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Plantation Pipe Line Co. v. Colonial Pipeline Co.
Order Dismissing Complaint
104 FERC ¶ 61,271 (2003)

Plantation Pipe Line Company (Plantation) filed a complaint against Colonial Pipeline Company (Colonial), alleging that Colonial had violated ICA Section 3(4) by refusing to allow an interconnection between the Plantation and Colonial pipeline systems at Greensboro, North Carolina. (at 61,901). Plantation requested that the Commission force Colonial to cooperate in the installation of the interconnection. Colonial alleged that the Commission lacked the jurisdiction to grant the relief sought by Plantation. Colonial also contended that ICA Section 3(4) created obligations "only among connecting carriers, *i.e.* only among carriers that already have connected voluntarily, and that the section cannot be interpreted to give the Commission authority to compel physical connections between oil pipelines." (at 61,903).

In order to reach a decision, the Commission had to interpret its authority under ICA Section 3(4). The Commission examined: (1) the history of oil pipeline regulation, (2) the language of ICA Section 3(4), (3) the Supreme Court's decision in Alabama & Vicksburg Ry. v. Jackson & Eastern Ry., 271 U.S. 244 (1926), and (4) the Court of Appeals decision in Farmers Union Central Exchange v. Federal Energy Regulatory Commission, 584 F.2d 408 (D.C. Cir. 1978). The Commission concluded that there was no support for Plantation's assertion that oil pipelines should be regulated as strenuously as other common carriers. Looking at the plain language of the statute, the Commission determined that the section did not grant it the authority to order interconnections.

Accordingly, the Commission dismissed Plantation's complaint.

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COMM-OPINION-ORDER, 104 FERC ¶61,271, Plantation Pipe Line Company v. Colonial Pipeline Company, Docket No. OR03-4-000, (September 11, 2003)

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Plantation Pipe Line Company v. Colonial Pipeline Company, Docket No. OR03-4-000

[61,901]

[¶61,271]

Plantation Pipe Line Company v. Colonial Pipeline Company, Docket No. OR03-4-000

Order Dismissing Complaint

(Issued September 11, 2003)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. On May 15, 2003, Plantation Pipe Line Company (Plantation) filed a complaint against Colonial Pipeline Company (Colonial) pursuant to Sections 3(4), 13(1), 15(1), and 15(3) of the Interstate Commerce Act (ICA),[1] Rule 206 of the Commission's Rules of Practice and Procedure,[2] and Section 343.2(c)(3) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings.[3] Plantation asserts that Colonial has violated ICA Section 3(4) by refusing to allow an interconnection between the Plantation and Colonial pipeline systems at Greensboro, North Carolina.[4] In the complaint, Plantation asks the Commission to direct Colonial to cooperate in the installation of the interconnection, and upon completion of the interconnection, to afford through routes on Colonial's system for volumes originating from Plantation at the interconnection.

2. As discussed below, the Commission will dismiss the complaint because it lacks jurisdiction to compel Colonial to interconnect with Plantation's pipeline system. This order is in the public interest because it appropriately describes the scope of the Commission's jurisdiction over oil pipelines, consistent with the level of regulation of the oil pipeline industry established by Congress.[5]

Background

3. Both Plantation and Colonial are major interstate oil pipeline common carriers. Plantation states that it transports petroleum products over its 3,100-mile system, which originates at Baton Rouge, Louisiana, and includes a mainline extending from Collins, Mississippi, to Greensboro, North Carolina. Plantation explains that it receives petroleum products from refineries in Louisiana and Mississippi, from Gulf Coast marine terminals, and from interconnections with Colonial at Collins, Mississippi, and Helena, Alabama, and transports the products to 130 terminals in a number of southern and southeastern states.

