<u>Texaco Refining and Marketing, Inc.</u>
<u>v. SFPP, L.P.</u>
80 FERC ¶ 61,200 (1997),
<u>reh denied</u> 81 FERC ¶ 61,388 (1997)

This case concerns 3.8 miles of pipeline facilities owned and operated by SFPP, L.P. in California. These facilities provide a line from certain refineries in Sepulveda to SFPP's pumping facility at Watson station. Although SFPP charged for crude oil transportation over these facilities, SFPP did not have a tariff covering their use on file with the Commission. Texaco Refining and Marketing and ARCO Products Company filed a complaint alleging that the facilities were subject to ICA jurisdiction. The Initial Decision found that the Commission did not have jurisdiction. The Commission reversed.

The Commission concluded that the test for determining whether a portion of a movement is interstate or intrastate depends on the essential character of the movement and the intent with which the shipment was made. Here, it was determined that the shipments transported over the facilities in question are intended to, and do, travel in interstate commerce.

Texaco

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ARCO Products Company v. SFPP, L.P., Docket No. OR96-10-000
Ultramar, Inc. v. SFPP, L.P., Docket No. OR96-17-000

Order Reversing Initial Decision

(Issued August 5, 1997)

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, and Donald F. Santa, Jr.

On October March 28, 1997, the Administrative Law Judge (ALJ) issued an Initial Decision finding that the Commission did not have jurisdiction over oil movements over a 3.8 mile pipeline owned and operated by SFPP, L.P. connecting refineries at Sepulveda California to SFPP's pumping facility in Watson Station, California.[1] ATT[2] , Ultramar, Inc., and Commission staff filed Briefs on Exception to the ALJ's decision. SFPP filed a brief Opposing Exceptions. As discussed below, the Commission finds the pipeline segment jurisdictional. SFPP is required to file within 60 days of this order interstate tariffs, with its proposed rates pursuant to section 342.2 of the Commission's regulations.

Background

SFPP owns and operates oil pipelines in the Western United States, including pipelines within California and Oregon and from California to Arizona, New Mexico, and Texas. SFPP

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[29] In an order being issued in Docket Nos. RP97-291-001 and RP97-291-002 contemporaneously with the instant order, the Commission is accepting Panhandle's filing, and on rehearing of the April 11, 1997 order, reaffirming that the scheduling of capacity on the basis of the highest percentage of the maximum rate is a reasonable way of scheduling firm capacity at secondary points.

[30] *Transcontinental Gas Pipe Line Corp.*, 77 FERC ¶ 61,195 at p. 61,770 (1995); *Great Lakes Gas Transmission, L.P.*, 64 FERC ¶ 61,017 at p. 61,188 (1993); and Order No. 636-B, 61 FERC ¶ 61,272 at p. 62,013 (1992).

[31] See Third Revised Sheet No. 60.

[1] *Texaco Refining and Marketing, Inc. v. SFPP, L.P.*, 78 FERC ¶ 63,017 (1997).

[2] ARCO Products Company (ARCO), Texaco Refining and Marketing, Inc. (TRMI), and Tosco Corporation (Tosco).

maintains a pumping station at Watson Station California and has, on file, a tariff covering transportation of oil from Watson Station to various interstate designations.

In 1982, TRMI and GATX Terminals Corporation (GATX) initiated discussions with SFPP's predecessor, Southern Pacific Pipe Lines (Southern), to provide a gathering line from refineries at Sepulveda to Watson Station as well as a line to return transmix to the refiners.[3] As a result, Southern built lines known as 109 and 110 (the transmix return line). In October 1982 and April 1983, Southern signed ten year contracts with Champlin (Ultramar's predecessor) and TRMI Petroleum Company for the use of lines 109 and 110. These contracts established a rate of \$.15 per barrel, with a minimum annual guaranteed payment. The contracts also provided that should Southern receive annual revenues of more than \$860,000, the excess amount would be distributed to all shippers according to their respective volumes. In July 1983, Southern signed a similar agreement with GATX, but without the minimum guaranteed payment provision. GATX has moved product under this contract for a number of customers. Upon the expiration of the ten year contracts, SFPP signed new contracts with its customers at a \$.05/barrel rate, but without the provisions relating to minimum annual payments or distribution of excess collections.

