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## I. SUMMARY

The Complaint should be dismissed because Cantium has not demonstrated that the Commission has jurisdiction over the services offered by the Fourchon Terminal and because Cantium has not demonstrated it has standing to bring it. Four reasons compel the conclusion that the Commission lacks jurisdiction here:

- First, Rosefield does not provide pipeline services at the Fourchon Terminal. It operates storage tanks and metering. The Commission has jurisdiction over pipelines that operate in interstate commerce. Under longstanding Commission precedent, Rosefield's terminal services are not necessary or integral to interstate pipeline transportation.
- Second, Cantium's pipeline and dewatering services *upstream* of the Fourchon Terminal are not under FERC jurisdiction and Cantium does not have FERC tariffs for those pipelines or services. Rosefield's Fourchon Terminal services cannot be subject to FERC jurisdiction since such jurisdiction begins only when oil is delivered into a FERC-jurisdictional pipeline.
- Third, when Cantium production leaves the Fourchon Terminal, the only working pipeline flows exclusively within Louisiana. The BOA Pipeline transports oil to the Alliance Terminal, a large storage hub where crude rests while shippers decide their shipments' next destination. This breaks the transportation chain and vitiates jurisdiction.
- Finally, oil *cannot* flow interstate out of Alliance, Louisiana via pipeline. The only out-of-state shipments leave that storage hub via Mississippi River barge. Because the Commission has jurisdiction only when all the links in the chain of interstate transportation are by pipeline, this, too, breaks the transportation chain and defeats any claim of FERC jurisdiction.

To avoid this conclusion, Cantium has heavily and erroneously relied in its Complaint on a 1984 decision addressing a completely different operating system; what was once a wholly integrated pipeline system running from the outer-continental shelf ("OCS") through bulk production drying facilities and to the Fourchon Terminal in Louisiana for further continuous movement Chevron's to Pascagoula, Mississippi refinery. As explained in this Answer, that integrated single pipeline system has not been in place

for many years, if not decades. The current configuration and operations of the Fourchon Terminal—consisting of storage tanks, metering facilities, and small-gauge terminal transfer lines—make clear that Rosefield does not perform a jurisdictional function under the Interstate Commerce Act (“ICA”).<sup>2</sup>

Even if the Commission were to ignore the significant precedent that terminal services like those offered by Rosefield do not fall under Commission jurisdiction, Cantium has provided insufficient evidence to demonstrate there is any fixed and persisting intent at the time of shipment to ship interstate. This is a significant factor relied upon to determine the “essential character” of transportation. As an initial matter, Cantium is not a customer of Rosefield terminal services, and it has not paid the rates at issue in the Complaint. The rates are instead paid by a separate unaffiliated shipper. Because Cantium has not demonstrated it contracted for shipment, Cantium’s Complaint has failed to provide reliable evidence of shipper intent. Furthermore, Cantium has provided no evidence of actual shipments of crude from its dewatering facilities shipping interstate. Instead, Cantium has made general unsupported claims that some small portion of its Bay Marchand Field product *might* end up in interstate commerce. That is not sufficient to meet the legal test to establish FERC jurisdiction.

Assuming *arguendo* that some volumes may eventually end up in other states, that is not sufficient to establish a single continuous interstate movement from offshore to destinations outside of Louisiana.<sup>3</sup> Such movements could constitute two or more separate

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<sup>2</sup> 49 U.S.C. app. § 1 (1988).

<sup>3</sup> The Commission and the Supreme Court have consistently found that mere knowledge that the product will ultimately be delivered to an interstate inland destination—even a specific inland destination—is not the equivalent of intent, particularly where transportation to the destination was not arranged for at the time the original movement commenced. *Atlantic Coast Line R. Co. vs. Standard Oil*, 275 U.S. 257 at 269 (1927) (“*Atlantic Coast*”); *See Northville Dock Pipe Line Corp.*, 14 FERC ¶ 61,111, at



local movements - an intrastate movement to Alliance followed by another interstate movement elsewhere. Cantium has the burden to show that there is a jurisdictional issue for the Commission to consider. Without demonstrating a single continuous movement it hasn't met its burden. Because Cantium has failed to meet its initial burden, the Complaint should be dismissed.