4. Plantation further states that Colonial is the nation's largest transporter of refined petroleum products, with a system encompassing approximately 2,886 miles of mainlines, 2,196 miles of stub-lines, and 192 miles of delivery lines. Plantation observes that Colonial serves refineries at origin points in the Western Gulf Coast area through two parallel mainlines originating at Houston, Texas, and ending at a tank farm at Greensboro. However, continues Plantation, Colonial has two additional mainlines extending northward from Greensboro, with one terminating near Baltimore, Maryland, and the other terminating in the New York Harbor area. Plantation also explains that Colonial delivers large quantities of petroleum products to Department of Defense facilities, marine and truck terminals, airports, other pipelines, power generating plants, and distribution facilities.

5. Plantation states that its system parallels the Colonial system from Collins to Greensboro and that the mainlines of the two companies typically are only a few miles apart. Because of this, continues Plantation, many terminals on the Plantation system also can receive deliveries from Colonial. Plantation contends that Colonial's

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lines from Collins to Greensboro occasionally become capacity-constrained during seasonal peak periods, requiring Colonial to prorate shipments on its system. In contrast, Plantation emphasizes that its own system between these points typically has excess capacity throughout the year.

6. Plantation states that it proposed an interconnection between the Colonial and Plantation systems at Greensboro where both systems go into break-out tankage. According to Plantation, the companies' break-out tankage is approximately one mile apart, but currently there is no connection between these facilities.[6] However, Plantation asserts that a connection between the

[61,902]

systems would allow Colonial's shippers to utilize excess Plantation capacity when Colonial's system between Collins and Greensboro is constrained. Plantation further states that, in their negotiations relating to the proposed interconnection, Colonial favored a lease arrangement to allow its shippers to gain access to Plantation's excess capacity. However, continues Plantation, Colonial insisted that any use of the proposed interconnection and Plantation's capacity must be limited to deliveries at destinations where Colonial is authorized to charge market-based rates. Plantation notes that Colonial sought a declaratory order from the Commission granting certain regulatory assurances, although Colonial later withdrew the petition.

7. Plantation claims that it offered: (1) to pay all reasonable costs of designing and constructing the interconnection facilities; (2) to construct the interconnection to accommodate the configuration and operations of Colonial's system; and (3) to ensure that the interconnection would permit shippers to meet the requirements of Colonial's rules and regulations tariff. However, Plantation alleges that Colonial frustrated its efforts to obtain the connection; therefore, Plantation filed the instant complaint.

Notice, Interventions, and Answers

8. Public notice of Plantation's complaint was issued on May 16, 2003, with interventions, protests, and Colonial's answer due June 4, 2003. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, timely, unopposed motions to intervene in this proceeding would be granted;[7] however, as discussed below, Colonial opposes the motions to intervene filed in this proceeding.

9. All three companies seeking intervention state that they are shippers on the Colonial and Plantation pipeline systems. ExxonMobil Oil Corporation (ExxonMobil) supports the proposed interconnection, indicating that it would utilize that facility to ship additional volumes on Plantation's system that cannot be accommodated on Colonial's system during peak periods. Murphy Oil USA, Inc. (Murphy) and Placid Refining Company LLC (Placid) filed motions to intervene out of time. Both Murphy and Placid support the proposed interconnection, which they maintain would increase their transportation options.

10. In an answer to the motions to intervene, Colonial alleges that movants have neither the type nor magnitude of interest in this matter that would warrant their intervention. Colonial asserts that an affiliate of ExxonMobil is a major (49 percent) shareholder of Plantation, so that ExxonMobil's entire corporate family would benefit directly from the increased long-haul revenues that Plantation could divert from Colonial as a result of the interconnection. Further, Colonial opposes the motions of Murphy and Placid to intervene out of time, arguing that they have not shown good cause for their failure to file timely motions to intervene and disputing their claims that existing access to Colonial's system at Collins is inadequate to meet their needs. Colonial emphasizes that all of the shippers seeking intervention have the ability to access all of the destinations served by Colonial and that they have not claimed otherwise.