While SFPP operates lines 109 and 110, the refiners provide the pumping necessary to move product to Watson Station. SFPP has no personnel stationed at Sepulveda, the origin of line 109; all its personnel are stationed at Watson Station.

Besides lines 109 and 110, there are other lines over which refiners can move product from Sepulveda to SFPP's facilities at Watson Station. These so-called "proprietary pipelines" move product for others and advertise their ability to move product to SFPP's Watson Station facility.[4] They do not have tariffs on file with the Commission.

On December 21, 1996 and January 25, 1996, TRMI and ARCO filed a complaint alleging that lines 109 and 110 were interstate pipelines subject to the jurisdiction of the Interstate Commerce Act (ICA) and that SFPP was operating those lines without the required interstate tariff. On August 21, 1996, Ultramar, Inc. filed a similar complaint that was consolidated with the TRMI and ARCO complaint.

ALJ's Decision and Summary of Arguments

On March 28, 1997, the ALJ issued an initial decision, concluding that complainants had failed to satisfy their burden of establishing that movements of oil along lines 109 and 110 were subject to ICA jurisdiction. The ALJ found that, although SFPP is an interstate oil pipeline, all movement of oil along lines 109 and 110 is non-jurisdictional, because these lines are extremely short, lie wholly within California, and perform a gathering function by collecting oil from refiners to bring the oil to SFPP's interstate system. He concluded that these lines provide solely an intrastate loop for the benefit of a few customers. The ALJ found a reasonable analogy between these lines and gathering lines, which are non-jurisdictional under the Natural Gas Act (NGA).

The ALJ also found that equitable considerations militate against a finding of jurisdiction over movements along these lines. He emphasized complainants' acceptance of non-jurisdictional status for 14 years and contended that the doctrine of laches should apply. He also found it would be anomalous to reclassify these lines while five other functionally equivalent lines would remain non-jurisdictional.

ATT, Commission staff, and Ultramar filed exceptions to the ALJ's decision. They contend that the ALJ's gathering analogy is inapposite since, in contrast to the NGA, the ICA contains no gathering exception, and the Commission has found transportation on oil pipeline gathering facilities jurisdictional in the past. They maintain that jurisdiction extends to movements along all pipeline facilities that are an essential link in interstate commerce and that lines 109 and 110 are such a link, carrying product destined for the interstate market.

They also argue that the equitable grounds mentioned by the ALJ do not justify denial of jurisdiction. Commission staff contend that agencies cannot waive jurisdiction on equitable grounds. ATT and Ultramar contend the contractual parties did not understand movements on lines 109 and 110 would be non-jurisdictional and, in any event, non-contractual parties (such as those using the facility through GATX) should not be bound to that determination. ATT and Ultramar contend the doctrine of laches does not apply here because SFPP has not been injured by the delay; in fact, ATT claims SFPP will be enriched. Further, all three contend laches is limited to equity and is inapplicable to a contract at law subject to a statute of limitations—which they maintain in

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[3] Transmix is the mixture of two petroleum products, such as gasoline and diesel fuel, and occurs at the interface of the products when the products are transported sequentially. The transmix mixture is unsuitable for sale or use without further refining. SFPP, exhibit No. 1, at p. 6.

[4] SFPP, exhibit Nos. 5 and 6.

this case is three years. They further argue that the jurisdictional status of movements on the alternative "proprietary" lines to Watson Station is irrelevant to the determination of jurisdiction over lines 109 and 110.

