

Report of the Committee on Oil Pipeline Regulation

I. INTRODUCTION

Safety, interpretations of FERC Opinion 154-B, and a variation on the theme of oil pipeline deregulation were the significant developments affecting oil pipelines in the year 1991 and early 1992. The introduction of amendments to the Hazardous Liquid Pipeline Safety Act¹ will result in Department of Transportation Regulations concerning in-depth reporting requirements of pipeline incidents and more frequent testing procedures to insure the safety of the pipeline. In November, 1991, Congressman Synar introduced a bill to streamline Federal Energy Regulatory Commission (FERC) procedures concerning oil pipelines.²

A. Amendments To The Hazardous Liquid Pipeline Safety Act

During 1991 several bills were introduced into the House and the Senate amending the federal Hazardous Liquid Pipeline Safety Act.³ Definitions of the Act were amended to include protection of the environment in "environmentally sensitive areas,"⁴ and in areas where the transportation of hazardous liquids would make a substantial adverse impact on the environment. Shutdown procedures of oil pipelines in the event of a rupture or other product release are to be reviewed by the Secretary of Transportation and regulations promulgated to assist in the efficiency of shutdown procedures.⁵

The problem of abandoned underwater pipelines is addressed by the proposed amendments to the Hazardous Liquid Pipeline Safety Act.⁶ Where an underwater pipeline is abandoned, the last operator is considered the operator at the time of abandonment.⁷ Regulations for procedures to be utilized in the abandoning of underwater oil pipelines are to be issued by the Secretary of Transportation so as to minimize the threat of such pipelines to navigation. Any abandonment of an underwater pipeline is to be reported by the operator of the pipeline to the Department of Transportation and a report filed showing that proper procedures were utilized for the abandonment.⁸

II. INTERSTATE OIL PIPELINE TECHNICAL CONFERENCE

In March, 1992, the FERC gave notice of a technical conference to consider whether ratemaking for oil pipelines should be market-based.⁹ A list of questions was also published for those oil pipeline entities desiring to submit

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1. Hazardous Liquid Pipeline Safety Act, 49 U.S.C. app. § 2002 (1979 & Supp. 1991).
 2. H.R. 776, *Oil Pipeline Regulatory Reform*, 101st Cong., 2d Sess. (1991).
 3. 49 U.S.C. app. § 2002 (1979 & Supp. 1991).
 4. *Id.*
 5. *Id.* at § 2002(1)3, Sec. 6 of the Bill.
 6. *Id.*
 7. *Id.*
 8. 49 U.S.C. app. § 2002(1)(c).
 9. 57 Fed. Reg. 43 (1992).

comments. The conference was held on April 30, 1992,¹⁰ with oil pipeline companies submitting comments. On May 8, 1992, a conference was held by the FERC to discuss alternative depreciation methods for oil pipelines.¹¹

III. NON-INTERVENTION OF THE FERC IN TARIFF CASE

In January, 1992, the FERC's Oil Pipeline Board (Board) refused to suspend, reject, or investigate oil pipeline tariffs protested under the Interstate Commerce Act (ICA). The Board's decision¹² involved tariff supplements proposed by Texaco Pipeline Inc. (TPI) to terminate transportation of crude oil to Mt. Vernon, Indiana.

Countrymark Cooperative, Inc. (Countrymark) protested the supplements, arguing that they should be rejected as unlawful or, alternatively, suspended for seven months pursuant to Section 15(7) of the Interstate Commerce Act. Finding the facts alleged in the protest to be inaccurate, the Board refused to order the requested relief, accepted the supplements for filing, and allowed them to take effect as proposed.

The decision in TPI relied on *ARCO Pipe Line Company*¹³ (*ARCO*). The Board noted Countrymark's attempt to distinguish TPI's proposed cancellation of service from the facts of *ARCO* where the Commission held that it lacked authority to suspend tariffs terminating transportation on a pipeline segment being taken out of service. The Board concluded that TPI's proposed abandonment was similar to the circumstances in *ARCO*.