11. The Commission will grant the motions to intervene in this proceeding. Part 343 of the Commission's Rules of Practice and Procedure contains the procedural rules applicable to oil pipeline proceedings, including complaints.[8] However, Section 343.2(a) establishes that interventions are governed by Rule 214,[9] which provides that a person seeking intervention must show, for example, an interest as a customer that may be directly affected by the outcome of the proceeding. The Commission finds that all three movants have made a sufficient showing that, as customers of Colonial and Plantation, they have an interest in the outcome of this proceeding. While Colonial also asserts that Placid and Murphy have not shown good cause for failing to seek intervention in a timely manner, the Commission grants their motions to intervene out of time. The Commission finds that

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granting these motions at this early stage of the proceeding will not delay or disrupt the proceeding, nor will it result in any prejudice to or additional burden on Colonial.

12. Colonial filed its answer to the complaint on June 4, 2003. Colonial also filed a Motion for Summary Disposition of, and to Dismiss, Complaint, which is discussed in greater detail below. Colonial asserts that the Commission lacks jurisdiction to require the interconnection. However, even if the Commission concludes that it has jurisdiction to order the interconnection, Colonial argues that there are no compelling reasons to do so because its system is not constrained. Colonial also maintains that requiring the interconnection at Greensboro would deprive it of significant long- haul revenue, and further, that such a decision would constitute an improper taking of its property, set a dangerous precedent that would discourage investment in oil pipeline infrastructure, and create additional regulatory burdens for the Commission.

13. Both Colonial and Plantation filed a number of counter pleadings. While the Commission's rules generally prohibit such pleadings, the Commission will accept the responsive pleadings filed in this proceeding, as they have provided the

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Commission additional information on which to base its decision.

Discussion

14. The Commission will dismiss Plantation's complaint because the Commission lacks jurisdiction under the ICA to compel the interconnection that Plantation seeks. As the complainant in this proceeding, Plantation bears the burden of demonstrating in the first instance that the Commission has the authority to grant the relief requested. Because Plantation has failed to meet this threshold legal requirement, the Commission need not address the other issues raised by the parties.

A. *Plantation's Jurisdictional Arguments*

15. Plantation argues that the Commission has the authority to order the interconnection. According to Plantation, during the time the Interstate Commerce Commission (ICC) regulated oil pipelines, it described the intent of Congress reflected in ICA Section 3(4) as obligating carriers to unite in a national system, establish through routes, and furnish necessary facilities for transportation.[10] Plantation acknowledges that the ICC order it cites addresses railroads, but Plantation argues that the requirement also applies to oil pipelines. Moreover, continues Plantation, the ICC consistently interpreted Section 3(4) as authorizing it to order an interconnection between carriers upon complaint by a carrier or shipper.[11] According to Plantation, in assessing whether it should order an interconnection, the ICC employed a balancing test,[12] examining such factors as transportation efficiency,[13] the adequacy of existing routes, and the overall balance of benefits and detriments among shippers and pipelines.[14] While Plantation admits that the ICC declined to order an interconnection in the Breckenridge case, Plantation submits that the balancing analysis utilized in that case should apply to the instant complaint. Plantation maintains that, in Farmer's Union,[15] the Court of Appeals exempted some oil pipeline duties from lighter regulation, holding instead that they are the same as the duties of railroad carriers. In particular, emphasizes Plantation, one of the duties excluded from light-handed regulation was the duty to furnish or allow continuous transportation.[16]

16. The remainder of Plantation's complaint and the bulk of its responsive pleadings consist of arguments supporting Plantation's assertion that the interconnection is warranted and challenging Colonial's position on all other issues. As relevant here, Plantation disputes Colonial's interpretation of the Supreme Court's decision in *Alabama & Vicksburg Ry. v. Jackson & Eastern Ry.* (*Alabama & Vicksburg*).[17] Plantation also asserts that there are disputed issues of material fact in this proceeding and, therefore, that dismissal of the complaint is unwarranted.

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B. *Colonial's Answer*

17. Colonial seeks summary disposition, arguing that there is no factual or legal basis for the complaint. With respect to the jurisdictional issue, Colonial submits that ICA Section 3(4) creates obligations only among connecting carriers, *i.e.*, only among carriers that already have connected voluntarily, and that the section cannot be interpreted to give the Commission authority to compel physical connections between oil pipelines.[18] Colonial emphasizes that ICA Section 3(4) simply states that carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines," but that it does not expressly grant the Commission any power whatsoever.[19] Colonial also points out that Plantation has cited no case, at the agency or judicial level, in which an oil pipeline has sought or has been granted the relief requested here.