SFPP responds that the determination of jurisdiction is factual and that the cases have held that the term transportation in the Interstate Commerce Act does not include the provision of services that are not essential to the provision of common carrier service. SFPP maintains that lines 109 and 110 were constructed for the convenience of the contracting parties in bringing oil to the tariff origin point and are not essential to gain access to the interstate system. It points out that the interstate lines had been operated for 30 years without lines 109 and 110 and the proprietary lines operated by other refiners provide an adequate alternative means of getting access to Watson Station. SFPP further contends the operation of lines 109 and 110 establish that they are not essential to obtaining common carrier service.

Discussion

The Interstate Commerce Act (ICA), in pertinent part, establishes jurisdiction over "common carriers engaged in ... the transportation of oil or other commodity, except water and except natural or artificial gas, by pipeline ... from one State or Territory of the United States ....[5] It then defines "common carrier" to include "all pipe-line companies; express companies; sleeping car companies; and all persons natural or artificial engaged in such transportation for as aforesaid as common carriers for hire."[6] The reach of the ICA is not necessarily coextensive with the reach of Congress under the commerce clause, but is determined by reference to the statutory terms.[7]

The determination of jurisdiction under the ICA depends on the specific facts of the individual case. In the preeminent *Pipe Line Cases*,[8] the Supreme Court held the ICA applied to movements of oil on a pipeline even though the pipeline transported only its own oil. In this case, Standard Oil Company insisted as a condition of carriage that the owner of the oil sell the oil to Standard Oil. The Court held that it would be a "sacrifice of fact to form" if Standard Oil, by the exercise of its market power, could insist on the sale to themselves and then gain exclusion from the ICA since they were not operating as a common carrier. The Court, therefore, found that the purpose of the Act was to bring within its jurisdiction all pipelines carrying all oil offered even if the pipelines were not technically common carriers at common law. At the same time, however, the Court found the ICA did not cover a clearly interstate pipeline that transported oil from the owner's wells to its own refinery.[9]

In *United States v. Champlin Refining Company*,[10] the Supreme Court reaffirmed jurisdiction over movements on an interstate pipeline transporting oil purchased at wells solely for its own use. Although finding jurisdiction, the Court concluded that Champlin did not have to file tariffs, since no party had ever requested common carrier service from Champlin and there were ample other common carrier pipelines available.[11] In *Hunt Refining Company*,[12] the Commission similarly found the oil pipeline's gathering system jurisdictional, but granted waiver from filing and reporting requirements where the pipeline carried only its own oil and there were no immediate or prospective shippers.

However, in another line of cases, the courts, the Interstate Commerce Commission, and this Commission have held that jurisdiction may not attach when the continuity of interstate transportation ends at a terminal or storage facility so that some portion of that transportation can be considered intrastate. In *Baltimore & Ohio Southwestern Railroad Company v. Settle* (Baltimore & Ohio),[13] the Supreme Court found that the test for determining whether a portion of a movement is inter- or intrastate "depends on the essential character of the movement" and the "intent with which the shipment was made."[14] In this case, the Court found that, despite a stop in movement at one city, the shippers' intent was always to transport to their final destination so that the transportation would be considered a single interstate trip to the second destination, rather

[5] 49 U.S.C. App. § 1(1).

[6] 49 U.S.C. App. § 3(a).

[7] *Southern Pacific Transportation Company v. I.C.C.*, 565 F.2d 615, 617 (9th Cir. 1977).

[8] 234 U.S. 548 (1914).

[9] *See Valvoline Oil Co. v. U.S.*, 308 U.S. 141 (1939) (ICA applied to interstate pipeline purchasing oil at the well-head to transport to its own refinery).

[10] 341 U.S. 290 (1951)(reaffirming the Court's earlier decision in *Champlin Refining Co. v. U.S.*, 329 U.S. 29 (1946)).

[11] 341 U.S. at p. 298.

[12] 70 FERC ¶ 61,035 (1995).

[13] 260 U.S. 166 (1922).