Moreover, the physical and operational limitations at Fourchon and downstream make it highly unlikely that Cantium could ship interstate, even if it had any intent to do so. Over the last four decades what was once a wholly-owned, integrated system shipping crude from the Gulf of Mexico through Louisiana and onto Pascagoula, Mississippi has been subdivided among several owners and went through significant changes in operations precipitated by storm damage and operational needs. There no longer is a single continuous jurisdictional route from the OCS to Fourchon and to Pascagoula, or to anywhere else interstate using Rosefield Terminal Facilities, or anywhere else interstate. Thus, Cantium cannot demonstrate intent to ship its product under Commission jurisdiction to points interstate, and the Complaint should be dismissed.

## **II. BACKGROUND**

Cantium makes several factual allegations regarding the configuration and make-up of the Fourchon Terminal and interconnecting systems that warrant correction, clarification, or further explanation. Without waiving other objections to fact or law, Rosefield submits the following clarifications are essential for the Commission to have a clear understanding of the facts and circumstances to aid in its determinations in this case.

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61,209 (1981) ("*Northville Dock*") (*emphasis added*).

### A. The Fourchon Terminal

Initially, Rosefield seeks to clarify its ownership interest in the Fourchon Terminal. Cantium's Witness Mr. Ricky Henagan ("Witness Henagan"), in his affidavit ("Henagan Affidavit"), provides a description of the distribution of ownership of the Fourchon Terminal between Cantium and Rosefield that lacks clarity and context. A clear understanding of Rosefield's interests in the Fourchon Terminal and their place in the chain of movement through the terminal is essential to understand their non-jurisdictional nature.

Witness Henagan inaccurately lumps together Cantium and Rosefield assets by describing the Fourchon Terminal as consisting of "12 tanks, ranging in size from 5,000 to 40,000 barrels, and associated dewatering equipment..."<sup>4</sup> Witness Henagan also states that in 2017, "Cantium acquired certain tankage and associated facilities at the Fourchon Terminal to perform crude oil separation/dewatering processes ('Cantium Dewatering Facilities')." <sup>5</sup> To be clear, Cantium owns these Cantium Dewatering Facilities, including various tanks and equipment, which are located adjacent to the Fourchon Terminal. Witness Henagan further states that in 2023, Rosefield purchased "the three large tanks and other facilities, less than 1000 feet of pipe across the channel, and interconnect facilities that allow delivery of crude to the two oil pipelines interconnected to the Fourchon Terminal..."<sup>6</sup> He goes on to state that the specific three tanks that are included in the Rosefield Terminal Assets are Tank Nos. 4, 33 and 44, and that Tank No. 44 is the only

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<sup>4</sup> Henagan Aff. at P 11.

<sup>5</sup> *Id.* at P 15.

<sup>6</sup> *Id.* at P 16. Of note, Cantium failed to timely object to the cancellation of the portions of the CPL Tariff previously applicable to the Fourchon Terminal. *See Chevron Pipe Line Co., 2023 Oil Pipeline Change to Other Services*, Docket No. IS23-663-000 (Aug. 22, 2023) (canceling 1155.28.0 effective August 22, 2023).

one currently capable of delivering crude to the two interconnecting pipelines.<sup>7</sup>

Thus, Cantium and Rosefield each own assets in Fourchon: Cantium's Dewatering Facilities and Rosefield's Fourchon Terminal. Cantium owns and controls nine of the twelve tanks described by Witness Henagan and all of the separation/dewatering processes in Fourchon. Rosefield's Fourchon Terminal is comprised of the "Rosefield Terminal Assets": three tanks, terminal transfer lines<sup>8</sup> and metering facilities (collectively, the "Rosefield Terminal Assets"). Rosefield three tanks are Tank Nos. 4, 33 and 44, each of which have a capacity of 50,000 barrels. Tank No. 44 is currently in service, and Rosefield is actively working to return its other two tanks back into operation. The terminal transfer lines and metering facilities are necessary to connect to the (1) Bay Marchand-to-Ostrica-to-Alliance Pipeline ("BOA Pipeline"), the capacity of which is partially leased by Arrowhead Offshore Pipeline, LLC ("Arrowhead"), and the (2) Chevron Pipe Line Company's ("CPL") 20-inch pipeline ("CPL 20-inch Pipeline") to its Empire Terminal in Plaquemines Parish, Louisiana. For the BOA Pipeline, a small-gauge terminal transfer line connects via a segment that traverses a waterway to a pump station ("BOA Pump Station"). For the CPL 20-inch Pipeline the connection occurs before the waterway, but there is no similar pump station. As a result, there currently is not sufficient pump pressure to establish flow into the CPL 20-inch Pipeline. Thus, there have been no flows from Rosefield Terminal Assets on the CPL 20-inch Pipeline since 2021, and there are no flows scheduled or anticipated on the CPL 20-inch Pipeline.