18. Moreover, continues Colonial, the Supreme Court has held that the statutory language on which Plantation relies "did not confer upon the Commission authority to permit and to require the construction of the physical connection necessary

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to effectuate that interchange."[20] Rather, states Colonial, the Supreme Court explained as follows:

> It was not until [the] Transportation Act, 1920 ... conferred upon the Commission additional authority, that it acquired full power over connections between interstate carriers. By Paragraphs 18-20 added to §1, it vested in the Commission power to authorize constructions or extensions of lines, although the railroad is located wholly within one State; and by Paragraph 21 authorized the Commission to require the carrier "to extend its line or lines."[21]

Thus, argues Colonial, Congress clearly knew how to confer regulatory authority to compel a common carrier to grant a competitor access to its facilities, but it declined to do so in the case of oil pipelines.[22]

19. Colonial maintains that the purpose of the Transportation Act of 1920 was to amend the original ICA to establish a more pervasive regulatory scheme that would foster a new, more efficient system of railroads.[23] Colonial asserts that the authority conferred on the ICC by Sections 1(18) through 1(22) of the Transportation Act of 1920 was among the means to that end,[24] but that those sections never applied to oil pipelines and, in any event, except for Section 1(18), were repealed in 1976 before jurisdiction over oil pipelines was transferred to this Commission.[25]

20. Colonial submits that Plantation ignores the significance of Section 1(21) in the ICC decisions Plantation cited. According to Colonial, those cases compelled involuntary connection of railroad lines, but the ICC, consistent with *Alabama v. Vicksburg*, relied on Section 1(21) as well as Section 3(4) to order the interconnection. For example, states Colonial, in *Wisconsin Power & Light Co. v. Chicago & North Western Ry.*,[26] the ICC ordered the interconnection by invoking its authority under the Transportation Act of 1920, finding that Section 3(4), "in light of the Transportation Act of 1920, confer[s] upon us power to require connections between carriers engaged in interstate commerce."[27] Colonial also cites Missouri Pacific R.R. Co. v. Louisiana & Arkansas Ry.,[28] where the ICC stated that "[u]nder the first portion of [Section 3(4)] the Commission has the power in conjunction with Section 1(21) to order an offending carrier to install the physical facilities or to institute the operations necessary to effect an interchange of traffic."[29] Thus, Colonial urges the Commission to find that the cases cited by Plantation do not support its claim that the Commission has the authority to order the requested interconnection.[30]

D. *Commission Analysis*

21. The Commission will dismiss Plantation's complaint. Plantation's arguments and evidence fail to meet the threshold issue in this case: the Commission's jurisdiction to grant the requested relief. As discussed below, the Commission concludes

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that neither the ICA nor judicial or agency precedent has invested the Commission with authority to compel an interconnection between oil pipelines. Hence, it is unnecessary for the Commission to address issues such as, *inter alia*, (1) possible constraints on Colonial's system; (2) the extent of any potential intrusion on Colonial's property required to accomplish the interconnection; (3) whether the requested interconnection would permit Plantation to short-haul Colonial, (4) whether the Commission should establish through routes; and (5) whether the public interest would be served by such a connection.

22. Regulation of oil pipelines commenced with enactment of the Hepburn Act of 1906,[31] which amended the existing ICA. However, while the ICC regulated oil pipelines, the pipelines "never faced the degree of regulation to which the vehicular common carriers were subject."[32] In 1977, jurisdiction over oil pipelines was transferred to this Commission by the Department of Energy Organization Act.[33] The Commission now regulates oil pipeline common carriers pursuant to the provisions of the ICA as they existed on October 1, 1977, although the Energy Policy Act of 1992[34] further relaxed the Commission's ratemaking authority over oil pipeline rates. The history of oil pipeline regulation since this Commission assumed jurisdiction over the pipelines shows a continuing Congressional intent that such regulation should be less stringent than the regulation of other common carriers. In the instant case, complainant Plantation bears the burden of demonstrating that the Commission has jurisdiction under the ICA to compel Colonial to accept an interconnection that Colonial opposes. The Commission finds that Plantation has failed to carry that burden. None of the statutory, judicial, or agency authorities cited by Plantation empowers or requires the Commission to order Colonial to interconnect with Plantation.