[14] *Id.* at p. 170.

than an interstate trip to the first city and intrastate to the second.[15]

In *Atlantic Coastline Railroad Company v. Standard Oil Company*,[16] the Court reached a different conclusion. In this case, Standard Oil shipped oil products by water to a storage facility in Florida from which it transported the products solely to intrastate locations over the railroad. The railroad sought to charge interstate rates as a continuation of interstate shipments. The Court, however, concluded that the holding of the oil in the seaboard storage facilities constituted a sufficient break in the continuity of interstate transportation that the subsequent transportation was intrastate in character.[17]

Relying on ICC decisions, the Commission has found that:

> In determining the "essential character of the commerce" the factor most often relied on is the fixed and persisting transportation intent of the shipper at the time of the shipment. As applied to the type of traffic here involved, the major manifestations of this intent, or the absence thereof, may be found in the following: (1) at the time of shipment there is no specific order being filled for a specific quantity of a given product to be moved through to a specific destination beyond the terminal storage, (2) the terminal storage is a distribution point or local marketing facility from which specific amounts of the product are sold or allocated, and (3) transportation in the furtherance of this distribution within the single state is specifically arranged only after sale or allocation from storage.[18]

The Commission finds here that SFPP is obligated to file interstate tariffs governing interstate movements on lines 109 and 110. SFPP ships oil for others on lines 109 and 110. The shipments are intended to, and do, travel interstate. SFPP does not dispute that a significant quantity of the oil shipped over line 109 ultimately is destined for interstate markets. Thus, as in the *Pipeline Cases* and *Valvoline* case, jurisdiction attaches at the point at which the pipeline connects to the shipper's refineries.[19] Jurisdiction attaches to line 110 (the transmix line) since it is operated as an integrated part of line 109 and thus is part of the transportation service.

Although the ALJ recognized that the ICA does not contain an exemption for gathering as does the NGA, he concluded that the gas pipeline analogy was compelling due to a number of physical and operational distinctions between lines 109 and 110 and SFPP's admittedly interstate mainline facilities.[20] The ALJ concluded that "in sum, the evidence establishes that the primary function of lines 109 and 110 is 'gathering' as opposed to 'transportation.'"[21]

Although the gathering analogy may be attractive as a matter of policy, it cannot be determinative of jurisdiction because the ICA, unlike the NGA, does not provide for a gathering exception to the exercise of jurisdiction. The Commission has previously found movement over oil gathering lines to be jurisdictional.[22] The ICA is not concerned with the function of facilities, but with whether the movements through those facilities are interstate.

As discussed above, under the cases, all interstate movements are jurisdictional unless the facts show a sufficient break in the continuity of transportation so that shippers moving product through these lines do not have a fixed intent to move product interstate. None of the physical and operational distinctions cited by the ALJ and no other evidence in the record establishes such a break in transportation continuity.

First, the ALJ pointed out that deliveries over line 109 are at different intervals than on SFPP's mainline; SFPP schedules the mainline

[15] In *Baltimore & Ohio*, the railroad posted interstate rates to two cities, Oakley and Madisonville, as well as an intrastate rate from Oakley to Madisonville, with the interstate rate to Madisonville being more expensive than the interstate rate to Oakley plus the intrastate rate to continue to Madisonville. Shippers tried to take advantage of this situation by shipping lumber to Oakley and then, without unloading the cars, reshipping them to Madisonville within a few days. The Court concluded that there was no issue of good faith for the jury to decide. It found the parties made shipments to Oakley as a destination, but because they had no place of business there, the shipper's intent clearly was to ship to Madisonville. Hence, the interstate rate applied.

[16] 275 U.S. 257 (1927).

[17] See *Northville Dock Pipe Line Company*, Opinion No. 111, 14 FERC ¶ 61,111 (1981) (storage of 24-48 hours with the possibility of remaining several weeks is break in movement); *Interstate Energy Company*, 32 FERC ¶ 61,294 (1985) (storage with orders for delivery after oil reaches terminal is break in movement).

[18] *Hydrocarbon Trading and Transport Company, Inc. v. Texas Eastern Transmission Corporation*, 26 FERC ¶ 61,201 (1984).