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<sup>7</sup> *Id.* at P 16. Only the Rosefield Terminal Assets are referred to herein as the Fourchon Terminal.

<sup>8</sup> These terminal transfer lines should not be conflated with transmission lines. Such terminal transfer lines are in place at marine terminals and refineries throughout the United States and are not subject to FERC jurisdiction.

**B. Rosefield Terminal Assets Are Not Interstate Pipeline Assets**

Cantium states that “Rosefield transports Cantium’s crude oil produced from the Bay Marchand Field in the Gulf of Mexico through the Fourchon Terminal located in Lafourche Parish, Louisiana.”<sup>9</sup> This statement is inaccurate.

Rosefield does not transport Cantium’s production from the Gulf of Mexico. Cantium ships its crude from its federal and state water production facilities in Cantium’s Bay Marchand Field on a pipeline Cantium owns and operates to the nine bulk tanks that Cantium owns adjacent to Rosefield’s Fourchon Terminal. Upon information and belief to Rosefield, Cantium has established no tariff on that movement from the Bay Marchand Field to the Cantium Dewatering Facilities and then to the Fourchon Terminal either under FERC or state jurisdiction, nor has it posted a non-jurisdictional tariff for such movement. Likewise, on information and belief to Rosefield, Cantium has established no tariff on its Cantium Dewatering Facilities located adjacent to the Fourchon Terminal, either under FERC or state jurisdiction, nor has it posted a non-jurisdictional tariff for such services despite its assertion that these Cantium facilities are a necessary and integral part of its alleged interstate movement of oil through the Fourchon Terminal.

Thus, in conducting any jurisdictional analysis, it is important to remember that the only role of the Rosefield Terminal Assets is to provide terminal tank services covered under its non-jurisdictional tariff. Stated differently, this service *does not include* shipment from the Gulf of Mexico, Cantium’s dewatering services at Fourchon, movement to Rosefield’s Terminal Assets or onward transportation from the Fourchon Terminal.

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<sup>9</sup> Complaint at P 3, *citing* Henagan Aff. at PP 10, 18, 21-23.

### III. COMMUNICATIONS AND SERVICE

Communications to Rosefield in this proceeding should be served upon:<sup>10</sup>

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### IV. MOTION TO DISMISS

The Commission should dismiss the Complaint because Cantium lacks the standing to bring this Complaint and because Cantium has failed to meet its burden that there is a jurisdictional issue for the Commission to consider.

#### A. Cantium Has Not Demonstrated It Is a Shipper That Has Used the Rates at Issue or Suffered An Economic Harm

Cantium has not shown that it has a substantial economic interest in the transportation of crude oil through Rosefield's Terminal Assets, or that it has suffered damages, related to rates for such services, that would confer sufficient standing to submit the Complaint.

Regarding standing, Section 9 of the ICA provides, in relevant part:

Any person or persons claiming to be damaged by any common carrier subject to the provisions of this chapter may ... make complaint to the Commission as hereinafter provided for ...<sup>11</sup>

Furthermore, the Commission's Rules Applicable to Oil Pipeline Proceedings

<sup>10</sup> Rosefield respectfully requests waiver of 18 C.F.R. § 385.203(b) (2022) to permit more than two individuals to be added to the Commission's official service list for this proceeding.