23. Plantation claims that, because the ICA allowed the ICC to order interconnections between railroads, that power extended as well to interconnections between oil pipelines. However, the Commission disagrees with this expansive reading of the ICA. First, the plain language of ICA Section 3(4) does not allow the Commission to order the establishment of interconnections. That section states as follows:

All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter....

This section clearly requires carriers to provide appropriate facilities to allow the interchange of traffic between their existing lines and existing connecting lines. The section also requires carriers to refrain from discriminating among connecting lines. It does not grant a carrier the unilateral right to interconnect with another pipeline, and it does not afford the Commission power to order –or even to approve –an interconnection.

24. The Supreme Court's decision in *Alabama & Vicksburg* mandates this interpretation of Section 3(4). In that case, the Supreme Court stated:

The [ICA] provided, by what is now Paragraph [4] of §3, that carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines;" but it did not confer upon the [ICC] authority to permit and to require the construction of the physical connection needed to effectuate such interchange. Paragraph 9 of §1, introduced by Act of June 8, 1910, ... required a carrier engaged in interstate commerce to construct a switch connection "upon application of any lateral, branch line" and empowered the [ICC] to enforce the duty; but that provision was held applicable only to a line already constituting a lateral branch road.... The Act of August 24, 1912, ... amending §6 of the [ICA], empowered the [ICC] to require railroads to establish physical connection between their lines and the docks of water carriers; but the provision did not extend to connections between two rail lines. It was not until Transportation Act, 1920, ... conferred upon the [ICC] additional authority, that it acquired full power over connections with interstate carriers. By Paragraphs 18-20 added to §1, it vested in the [ICC] power to authorize constructions or extensions of lines, although the railroad is located wholly within one State; and by Paragraph 21 authorized the [ICC] to require the carrier "to extend its line or lines."[35]

25. Plantation has cited a number of ICC cases involving railroads, but none of these cases, almost all of which

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were decided after the Transportation Act of 1920 and long before this Commission assumed jurisdiction over oil pipelines,

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involves oil pipelines or persuades the Commission that it has the authority to order interconnections between such pipelines. Moreover, while Plantation is correct that ICA Section 15(3) specifically allows the Commission to establish through routes, that section applies in instances where the carriers already are connected, and no corresponding authority allowing the Commission to compel interconnections is found in Section 3(4).

26. In *Farmers Union*, the Court of Appeals recognized that oil pipelines were not subject to the same degree of regulation as other common carriers. Plantation has contended that *Farmers Union* supports its position that the Commission should order the interconnection with Colonial, but the Commission disagrees. The Court of Appeals' examples of regulatory concepts applicable to oil pipelines, as well as to other common carriers, do not include a reference to Section 3(4) on which Plantation principally bases its claim.[36]

27. *Farmers Union* also includes statements by the Court of Appeals that support the concept of light-handed regulation of oil pipelines. Although these statements are applicable to ratemaking, they are consistent with the Commission's determination here that it cannot extend its jurisdiction in a fashion that is not authorized by the ICA or by any precedent. For example, the Court of Appeals stated as follows:

To the extent that economic conditions facing the oil pipeline industry have changed since 1948 --and, in light of the modern onslaught of inflation, petroleum shortages, and reliance on imports, as well as the maturing of the industry itself, we may readily assume they have --the conclusions of the ICC in its earlier cases as to appropriate rates of return are equally as much artifacts of a bygone era as is its reliance then on a valuation rate base.

