

113 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Flint Hills Resources Alaska, LLC

Docket No. OR05-9-000

v.

ConocoPhillips Alaska, Inc.
Exxon Mobil Corporation
Tesoro Alaska Company
BP America Production Company
BP Exploration (Alaska) Inc.
OXY USA Inc.
Union Oil Company of California
Petro Star Inc.
State of Alaska
BP Pipelines (Alaska) Inc.
ConocoPhillips
Transportation Alaska, Inc.
ExxonMobil Pipeline Company
Koch Alaska Pipeline Company, LLC
Unocal Pipeline Company

ORDER DISMISSING COMPLAINT

(Issued October 20, 2005)

1. On July 11, 2005, Flint Hills Resources Alaska, LLC (FHR or Flint Hills) filed a Complaint against the above-named parties. Flint Hills acquired a refinery situated along the Trans Alaska Pipeline System (TAPS) on April 1, 2004, and thus is now a participant in the TAPS Quality Bank. Flint Hills alleges that the portion of the TAPS Quality Bank methodology relating to the valuation of the West Coast vacuum gas oil (VGO) cut is unjust and unreasonable, and was unjust and unreasonable even before April 1, 2004. Flint Hills requests that the Commission immediately institute a new reference price of West Coast VGO, grant refunds, reparations, damages and other appropriate relief. Timely answers were filed opposing Flint Hills' complaint. This order dismisses the complaint because the Commission is issuing an order in Trans Alaska Pipeline System, *et al.*, Docket No. OR89-2-016 (the TAPS Order) which establishes the valuation of the West Coast VGO cut, and provides for prospective application of that new valuation for the West Coast VGO cut.

Background

2. As more fully described in the TAPS Order, the TAPS' Quality Bank makes monetary adjustments between shippers on TAPS based upon the value of the crude oil that they inject into TAPS. The valuation is determined by the value of the constituent "cuts" of the injected crude oil, one of the cuts being VGO.
3. In a May 1994 Order, 67 FERC ¶ 61, 175, the Commission modified the reference price for valuing the VGO cut, which covers the 650°F to 1,000°F range.¹ The order directed that the reference price for both the Gulf Coast and the West Coast would be the Oil Pricing Information Service (OPIS) Gulf Coast price for high sulfur VGO.
4. As a result of certain court remands, the Commission, in a November 7, 2001 Order in Docket No. OR89-2-000, 97 FERC ¶ 61,150, set for hearing a number of issues relating to the valuation of certain Quality Bank cuts, one of which was the West Coast VGO cut.
5. At the hearing in that proceeding, the parties, in an October 3, 2002 Stipulation,² stipulated that the West Coast VGO should be valued on the basis of the OPIS West Coast High Sulfur VGO weekly price, but disagreed as to the effective date. Flint Hills was not a party in that proceeding when the stipulation was executed, but was permitted to intervene after it purchased the Alaska refinery in April 2004.
6. In an Initial Decision issued August 31, 2004, the Administrative Law Judge (ALJ) accepted the agreed-upon new reference price, but held that there was no evidence in the record that supported making the agreed-upon West Coast VGO price effective on a retroactive basis. Accordingly, he held that the West Coast VGO would be valued

¹ The VGO cut was subsequently broadened to 1,050°, which the Court affirmed in *Exxon Corp., USA v. FERC*, 182 F.3d 30 at 45 (D.C. Cir. 1999).

² The stipulation provided:

Stipulation to Issue No. 4 – West Coast VGO Valuation

1. West Coast VGO shall be valued based on the published OPIS West Coast High Sulfur VGO weekly price.
2. The Parties disagree as to the effective date of the new West Coast VGO value. However, the Parties agree that if a different West Coast Naphtha valuation methodology is adopted in this proceeding, it and the new West Coast VGO value should have the same effective date.

using the OPIS West Coast High Sulfur VGO weekly price on a prospective basis.³ He added that since he had determined that the new West Coast Naphtha value also should be made effective on a prospective basis, his ruling coincided with the parties' October 3, 2002, Stipulation that the valuations for the West Coast Naphtha and West Coast VGO cuts should have the same effective date. Flint Hills, and another party, filed exceptions to this ruling.

Flint Hill's Complaint

7. Flint Hills asserts that based on changed circumstances the current reference price for the West Coast VGO cut must be changed to the OPIS West Coast High Sulfur VGO weekly price. Moreover, that new reference price should be implemented immediately by the Commission.

8. In support of the proposed change, Flint Hills refers to the October 3, 2002 stipulation in Docket OR89-2-000, noted above. This stipulation, Flint Hills asserts, was recognition by all parties that the West Coast OPIS price was the just and reasonable reference price for the West Coast VGO cut. Moreover, Flint Hills states, the ALJ, in his Initial Decision, approved the West Coast OPIS reference price as the just and reasonable price for the West Coast VGO cut. Despite this, Flint Hills argues, the reference price for the West Coast VGO has not been changed, and the existing reference price, which is no longer just and reasonable, remains in effect.

9. Flint Hills requests that the Commission immediately order the West Coast OPIS price as the reference price for the West Coast VGO cut. Moreover, Flint Hills claims it is entitled to reparations or refunds from April 1, 2004, until implementation of the new reference price for the West Coast VGO cut based upon the continued use of the illegal reference price during that period. Use of this illegal reference price, it contends, caused Flint Hills to pay into the Quality Bank substantially more than it would have paid if the just and reasonable reference price for West Coast VGO had been in effect during this period.

Responsive Pleadings to Flint Hills' Complaint

10. Notice of Flint Hills' complaint was issued on July 12, 2005. All parties named in the complaint filed timely answers opposing the complaint. They all contend that since the ALJ held that the new reference price for the West Coast VGO was to be implemented on a prospective basis there is no basis to grant the requested relief.

³ 108 FERC ¶63,030 at P 2770.

Discussion

11. As all parties asserted in their answers, the ALJ in his Initial decision held that the new West Coast VGO reference price should be implemented on a prospective basis. Flint Hills did not refer to this in its complaint, recognizing that Flint Hills had filed exceptions to the ALJ's ruling. Flint Hills contended in its exceptions, as it does in the instant complaint, that the effective date for the agreed-upon reference price should be October 3, 2002, when the parties stipulated what the value for the West Coast VGO cut should be.

12. In the TAPS Order, the Commission found no merit to the exceptions filed on this ruling by the ALJ, and affirmed the ALJ's ruling that the new reference price for the West Coast VGO cut would be applied prospectively.⁴

13. The Commission stated in the TAPS Order that in *Tesoro*⁵ the Court required the Commission to address the issue of what should be the reference price for the West Coast VGO cut. The parties then stipulated what that price should be, and the ALJ accepted that agreement. In the TAPS Order, the Commission agreed with the ALJ's conclusion that nothing in that stipulation provided for retroactive application of that price, or that it should apply from the date of the stipulation.⁶ Moreover, as the ALJ had noted, the stipulation provided that if a new West Coast Naphtha price was established, the effective date of both that price and the new West Coast VGO price should be the same. Since the ALJ had established a new West Coast Naphtha price on a prospective basis, the ruling on the new reference price for the West Coast VGO cut was consistent with the stipulation.

14. Accordingly, we will dismiss Flint Hills' complaint since the Commission's TAPS Order affirms the ALJ's ruling of prospective application of the new reference price for the West Coast VGO cut.

⁴ TAPS Order at P 192.

⁵ *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286 (D.C. Cir. 2000).

⁶ TAPS Order at P 189. The Commission found no merit in the other exceptions as well.

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The Commission orders:

The complaint filed by Flint Hills on July 11, 2005, is dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.