<sup>11</sup> ICA § 9.

provide that its Rules of Practice and Procedure in part 385 will govern procedural matters in oil pipeline proceedings under the ICA.<sup>12</sup> The Complaint was filed pursuant to Rule 206, which provides that a Complaint must, among other things, “[s]et forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant;” and “[m]ake a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction ...”.<sup>13</sup> Thus, under Commission precedent, a complainant must at a minimum “demonstrate that it is adversely affected by the action it challenges.”<sup>14</sup>

Cantium’s claim of damages does not withstand scrutiny because Cantium has not provided adequate evidence that it is a shipper of record on the Rosefield Terminal Assets and paid the rates at issue in the Complaint or that it is otherwise economically affected by Rosefield’s rates. The fact is that Cantium is not a customer of Rosefield’s and does not pay the rates for Rosefield’s terminal services. ICA precedent is clear that only “parties directly charged” the tariff rates are entitled to damages under the ICA; thus, the “Commission’s requirement that a complaint against a pipeline’s rates must be brought by a party that actually pays those rates or is otherwise directly financially harmed by them is reasonable, since only such a party will directly benefit from a reduction in the rate or be entitled to reparations.”<sup>15</sup>

Regarding this inquiry, Rosefield wishes to highlight the assertion in the Complaint

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<sup>12</sup> 18 C.F.R. § 343.0 (2022).

<sup>13</sup> 18 C.F.R. § 385.206(b)(3) and (4) (2022) (*emphasis added*).

<sup>14</sup> *Continental Resources, Inc. v. Bridger Pipeline, LLC*, 113 FERC ¶ 61,178, at P 8 (2005) (*emphasis added*); *Chevron Products Company v. SFPP, L.P.*, 99 FERC ¶ 61,196 (2002) (dismissing complaint for failing to document and quantify the financial impact or burden to the complainant of the challenged pipeline actions).

<sup>15</sup> *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 789-93 (D.C. Cir. 2006).

that Cantium maintains ownership of crude leaving the Cantium Dewatering Facilities until it reaches the barge dock at the Alliance Terminal in Plaquemines Parish, Louisiana.<sup>16</sup> In making this claim, Cantium relies on the terms of its “Agency Agreement” with Harvest Marketing & Trading, LLC (“Harvest”). Putting aside the contract’s general illusory nature, seemingly designed to create by contract a transfer of Harvest’s rights and ownership of its shipments of crude from Fourchon Terminal to the Alliance Terminal, and the timing of its execution, which gives the appearance that the arrangement was made solely for the purposes of this litigation, Rosefield notes a few provisions of interest in the contract. The Agency Agreement specifically nominates and assigns Harvest as agent for transportation on the BOA Pipeline at the Alliance Terminal and points interstate.<sup>17</sup> However, there is no analogous provision assigning Harvest as agent for services provided under the Rosefield non-jurisdictional tariff or for services provided by the Rosefield Terminal Assets. Rosefield’s Non-Jurisdictional Rate Schedule requires shippers to have title to crude that passes through the Rosefield Terminal Assets.<sup>18</sup> Consequently, it appears that Harvest as the shipper has ownership of crude through the Rosefield Terminal Assets; otherwise, any nominations would fail to comply with the terms of Rosefield’s Non-Jurisdictional Rate Schedule.

For these reasons, Cantium has not made the requisite showing to establish it has

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<sup>16</sup> Complaint at P 36 and Henagan Aff. at PP 22 and 28.

<sup>17</sup> See Agency Agreement at l. a. i. – iii.

<sup>18</sup> See Rosefield Fourchon Operating, LLC, Non-Jurisdictional Rate Schedule 1.1.0, “By Nominating Crude Petroleum, the Shipper warrants and guarantees that the Shipper has unencumbered title thereto and that unencumbered title or right remains in effect throughout the Terminalling Services covered by this tariff. In addition, Shipper agrees to hold Rosefield harmless for any and all loss, cost, liability, damage or expense resulting from failure of title or Shipper’s failure to have the right to cause the Crude Petroleum to be stored or transferred; and Shipper agrees that acceptance by Rosefield of the Crude Petroleum for Terminalling Services shall not be deemed a representation by Rosefield as to title.”

paid the rates at issue to establish standing or rights to any damages.

**B. The Commission Lacks Jurisdiction Over the Rosefield Terminal Assets**

Cantium as the Complainant has the burden of establishing the Commission's jurisdiction over the Rosefield Terminal Assets. Cantium's Complaint, however, fails to establish Rosefield is shipping crude oil interstate through the Rosefield Terminal Assets or otherwise. As provided above, the Rosefield Terminal Assets consist of one active and two inactive storage tanks and terminal transfer lines that transport crude from the tanks to interconnecting pipelines.