[19] See *Southern Pacific Terminal Company v. I.C.C.*, 219 U.S. 498 (1911) (wholly intrastate terminal facility is jurisdictional when it provides a "link in the chain of interstate transportation").

[20] 78 FERC at p. 65,188, ¶ 7, ¶ 11.

[21] 78 FERC at p. 65,189, ¶ 11.

[22] See *Hunt*, *supra* note 12, 70 FERC ¶ 61,035 (1995).

weekly, at four cycles per month, while the refiners schedule lines 109 and 110. Due to these scheduling differentials, SFPP stores oil transported over line 109 at Watson Station pending mainline scheduling. The ALJ further found that SFPP does not operate the pumps on line 109 and it maintains no personnel at Sepulveda; the refiners pump their own oil.

But, storage by itself is not an indicia of purely intrastate movement.[23] The record shows that storage of product is a component of admittedly interstate transportation as well.[24] Moreover, regardless of who operates the pumps, where personnel are located, or how oil is scheduled, SFPP owns and operates the lines and transports oil destined for other states. The record shows no function performed at Watson Station or other facts to suggest that shippers on lines 109 and 110 do not have a fixed intent to make interstate shipments when they move product along these lines.

The ALJ also found that line 109 is the only line in SFPP's system with a separate transmix return line. On SFPP's mainlines, transmix is allocated to shippers, since it is not economical to build a separate return line. The existence of the return transmix line does not indicate that there is a break in transportation. Returning transmix over longer lines is merely economically infeasible.

The ALJ also found that movements over lines 109 and 110 were non-jurisdictional because these lines are only 3.8 miles long. The length of lines 109 and 110 does not, by itself, show that the product is not destined for interstate movement. The Commission has found that interstate movements along a line only 1,400 feet long are jurisdictional.[25] Like this case, movements along this line were destined for both inter- and intrastate destinations.

SFPP contends movements along lines 109 and 110 are non-jurisdictional citing to cases that establish that services which are not essential to interstate service are not considered transportation under the ICA. But the cases cited by SFPP are inapposite. These cases dealt principally with services such as tracking title prior to actual shipment of oil,[26] the use of stock scales for the purpose of weighing cattle, but without connection to transportation service,[27] feeding of livestock,[28] storage of produce after delivery,[29] and warehousing and auctioning services.[30] In contrast, SFPP is not providing an unrelated service; it is providing transportation.

SFPP also cites a 1922 ICC decision, *Certain-Teed Products Corporation v. Chicago, Rock Island, & Pacific Railway Company*,[31] for the proposition that passive ownership of transportation facilities does not necessarily require the filing of a tariff rate for those facilities. In that case, shippers under long-standing agreements had paid $1.00 per car for the use of rail track, which the Chicago, Ottawa and Peoria Railroad (Peoria) purchased. The Peoria did not provide interstate service using that line. Such service was provided by the Rock Island which had tariffs on file for interstate transportation for the shippers. The shippers contended the $1.00 charge could not be added to the interstate rates already on file for Rock Island.

The ICC found that no tariff was necessary, because the Peoria was simply the naked holder of title to the track and performed no common carrier service. It concluded that although the $1.00 per carload rate looked like a transportation charge, it was simply a convenient method of measuring the amount to be paid for the use of the track. SFPP contends that, like *CertainTeed*, SFPP is a passive owner of lines 109 and 110 and the shippers themselves arrange for transportation by providing the pumping necessary to move product over the line.

Not only is this a single I.C.C. decision, but it is distinguishable from the situation here. First, the case is based on certain factors applicable only to railroads. The ICC emphasized that under the ICA, the shipper is required to provide a sidetrack; the railroad is not obligated to provide it.[32] The fact that the shippers chose to lease the side track rather than build their own does not make ownership of the track jurisdictional. The ICA, however, does not impose on shippers the comparable obligation to build facilities to transport oil to the interstate

[23] *See Department of Defense v. Interstate Storage and Pipeline Corporation*, 353 I.C.C. 397 (1977) (finding that placement in storage not sufficient to break continuity when no change of ownership or other processing of oil in storage).

