvieu to Erwinville to give it the ability to tie up capacity to Hattiesburg when DHR finds that movement more profitable than shipping propane to Erwinville to serve as a feedstock for Dow Chemical's plant near that destination.

51. As DHR has pointed out, the current injection allocation provision allows any long-haul shipper on Dixie's system to make the decision to build up a shipping history that would permit it to obtain a greater share of allocated injection capacity during periods of prorationing. Thus, it appears that Dixie's current tariff provision is neutral because the ability to move propane on Dixie from Mont Belvieu during periods of constraint depends entirely on the shippers' own business decisions. Further, Dixie has not shown that its current methodology hampers the physical operation of its system during periods of injection allocation and that the proposed methodology would remedy any such situation.

52. Dixie also contends that long-haul shippers are responsible for a greater share of barrel-miles and a greater share of its revenue. Dixie asserts that, if those shippers leave the system, Dixie will be harmed. This claim is speculative, and at any rate, Dixie's attempt to favor certain shippers is contrary to the protections established in the ICA.

²⁰ 49 U.S.C. App. § 3(1). ICA section 1(4) requires that carriers provide transportation upon reasonable request therefor and that they make reasonable rules and regulations with respect to their operations. 49 U.S.C. App. § 1(4).

²¹ *E.g., Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004) ("There is no single method of allocating capacity in times of excess demand on oil pipelines should have some latitude in crafting capacity allocation methods to meet circumstances specific to their operations.").

53. Further, Dixie argues that the ability of a single shipper to tie up capacity at the pipeline's Mont Belvieu origin gives that shipper the ability to control the price of propane at Hattiesburg and points east. It is not at all clear from the record that DHR is influencing the propane price at Hattiesburg or Mont Belvieu any more than other market participants. Moreover, these claims are irrelevant in determining whether the proposal is just and reasonable and operates in a not unduly discriminatory manner. The fact that DHR has established a history of injections that result in a particular allocation of capacity under Dixie's own prorationing provisions is not in itself sufficient to establish a just and reasonable basis for changing that policy. Upon consideration of all the arguments and counterarguments following the technical conference, it appears to the Commission that all shippers had an equal opportunity to build a shipping history under the existing tariff and still do. As provided in section 3(1) of the ICA, a common carrier cannot subject a shipper to any undue or unreasonable prejudice or disadvantage, and Dixie's proposal appears to do just that. For all of the above reasons, the Commission cannot find that the proposal is just and reasonable and not unduly discriminatory, and must reject FERC Tariff No. 99.1.0.

54. Finally, both DHR's allegation that Dixie and other long-haul shippers may have violated the Sherman Act and the Propane Group's allegation that DHR's operation of its proprietary pipeline is interstate in nature are beyond the scope of this proceeding.

The Commission orders:

FERC Tariff No. 99.1.0 is rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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