The Commission has repeatedly held that terminal facilities of the type represented by the Fourchon Terminal are not subject to its jurisdiction under the ICA. In *TE Products Pipeline Company, LLC*, the Commission held that a terminal at the end of an interstate pipeline system was not jurisdictional.<sup>19</sup> Specifically, the Commission found the terminalling service was neither necessary nor integral to the transportation interstate.<sup>20</sup> The Commission further drew a distinction between the terminal tanks at issue in that and this case, and the breakout storage tanks at issue in *Lakehead*.<sup>21</sup> The Commission found the breakout tanks considered jurisdictional in *Lakehead* are functionally different than storage tanks provided at a terminal, reinforcing that there is no jurisdiction over terminal tanks. In *Tesoro Refining and Mkt. Co., et al.*, the Commission considered short connecting lines transporting crude in a terminal setting to and from oil tanks, and found the

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<sup>19</sup> *TE Products Pipeline Company, LLC*, 130 FERC ¶ 61,257 (2010) *reh'g denied*, 131 FERC ¶ 61,277 (2010) ("TEPPCO").

<sup>20</sup> *Id.*

<sup>21</sup> *Lakehead Pipe Line Co., L.P.*, 71 FERC ¶ 61,338, at 62,325 (1995), *order on reh'g*, 75 FERC ¶ 61,181, at 61,601 (1996) ("*Lakehead*").



Commission's jurisdiction ends when crude oil exits a jurisdictional pipeline and enters the terminal and does not begin again until the product enters an interstate pipeline connecting from the terminal.<sup>22</sup>

The tanks that make up the Rosefield Terminal Assets are not breakout or operational tanks of the kind considered in *Lakehead*, but instead merchant storage tanks offered for the convenience of shippers. In *Lakehead*, the carrier required the tanks in order to address changing pressures and flow rates between different size pipelines as part of a single posted interstate movements; thus, the tanks were physically necessary to make the applicable pipeline movements. Here, the Rosefield Terminal Assets provide no such function given they are not operationally required to provide transportation on any pipeline, either before or after the Fourchon Terminal. To suggest otherwise would be analogous to suggesting that refinery tankage is jurisdictional, operational storage because it connects to an interstate pipeline. The Commission has never attempted to exert its jurisdiction into these types of facilities and to do so now would up-end long settled practice and jeopardize the operational and jurisdictional status of every refinery and terminal facility in the United States.

The fact that other entities providing the same or similar terminalling services as Rosefield do so without Commission tariffs on file simply underscores the Commission's long settled practice of excluding such terminalling service from FERC jurisdiction. Indeed, Cantium itself provides dewatering and terminalling services at its Cantium Dewatering Facilities in Fourchon and does not have a Commission tariff for such services.

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<sup>22</sup> *Tesoro Refining and Mkt. Co., et al.*, 135 FERC ¶ 61,116 (May 5, 2011) ("*Tesoro Refining*").

**C. The Pipeline Delivering Cantium Crude and Cantium's Own Fourchon Assets Are Not Operated Under a FERC Tariff**

The case law examining jurisdictional status of oil pipeline assets generally considers whether there is a single continuous interstate movement or if there are two or more local movements. The Commission does not consider facilities upstream of the custody meter of a common carrier interstate pipeline to be jurisdictional unless there is a demonstration that these facilities are necessary and integral to a single continuous interstate movement.

For the movements in question here, Cantium uses its own pipeline to ship its crude from the Bay Marchand Field to the Cantium Dewatering Facilities and then onto the Fourchon Terminal in Louisiana. That pipeline does not have a FERC Tariff on file. From Bay Marchand, the movements come first to the Cantium Dewatering Facilities. Cantium does not have a FERC Tariff for the provision of those dewatering services, presumably because Cantium itself does not consider these movements to be part of a continuous interstate movement. If that is true, then, likewise, the storage of crude at the Fourchon Terminal cannot be an intermediate movement as part of a continuous interstate movement because FERC jurisdiction only begins when oil is tendered to a pipeline for interstate transportation.