In *ARCO*, the FERC reconsidered its original decision to suspend the tariffs in question, which would have effectuated an abandonment, and held that the cancellation of service was distinguishable from the facts in *Cheyenne Pipeline Company*¹⁴ (*Cheyenne*). The Commission had relied upon *Cheyenne* as the basis for ordering the suspension, but ruled on reconsideration that *Cheyenne* should be treated as an anomaly with no precedential value. The decision was based on post-*Cheyenne* FERC cases and *Farmers Union Central Exchange, Inc. v. FERC*.¹⁵ Accordingly, the FERC voted to vacate the suspension and allow ARCO Pipe Line Company's cancellation tariffs to take effect.

IV. TRANS ALASKA PIPELINE QUALITY BANK CASE

An initial decision in the investigation of the Trans Alaska Pipeline System (TAPS) quality bank was issued on November 19, 1991.¹⁶ Subject to pending appeal, the decision will require that quality bank adjustments be based on a straight-line gravity measurement modified at the upper end by a

10. F.E.R.C. Docket No. OR92-6-000.

11. Interstate Oil and Gas Pipeline Industry, Depreciation Technical Conference, F.E.R.C. Docket No. PL92-2-000.

12. Texaco Pipeline Inc., F.E.R.C. Docket No. IS92-20-000, 58 F.E.R.C. ¶ 62,051 (1992).

13. 55 F.E.R.C. ¶ 61,420 (1991); *vacating* 55 F.E.R.C. ¶ 61,153 (1991).

14. 19 F.E.R.C. ¶ 61,077 (1982).

15. 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984), *cert. denied sub nom* Williams Pipeline Company v. Farmers Union Central Exchange, 469 U.S. 1034 (1984).

16. 57 F.E.R.C. ¶ 63,010 (1991).

bendover penalty for natural gas liquids (NGL) and the high-gravity materials contained in refinery return streams. The bendover will apply to tendered oil above forty degrees API with a penalty assessed on shipments forty-five degrees or greater. The new adjustments adopt a proposal put forward by Tesoro Alaska Petroleum Company (Tesoro). They will change the pipeline's current quality-bank methodology which is gravity based.

A. Other Developments Arising Out Of Trans-Alaska Pipeline System

Other recent FERC developments involving TAPS include the settlement of a shipper protest of corrosion-related expenses factored into the pipeline's tariffs¹⁷ and complaints filed regarding the "Pumpability Factor" contained in the pipeline's 1992 tariffs.¹⁸ The settlement resolved claims by Petro Star Inc. on February 12, 1992.

The Pumpability Factor (or PF) is based on a standard set out in the tariffs and is used to adjust the transportation rate for the various shipper streams tendered to TAPS. Filed in December 1991, the complaints argue that the PF unfairly penalizes certain shippers, subsidizes others, and is not justified on a cost basis.

V. OIL PIPELINE REGULATORY REFORM BILL - STREAMLINING FERC PROCEDURES

As a part of the Comprehensive National Energy Policy Act, House Bill No. 776, which was referred to the Committee on Finance on June 2, 1992, directs the Federal Energy Regulatory Commission to establish a "simplified and generally applicable ratemaking methodology for oil pipelines."¹⁹ Pursuant to the bill, the FERC has eighteen months from its enactment to issue a final rule to "streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays."²⁰

The proposed legislation also directs the FERC to promulgate specific rules concerning back-up data submitted with tariffs, qualifications for standing, guidelines for filing a protest or complaint, and guidelines for allowing oil pipelines to file a response to any protest or complaint.²¹

Further, any tariff in effect for a one year period prior to enactment of the legislation shall be deemed to be a "just and reasonable rate."²² Alternative dispute resolution is also emphasized by the legislation and the FERC is to establish procedures for the resolution of pending cases. The only oil pipeline not covered by the proposed legislation is the Trans-Alaska Pipeline system.²³

17. F.E.R.C. Docket Nos. IS90-11-000, IS91-6-000 and IS92-3-000.

18. 57 F.E.R.C. ¶ 62,274 at 63,566 (1991).

19. H.R. 776, 102d Cong., 2d Sess., § 1802 (1992).

20. H.R. 776, 102d Cong., 2d Sess., § 1802(a) (1992).

21. H.R. 776, 102d Cong., 2d Sess., § 1802(b) (1992).

22. H.R. 776, 102d Cong., 2d Sess., § 1803(a)(2) (1992).

23. H.R. 776, 102d Cong., 2d Sess., § 1804(2)(B) (1992).

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