

Ultramar, Inc. v. Gaviota Terminal Company
80 FERC ¶ 61,201 (1997)

Ultramar, Inc. is a petroleum refining company that purchases oil produced from the Point Arguello field located on the Outer Continental Shelf (OCS), takes title to the oil as it exits the onshore processing facility, and ships the oil through the Gaviota terminal system. From there, the oil is commingled with interstate oil and moved over various pipelines to Ultramar's refinery in Los Angeles. Ultramar complained not only that Gaviota illegally operated its terminal for a time without a proper tariff on file, but also that the tariff Gaviota eventually filed was unjust and unreasonable.

The Commission dismissed the complaint for lack of jurisdiction, finding that Ultramar did not establish that it is shipping crude oil interstate. Bonito Pipe Line Company, 61 FERC ¶ 61,050 (1992), aff'd sub. nom. Shell Oil Co. v. FERC, 47 F.3d 1186 (D.C. Cir. 1995), and OXY Pipeline, Inc. et al., 61 FERC ¶ 61,051 (1992), stand for the proposition that the ICA does not expressly cover pipelines transporting oil solely on or across the OCS. Therefore, the Commission found that ICA jurisdiction can begin only at that point where the oil crosses the seaward boundary between the OCS and an adjacent state. Here, after coming off the OCS, Ultramar's oil did not leave California before being refined. The refining process caused a break in the transportation process, thus leaving Ultramar's crude oil transportation wholly intrastate and not subject to ICA jurisdiction.

Ultramar, Inc. V. Gaviota Terminal Company
Order Dismissing Complaint
80 FERC ¶ 61,201 (1997)

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Cited as "80 FERC ¶"

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[¶ 61,201]

Ultramar, Inc. v. Gaviota Terminal Company, Docket No. OR96-13-000

Order Dismissing Complaint

(Issued August 5, 1997)

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

On April 30, 1996, Ultramar, Inc. (Ultramar) filed a complaint under section 13(1) of the Interstate Commerce Act (ICA) against

Gaviota Terminal Company (Gaviota). The Commission concludes the complaint should be dismissed for the reasons discussed below.

³⁰ See *The Tap Line Cases*, 234 U.S. 1, 25 (1914) (railroad lines that were initially private may become common carriers as business increases along the lines).

⁴⁰ *Hunt Refining Company*, 70 FERC at p. 61,112.

⁴¹ 18 C.F.R. § 342.4(b), § 348.

⁴² As SFPP points out, five other pipelines compete for business to Watson Station and lines 109 and

110 carry only 20% of the volume to Watson Station. One shipper previously using SFPP's lines 109 and 110 changed to the Shell service. The record also shows serious discussions among the users of lines 109 and 110 about the possibility of building a competing pipeline, which may suggest that entry barriers are not substantial.

Background

Ultramar states it is an independent petroleum refining company with refining and retail marketing operations located almost exclusively in California. It operates its refinery in the Wilmington area of Los Angeles and has been a principal shipper of crude oil through the Gaviota terminal from its opening in 1991. It purchases oil produced from the Point Arguello field located on the Outer Continental Shelf (OCS) offshore California, takes title to the oil as it exits the onshore processing facility of the Point Arguello Pipeline Company, and ships the oil first through the Gaviota terminal system. From Gaviota, Ultramar states, it ships the oil through the All American Pipeline to the interconnection with ARCO Pipeline Company Line 63 in Kern County, and then to its refinery in Los Angeles via Line 63. Ultramar further asserts that before the oil is transported over Line 63 it is commingled with other oil that is moving interstate.

Ultramar's complaint alleges (1) that Gaviota collected transportation charges prior to February 1, 1994, without a tariff on file with the Commission, (2) that the rates Gaviota has charged since February 1, 1994, pursuant to filed tariffs are unjust, unreasonable, and unduly discriminatory, and (3) that since September 1, 1995, Gaviota has charged rates in excess of the applicable index ceiling without providing an adequate cost showing, in violation of sections 1(5), 2, 3(1), 6, and 8 of the ICA.¹ Ultramar seeks refunds to the extent that the Commission finds that Gaviota's rates were unlawful, both before and after the filing of initial tariffs. The complaint was noticed on May 6, 1996, with answers due May 30, 1996.

Gaviota and the Producer Group² filed responses to the complaint. Both filed motions to dismiss, asserting (1) that the Commission lacks jurisdiction because Ultramar's shipments are purely intrastate, and (2) that the complaint is a collateral attack on previous orders denying intervention in other proceedings. In addition, they assert that entertaining this complaint will result in unnecessary duplication of issues that are being tried in other proceedings now before the Commission.

Ultramar filed a reply to the answers filed by Gaviota and the Producer Group asserting

that, unlike the Producer Group, it is an actual shipper and has concerns that are not shared by the complainants or the protesting parties involved in the other proceedings. It asserts that as an actual shipper it is entitled to direct refunds, unlike the netback remedy that is sought by the Producer Group, and that the latter is not, with limited exceptions, seeking the refunds that would be due Ultramar. Ultramar also asserts that it filed its complaint based on its own concerns and that the complaint is not a collateral attack on the ALJ's denial of Ultramar's request for late intervention in Docket No. IS94-23-000, *et al.*

Ultramar also asserts that Gaviota and the Producer Group have not established that Ultramar is not shipping interstate. Ultramar asserts that the oil in question moves under an OCS tariff to a point on land and that the Commission has stated that the portion moving beyond the OCS could be jurisdictional. It claims that the oil used at its Los Angeles refinery is part of an integrated series of transportation arrangements that are necessary to satisfy Ultramar's specific requirement for OCS-type crude oil. It states that at the refinery the oil is processed into motor fuels and other refined petroleum products, which are shipped from its refinery for distribution and sale in California, Arizona, and Nevada.