The Commission has long held that “terminal facilities” consisting of “smaller pipes, metering facilities and storage tanks, [and] truck unloading facilities” are non-jurisdictional if they occur “after jurisdictional transportation is completed.”<sup>23</sup> Likewise, the same facilities are not jurisdictional if they occur *before* jurisdictional transportation

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<sup>23</sup> *NGL Supply Wholesale, LLC v. Phillips 66 Pipeline LLC and Phillips 66 Co.*, 17 FERC P 61,016 (July 9, 2020) (“*NGL Supply Wholesale*”), quoting *TEPPCO*, 131 FERC ¶ 61,277 at P 12.

has commenced.<sup>24</sup> The Commission has further held “that transportation services are completed at the time the petroleum product enters the terminal or other facilities.”<sup>25</sup> Here, Cantium uses the Rosefield Terminal Assets prior to pipeline transportation, and the Commission should find that the Rosefield Terminal Assets and facilities comprising the Fourchon Terminal are non-jurisdictional.

**D. Cantium’s Complaint Does Not Recognize the Intrastate Nature of Its Movements**

Cantium claims Commission jurisdiction over the Rosefield Terminal Assets based on alleged distribution of crude interstate that must pass separately through the Fourchon Terminal, then to either the Alliance Terminal or Empire Terminal, and then allegedly to points interstate. As an initial matter, it must be noted that there are multiple distribution options at the Fourchon, Alliance and Empire Terminals that result in crude oil remaining in Louisiana. In these instances, the ultimate decision on where to distribute the crude is made after the initial movement onshore, when it is at a location (the Alliance Terminal, or possibly Empire Terminal) where it could, and often is, diverted into intrastate alternatives. Thus, there is no fixed and persisting intent on a continuous interstate movement.

At the Cantium Dewatering Facilities and Rosefield’s Fourchon Terminal, crude comes to rest, which causes a break in transportation that results in any subsequent transportation of products being a separate movement. In addition, there is a subsequent break in transportation at both the Alliance and Empire Terminals when the crude comes

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<sup>24</sup> *Id.*, citing *Tesoro*, 135 FERC at P 17 (2011) (“jurisdiction does not begin until the petroleum products enter an interstate pipeline”).

<sup>25</sup> *TEPPCO*, 131 FERC ¶ 61,277, at P 11 (2010).

to rest before further movement. Therefore, the Commission should find there are two or three separate movements before any possibility of any movements interstate, and not a continuous movement across state lines that would establish jurisdiction.

## V. ANSWER

Subject to Rosefield's request that the Commission dismiss Cantium's Complaint and terminate this proceeding, Rosefield files this Answer to the Complaint. The Commission should dismiss Cantium's Complaint for the following three reasons.

- First, Cantium relies on an inapplicable 40-year old decree concerning a vastly different operating system. The *South Timbalier* Order addressed a wholly integrated pipeline system, owned by one company, used to transport crude from the Gulf through Louisiana to the owner's affiliated Mississippi refinery.
- Under the Commission's precedents, its oil pipeline regulations do not apply to Rosefield's terminal assets because those services, as a matter of law, "are not integral or necessary to the transportation function."
- Cantium concedes that any interstate crude shipments rely on barges to leave Louisiana and thus are not subject to FERC's pipeline regulations.
- The Complaint shows that the crude shipments it describes flunk "the essential character of the commerce" test because those shipments repeatedly come to rest, thereby breaking the continuity of transportation required for a shipper to demonstrate a fixed and persisting intent to transport product interstate.

### A. The 1984 Consent Decree Is No Longer Applicable

In making its arguments that the Rosefield Terminal Assets should be deemed jurisdictional under the ICA, the Complaint relies on an Order Approving Stipulation and Consent Agreement<sup>26</sup> issued in 1984. The *South Timbalier* Order is no longer applicable nor is it controlling with regard to the current proceeding.

As an initial matter, the Parties to the Consent Decree made abundantly clear it was non-precedential. The admissions of violations contained therein were for the purposes of

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<sup>26</sup> *South Timbalier Pipeline Sys.*, 29 FERC ¶ 61,345, at 61,726 (1984) ("*South Timbalier*")

that settlement and the parties stipulated that any “proceedings commenced by the Commission relating to such Order, are neither intended nor viewed as constituting a basis of any action in any future litigation by other persons.”<sup>27</sup> Thus, neither the parties to the Consent Agreement, nor the Commission considered the *South Timbalier* Order to be precedential or controlling, either at the time, or forty years after the fact.<sup>28</sup>

Moreover, the 1984 Consent Decree was based on the facts then presented. It is undisputed that *South Timbalier* involved assumptions regarding the jurisdictional status of a pipeline system then wholly owned by CPL and affiliates, inclusive of the Fourchon dewatering (drying) facilities. However, since that time, the configuration and operations of the once continuous system have completely changed.