[24] Tr. 445-46.

[25] *Sadlerochit Pipeline Company*, 76 FERC ¶61,125 (1996).

[26] *Coastal States Trading, Inc. v. Shell Pipeline Corporation*, 573 F. Supp. 1415 (S.D. Tex 1983).

[27] *Great Northern Railway v. Minnesota*, 238 U.S. 340 (1915).

[28] *Thompson v. Chicago, Burlington & Quincy Railroad Co.*, 157 I.C.C. 775 (1929).

[29] *Burkley Produce Company v. Pennsylvania Railroad Co.*, 277 I.C.C. 319 (1959).

[30] *Andrews Brothers Co. v. Pennsylvania Railroad Co.*, 123 I.C.C. 733 (1927).

[31] 68 I.C.C. 260 (1922).

[32] *See Cleveland, Cincinnati, Chicago & St. Louis Railway Co. v. U.S.*, 275 U.S. 404, 413 (1928) (citing *Certain-Teed* for this proposition).

pipelines. The case also contradicts the cases cited above in which the ICA was applied to all aspects of oil transportation, including gathering services, back to the wellhead. Second, in *Certain-Teed*, there was an interstate tariff governing the transportation service, while there is no interstate tariff governing shipments over lines 109 and 110. SFPP is not simply the passive owner of lines 109 and 110; it facilitates transportation service over that line with personnel who repair and maintain the line, and receive and handle the product upon receipt.

SFPP also cites to *Cooper-Jarrett, Inc. v. United States*[33] for the proposition that the shipper has the obligation to bring its product to the tariff origin point, which in this case SFPP argues is Watson Station. *Cooper-Jarrett*, however, also is not pertinent here. It involved the question whether railroads could charge different fees for transporting truck trailers on flatcars depending on whether the railroad provided the trailer and the flatcar. It did not deal with the question of whether some transportation on the railroad can be deemed preliminary to the interstate shipment. Moreover, an oil pipeline cannot be given the ability to determine whether movement over a line is jurisdictional by simply designating an origin point. A carrier cannot avoid jurisdiction simply by attempting to separate an interstate rate into component parts and charging a local rate for the intrastate shipment.[34] The *Pipeline Cases* held that pipelines could not avoid jurisdiction by the artifice of requiring the sale of oil prior to transport. Similarly, jurisdiction cannot be avoided simply by designating a point as an origin for interstate shipment.

The ALJ and SFPP both focus on the circumstances under which the parties entered into the contracts to build lines 109 and 110 and the existence of reasonable alternatives to the use of lines 109 and 110 in determining the jurisdictional status of movements over these lines. They emphasize, for instance, that SFPP had operated its interstate lines without the need for lines 109 and 110 for 30 years and was under no obligation to build lines 109 and 110, and that the parties had entered into private agreements to build these lines. The ALJ cites to *Producers Transportation Company v. Railroad Commission*,[35] for the proposition that if a pipeline were constructed solely to carry oil under private contracts, and was not devoted to the public use, it would not be a common carrier subject to regulation by the state.

Whatever the circumstances giving rise to the construction of the lines, once built, transportation along these lines is jurisdictional because the refiners intend to, and do use these lines for part of their interstate oil shipments. Simply because a line was built at the behest of shippers does not mean that movements on the line are non-jurisdictional when they move interstate. Jurisdiction depends on the intended use of the line, not whether the pipeline decided to build the line based on its perceived demand or because its potential shippers informed it of their need.[36]

The *Producers Transportation* case does not compel a different result. In that case, a pipeline company transported crude oil for particular producers under private contracts. The Court, however, found that the company's charter to provide a general transportation service, its authority to use eminent domain, and its ready admission of new members demonstrated that it did carry oil for all those seeking its service. In this case, there is nothing in the parties contracts to suggest that new companies should not be added.[37] GATX Terminals, for instance, uses lines 109 and 110 on behalf of a number of shippers, and its contract contains no limitation on the number of shippers with which it can deal or the amount of product it can transport on behalf of these shippers.[38] Moreover, as pointed out above, *The Pipeline Cases* found that a pipeline could not use its market power to manipulate circumstances so as to avoid jurisdiction under the ICA. Permitting a pipeline to avoid jurisdiction simply by entering into specific contracts with the major shippers in an area would again run counter to the Court's injunction to beware of allowing form to supplant substance.