Finally, the ICC's 1940's cases recede even further into the background when it is realized that the ICC has been replaced by FERC as the government agency charged with watching over oil pipeline rates.... Here, the transfer of authority has deprived us of even the possibility of endorsing ICC's attempt to develop such an approach, and, in fact, has created the likelihood that anything we say will inhibit FERC from freely developing its approach in the future.[37]

28. Additionally, the Commission has determined that it lacks jurisdiction over abandonment of service by oil pipelines.[38] In reaching that conclusion, the Commission stated in part as follows:

Post 1906 amendments to the Interstate Commerce Act gave the agency that administered that statute a veritable arsenal of regulatory controls over the construction of new facilities, the abandonment of service, the quality of service, and the finances of the carriers. But these augmented powers were not granted with respect to oil pipelines. What we have here is pure rate control unaccompanied by other restraints on entrepreneurial freedom. Legislators intent on rigor would, we think, have fashioned something more rigorous.[39]

Given the Commission's lack of authority over abandonment of service by oil pipelines, it would be illogical and inconsistent for the Commission to conclude here that it has the power to compel an interconnection that Colonial does not want and could abandon. Accordingly, because the Commission lacks jurisdiction to grant the requested relief, the Commission dismisses Plantation's complaint.

The Commission orders:

Plantation's complaint is dismissed.

[1] 49 U.S.C. App. §§3(4), 13(1), 15(1), and 15(3) (1988).

[2] 18 C.F.R. §385.206 (2003).

[3] 18 C.F.R. §343.2(c)(3) (2003).

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[4] ICA Section 3(4) provides as follows:

All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water, subject to Chapter 12 of this Appendix.

[5] *See, e.g., Farmers Union Central Exchange v. FERC*, 584 F.2d 408, 413 (D.C. Cir. 1978) (*Farmers Union*).

[6] Plantation states that the only connection between Plantation and Colonial in the Greensboro area is via an eight-inch diameter pipeline that connects tankage owned by ExxonMobil (which itself is connected to Plantation's system) to the Colonial pipeline that serves Selma, North Carolina.

[7] 18 C.F.R. §385.214 (2003).

[8] 18 C.F.R. Part 343 (2003).

[9] 18 C.F.R. §385.214 (2003).

[10] Plantation cites *Missouri & Illinois Coal Co. v. Illinois Central R.R.*, 22 ICC 39, 46 (1911).

[11] Plantation cites *Wisconsin Power & Light Co. v. Chicago and N. Western Ry. Co.*, 220 ICC 475, 480 (1937) (ordering a connection between carriers under Section 3(4) where "circumstances and conditions warrant").

[12] *Plantation cites Sturgeon Bay v. Ann Arbor R.R.*, 313 ICC 13, 21 (1960).

[13] Plantation cites *Keyes Ry. Committee v. Beaver, Meade & Englewood R.R.*, 214 ICC 526 (1936).

[14] Plantation cites Breckenridge, *Texas Chamber of Commerce v. Wichita Falls, Ranger & Fort Worth R.R.*, 109 ICC 81, 88 (1926) (*Breckenridge*).

[15] 584 F.2d 408, 412-13 (D.C. Cir. 1978).

[16] *Id.* at 413.

[17] 271 U.S. 244 (1926).

[18] Colonial states that Section 15(3) requires one such connecting pipeline to establish a "through route" with another. However, argues Colonial, like Section 3(4), "the power to establish through routes under Section 15 (3) ... presupposes a physical connection." *Thompson v. United States*, 343 U.S. 549, 558 (1952). Colonial finds it inexplicable that Plantation would recognize the prerequisite of physical interconnection for the establishment of through routes under Section 15(3), but contend that Section 3(4), which imposes duties on carriers only in relation to "connecting lines," could somehow authorize the Commission to compel such interconnections.

[19] Colonial states that, in striking contrast to ICA Section 3(4), the Natural Gas Act contains language that very clearly grants the Commission the authority to compel a gas pipeline to interconnect: "Whenever the Commission ... finds such action necessary or desirable in the public interest, it may order any natural-gas company ... to establish physical connection of its transportation ...." 15 U.S.C. §717f(a). *See also Kuparuk Transp. Co.*, 45 FERC ¶63,006, at p. 65,042 (1988) ("Unlike natural gas pipelines, ... oil pipelines ... cannot be compelled to extend facilities or make particular physical connections (*compare, e.g.*, 15 U.S.C. §717f(G))").