Specifically, the finding of jurisdiction of a pipeline system that included the Fourchon Terminal in 1984 was based on nine factors admitted to by the parties. Rosefield asserts that these facts have changed in a manner that no longer results in a reasonable reliance on the *South Timbalier* Order in determining the jurisdictional status of the Rosefield Terminal Assets. Pipeline assets are prone to physical and operational changes over four decades. These include changes due to normal age and wear as well as hurricanes and other storm damage. Most recently, in 2021, Hurricane Ida significantly damaged key assets, both offshore and onshore, which are relevant to this proceeding. Review of the changed circumstances following each of the key findings from *South Timbalier* is warranted.

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<sup>27</sup> Stipulation and Consent Agreement, Section I, at p. 3.

<sup>28</sup> See *Ship Shoal Pipeline Company*, 172 FERC ¶ 61,116, at P 20 n.43 (2020) (explaining that the jurisdictional findings in *South Timbalier* were part of a consent agreement and “not intended to be precedential”).

The first factor relied upon in *South Timbalier* was that the CPL-owned South Timbalier pipeline system transported wet oil from the OCS to the CPL-owned Fourchon Terminal treatment facility.<sup>29</sup> The relevance here was the common ownership by CPL of the South Timbalier pipeline system and the dewatering facility (now Cantium's). However, the South Timbalier pipeline system is not at issue in this Complaint because it is not the pipeline Cantium uses to bring its crude from the Bay Marchand Field to the Fourchon Terminal. Instead, Cantium uses its own pipeline. Upon information and belief, Cantium operates its pipeline as a non-FERC-jurisdictional line utilized only to bring its own product from the OCS to onshore. Moreover, although Cantium does also own the dewatering facilities and despite its claim that these facilities are necessary and integral to its crude movement, it has made no claim that those assets are jurisdictional. And, Cantium does not own the entirety of the assets at Fourchon because of Rosefield's ownership of the Rosefield Terminal Assets. Thus, this common ownership factor of the many different functional aspects of the broader system is no longer present in the current configuration and operation at issue in the Complaint.

The second factor was that the South Timbalier pipeline system connected with the Fourchon Terminal located onshore Louisiana, and through it, with the Cal-Ky pipeline system.<sup>30</sup> Once again, the South Timbalier pipeline system is not the pipeline system utilized to bring Cantium crude to Fourchon, as Cantium uses its own pipeline system connected to its Bay Marchand Field. In addition, the Cal-Ky pipeline system referenced in the Order is no longer part of a continuous pipeline system. The interconnection that

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<sup>29</sup> *South Timbalier* at 61,727.

<sup>30</sup> *Id.* at n. 3.

remains at the Fourchon Terminal that was the subject of the settlement in 1984 is the CPL 20-inch Pipeline which previously provided transportation to the Empire Terminal. But, as Cantium acknowledges, currently there is not sufficient pump pressure to establish flow on the CPL 20-inch Pipeline.<sup>31</sup> Given this, it is not physically possible to make movements on the CPL 20-inch Pipeline, the subject of the Consent Decree and *South Timbalier* Order. Cantium admits in the Complaint it has not attempted to deliver oil on the CPL 20-inch Pipeline since 2021.<sup>32</sup>

The third factor was that the Cal-Ky system consisted in part of a crude oil pipeline that extended to the Empire Terminal and beyond to CPL's affiliate's refinery in Pascagoula, Mississippi.<sup>33</sup> As stated above, the Cal-Ky system is no longer an integrated pipeline system. It has been three years since any crude has shipped from the Fourchon Terminal on the CPL 20-inch Pipeline. Even if shipments were possible, the CPL 20-inch Pipeline currently ships crude to the Empire Terminal within Louisiana. At Empire, crude comes to rest, causing a break in transportation, and subsequently a decision is made regarding any further distribution of crude. As a result, there are at least two separate local movements: one from Fourchon to Empire and then a second from Empire to the ultimate destination. CPL no longer has a tariff on file with the Commission for movement from either the Fourchon Terminal or the Empire Terminal to Pascagoula, Mississippi.<sup>34</sup> First,