The ALJ further asserts that the refiners' silence, and apparent acceptance of the non-jurisdictional status of these lines, should preclude a finding of jurisdiction on equitable grounds. He further finds imposing jurisdiction on movements on SFPP lines anomalous since movements on five other functionally equivalent lines feeding product to Watson Station remain non-jurisdictional.

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[33] 226 F. Supp. 318 (W.D. Mo. 1964).

[34] Baltimore & Ohio, *supra* note 13, 260 U.S. at p. 170 (carrier cannot separate rates into component parts to deprive shipper of interstate rates).

[35] 251 U.S. 228, 230 (1920).

[36] It would truly "sacrifice form to fact" if transportation on Standard Oil's pipelines were not subject to ICA jurisdiction simply because oil well owners had asked Standard Oil to connect their wells to its interstate lines as their only means of gaining interstate transport. The *Pipeline Cases*, 234 U.S. at p. 560.

[37] Exhibit No. ATT-6, at p. 1 (noting that SFPP will "allow various shippers" to pump into Watson Station); Tr. 505-506.

[38] Exhibit No. SFPP-1, at p. 12, exhibit No. Staff-7.

Jurisdiction is not dependent on equity. Congress established the scope of Commission jurisdiction in the ICA and the Commission is bound by Congress's determination of the jurisdictional scope. The ICA also establishes no time limit or other bar to raising jurisdictional issues. Admittedly, the refiners here could have raised the jurisdictional issue earlier. However, the initial contracts between the refiners and SFPP contained a rebate provision which protected the shippers for some period, which may explain their failure to raise the issue earlier. But these provisions have now expired, and the renegotiated contracts no longer contain these protections. Changed circumstances may render jurisdictional what previously was not.[39] The jurisdictional status of the other pipelines sending product to Watson Station has not been presented to the Commission for consideration and, therefore, the Commission finds no anomalous or discriminatory treatment in finding transportation on lines 109 and 110 to be jurisdictional.

SFPP places great weight on the existence of vigorous competition from these alternative lines as demonstrating that lines 109 and 110 are not necessary to gain access to Watson Station. However, jurisdictional determinations do not depend on how necessary the lines are: "the existence of adequate competitive alternatives is irrelevant to a pipeline's jurisdictional status."[40]

In the early cases, such as *Champlin*, the Court found jurisdiction even though no shippers sought to use the lines and there were adequate alternatives. The Court did, however, give some consideration to shippers' need for the lines in considering whether to require the pipelines to file tariffs. Under the Commission's rules, consideration of competitive conditions no longer needs to be undertaken in the jurisdictional phase of the proceeding. The regulations permit oil pipelines to file for market-based rates if they believe there is adequate competition to limit the pipeline's market power.[41]

SFPP did not support a particular rate design in this proceeding, contending that it should have the right to develop a rate design if the Commission finds lines 109 and 110 jurisdictional. Other parties submitted proposed cost-of-service rate design proposals. The Commission agrees that SFPP should have the right to file for initial rates pursuant to section 342.2 of the Commission's regulations. SFPP also has the opportunity to raise competitive factors by making a market based rate filing.[42]

The parties also raise issues concerning the appropriate period for determining possible reparations. The possible need for reparations, and the applicable time period for reparations must first await a determination on the appropriate rate to be applied to lines 109 and 110.

The Commission orders:

(A) The initial decision is reversed as discussed in the body of this order.

(B) SFPP is required to make a tariff filing to establish initial interstate rates for shipments using lines 109 and 110 within 60 days of the date of this order.