On May 20, 1997, Gaviota and the Producer Group filed a joint Offer of Settlement in the three pending Gaviota proceedings.³ On the same day they renewed their motion to dismiss this case. Ultramar replied, repeating many of its earlier assertions. Ultramar also argued that the fact that parties in the other proceedings had reached a settlement to which Ultramar is not a party should not compromise the validity of this complaint.

Discussion

The Commission concludes that the complaint should be dismissed because the Commission does not have jurisdiction over the transportation movement that is the subject of the complaint. Ultramar as the complainant has the burden of establishing the Commission's jurisdiction. Ultramar's complaint and answer, however, both fail to establish that Ultramar is shipping crude oil interstate.

¹ The same issues regarding Gaviota's rates and operations are pending in the consolidated rate case and complaint proceeding in Docket No. IS94-23-000, *et al.*, and in the separate pending rate cases in Docket Nos. IS95-35-000 and IS97-12-000.

² The Producer Group consists of Pennzoil Exploration and Production Company, Simmons-Santa Bar-

bara Ltd., Union Pacific Resources Company, and Harvest Corporation.

³ In a letter order being issued contemporaneously with this order, the Commission is approving the settlement in Docket No. IS94-23-000, *et al.*

Section 1(1) of the ICA provides that the ICA "shall apply to common carriers engaged in ... [t]he transportation of oil ... by pipeline...

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States.⁴

In *Bonito Pipe Line Company*,⁵ and in *Oxy Pipeline, Inc., et al.*,⁶ the Commission concluded that inasmuch as the OCS is not a State or Territory of the United States, the OCS does not come within the ICA's jurisdictional language and, thus, the ICA "does not expressly cover pipelines transporting oil solely on or across the OCS."⁷ The transportation at issue here starts on the OCS and continues across the OCS and through the seaward boundary of California to shore for further movement within California to Los Angeles. Under *Bonito* and *Oxy*, the movement across the OCS is not subject to ICA jurisdiction. Since the OCS is neither a State nor a Territory, a logical application of the *Bonito* and *Oxy* cases requires that ICA jurisdiction attach, if at all, only at that point where the oil crosses the seaward boundary between the OCS and an adjacent state and enters that state, here California. The transportation from that point in California where the movement crosses the seaward boundary to another point in California, namely Ultramar's refinery in Los Angeles, however, is wholly within the State of California. As such it does not come within the ICA's jurisdictional language, and, thus, is not subject to ICA jurisdiction.

Ultramar claims ICA jurisdiction based on its distribution of refined products from its Wilmington refinery to points out-of-state. At Ultramar's refinery the crude oil is transformed into different products which are then marketed, at least to some extent, in other

states. The refining of the oil, however, causes a break in transportation that results in any subsequent transportation of refined products being a separate movement. Even if that subsequent movement from the refinery is interstate, it has no bearing on the nature of the first movement from offshore. Thus, the shipment of the crude oil and the refined products are distinct movements, not a continuous movement across state lines that would establish jurisdiction.

Ultramar cites *South Timbalier Pipeline System*⁸ for the proposition that pipeline transportation of crude oil from the OCS to a state is subject to ICA jurisdiction. That case, however, clearly addresses a situation where oil moved from the OCS to onshore Louisiana for further movement to a refinery in Mississippi without any break in the transportation to Mississippi. The Commission more recently addressed this same situation in both *Bonito* and *Oxy*, stating that "[a] pipeline that starts on the OCS and transports oil through the seaward boundaries of the State to shore for further movement in interstate commerce is jurisdictional under the ICA."⁹ That is not the situation here. *South Timbalier* thus is consistent with our decision.

Finally, Ultramar points to commingling of its oil with other oil moving interstate as conferring ICA jurisdiction over the movement of its oil. The Commission has held, however, that commingling of oil is not determinative of whether transportation is interstate or intrastate and does not alter the jurisdictional nature of shipments. The Commission looks to each shipper's individual shipments to determine whether a particular shipper's oil, commingled with others' oil, is moving interstate or intrastate.¹⁰ Ultramar's oil, though it may be commingled with oil moving interstate, still is moving intrastate.

Under these facts, the complaint fails for lack of jurisdiction. Given this conclusion, it is not necessary to reach the other issues raised by the parties.

The Commission orders:

The complaint is dismissed.

⁴ 49 App. U.S.C. § 1(1) (1988).

⁵ 61 FERC ¶ 61,050 (1992), *aff'd sub. nom. Shell Oil Co. v. FERC*, 47 F.3d 1186 (D.C. Cir. 1995).

⁶ 61 FERC ¶ 61,051 (1992).

⁷ 61 FERC at pp. 61,221 and 61,227-28.

⁸ 29 FERC ¶ 61,345 (1984).

⁹ 61 FERC at p. 61,221, footnote 22 (emphasis added); see, also, 61 FERC at p. 61,228, footnote 14.

¹⁰ See *Amoco Pipe Line Company*, 62 FERC ¶ 61,119 (1993), *reh'g denied*, 67 FERC ¶ 61,378 (1994).