[20] Colonial cites *Alabama & Vicksburg*, 271 U.S. 244, 248 (1926).

[21] *Id.* at 249.

[22] Section 1(21), entitled "Power of Commission to require adequate facilities or extension of line ...," before its

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repeal in 1976, provided as follows:

The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this chapter, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this chapter, and to extend its line or lines; *Provided*, That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public.

[23] Colonial cites *Norfolk & Western Ry. v. American Train Dispatchers Assoc.*, 499 U.S. 117,158 (1991); *Dayton-Goose Creek Ry. v. United States*, 263 U.S. 456, 478 (1924).

[24] Colonial maintains that the fact that Congress believed that the express authority it established in the Transportation Act of 1920 was necessary for the consolidation of the railroad network and the creation of a system of interconnected railroads renders irrelevant Plantation's citation of the language in *Missouri & Illinois Coal Co. v. Illinois Central R.R.*, 22 ICC 39, 46 (1911). According to Colonial, if the intent of Congress in the era preceding the Transportation Act of 1920 could have been carried out based on the provisions of the original ICA of 1887, for example, Section 3(4), there would have been no reason to enact the provisions of the Transportation Act of 1920

[25] Colonial cites Public Law 94-210 (90 Stat. 127). *See, e.g., ARCO Pipe Line Co.*, 66 FERC ¶61,159, at p. 61,313 (1994) (recognizing that the abandonment authority conferred on the ICC by the Transportation Act of 1920 does not apply to oil pipelines); *Farmers Union*, 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984).

[26] 220 ICC 475 (1937).

[27] *Id.* at 480.

[28] 332 ICC 569 (1968).

[29] *Id.* at 579.

[30] In fact, argues Colonial, Plantation cites only one case in which the ICC, purporting to rely solely on Section 3 (4), ordered two railroads to interconnect, Keyes Ry. Comm. v. Beaver, Meade & Englewood R.R., 214 ICC 526 (1936). However, Colonial maintains that the case cannot be taken at face value, as it was decided after the enactment of the Transportation Act of 1920, and hence the ICC had authority to compel connection under Section 1(21), although Section 1(21) was not expressly cited. According to Colonial, in *Breckenridge* and *Sturgeon Bay*, the requested interconnections were denied. In addition, states Colonial, the ICC had clear authority under ICA Section 6 to require railroads to establish a physical connection between their lines and the docks of water carriers. *See Alabama & Vicksburg*, 271 U.S. at 248. Moreover, claims Colonial, it is significant that these cases speak in terms of "determining whether public convenience and necessity reasonably require the establishment and maintenance of the interchange." Colonial concludes that "public convenience and necessity" is a concept and a phrase found in Section 1(21) of the ICA, not in Section 3(4).

[31] Act of June 29, 1906, c.3591, §1, 34 Stat. 584.

[32] *Farmers Union*, 584 F.2d 408, 412 (D.C. Cir. 1978). The court distinguished the more restrictive requirements applicable to other common carriers, concluding that, "[W]e may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business." 584 F.2d 413.

[33] 42 U.S.C. §§7101, *et seq.* (1988).

[34] 42 U.S.C.A. 7172 (West Supp. 1993).

[35] 271 U.S. 244 at 248-49 (1926).

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[36] *Farmers Union*, 584 F.2d 408, 412-13 (D.C. Cir. 1978).

[37] *Id.* at 416-17 (footnotes omitted).

[38] *See, e.g.*, *Williams Pipe Co.*, Opinion No. 154, 21 FERC ¶61,260, at p. 61,690 n.217 (1982), *reh'g denied*, Opinion No. 154-A, 22 FERC ¶61,087 (1983).

[39] Opinion No. 154, 21 FERC ¶61,260, at p. 61,599 (1983) (footnotes omitted). *See also ARCO Pipe Line Co.*, 55 FERC ¶61,420 (1991).

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