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<sup>31</sup> Henagan Aff. at P 23. "Currently, the Rosefield Terminal Assets do not have adequate pumps to meet the CPL 20-inch's operating pressure, which restricts Cantium's ability to use the CPL 20-inch pipeline. Therefore, Cantium has used this pipeline only when Cantium's primary interconnection to the BOA Pipeline has become inaccessible, such as when this interconnection was temporarily shut down due to damage from Hurricane Ida in 2021.

<sup>32</sup> *Id.*

<sup>33</sup> *South Timbalier* at 61,727, n.3.

<sup>34</sup> See *Chevron Pipe Line Company*, Index of Tariffs, effective January 1, 2024, available here: <https://www.chevron.com/-/media/chevron/what-we-do/energy/transportation/pipelines/tariffs-rate->

on June 26, 2003, CPL submitted its FERC Tariff No. 811, which, among other things, cancelled the FERC Tariff previously in place for movements from Empire Terminal to Pascagoula, Mississippi on the Cal-Ky pipeline, effective July 1, 2003, when the pipeline was removed from service.<sup>35</sup>

Additionally, in 2011 CPL sought to return a portion of the Cal-Ky system to service so it could transport its affiliates' crude oil from Empire Terminal to Chevron's refinery at Pascagoula, Mississippi.<sup>36</sup> In doing so, Chevron sought and received a "Hunt Waiver" (*i.e.* a Temporary Waiver of Sections 6 and 20 of the ICA) for what was identified as "Chevron's 20-inch 'Cal-Ky' pipeline that spans 103 miles, begins in Plaquemines Parish, Louisiana and ends at an affiliate's refinery, in Pascagoula, Mississippi."<sup>37</sup> In its request, CPL noted that it previously "removed the Cal-Ky Pipeline from interstate service cancelling its FERC tariff effective July 1, 2003." In that Order, the Commission took notice that there are no pipeline interconnections with other pipelines between the Empire Terminal and the termination pipeline, all oil transported on the pipeline will be owned by Chevron's affiliate, and there are not anticipated requests for third-party transportation on the pipeline.<sup>38</sup> CPL was directed to report on any change in circumstances affecting the waivers including third party service.<sup>39</sup> No such change in circumstances notice has been

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sheets/documents/FERC-1176260-Index-of-Tariffs.pdf

<sup>35</sup> See *Chevron Pipe Line Co.*, F.E.R.C. No. 811, submitted June 26, 2003, to be effective July 1, 2003 in Docket No. IS03-328-001 and also *Chevron Pipe Line Co.* F.E.R.C. No. 812, submitted July 25, 2003, to be effective August 1, 2003.

<sup>36</sup> See *Chevron Pipe Line Co.*, *Letter Order Granting Temporary Waiver of Sections 6 and 20 of the Interstate Commerce Act*, 134 FERC P 61,073 (January 31, 2011). Docket No. OR11-1-000.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*



filed with the Commission since the issuance of the Letter Order.

The fourth factor was that the Cal-Ky pipeline had always been owned and operated by CPL or CPL affiliates and had always been covered by tariffs.<sup>40</sup> As discussed, what was once referred to as the Cal-Ky pipeline system is no longer in service as it was in 1984. The Cal-Ky pipeline is no longer operated by CPL as a common carrier pipeline with posted tariffs with the Commission.

The fifth factor was that the South Timbalier system and the Cal-Ky system were then part of CPL's Gulf Coast Division.<sup>41</sup> What was relevant here was that the "system" considered in the *South Timbalier* case was an integrated one, operated as a common carrier under a single owner. The South Timbalier pipeline is no longer owned by CPL, nor is it the pipeline at issue in this Complaint. The Cantium-owned pipeline that brings its crude to Fourchon is also not part of a single system owned by a single pipeline operator.

The sixth fact was that the South Timbalier system, at the time of the 1984 Order, was engaged in interstate transportation of oil by pipeline subject to the ICA and offered transportation under a FERC-approved tariff.<sup>42</sup> The South Timbalier pipeline FERC tariff was cancelled in August 2022.<sup>43</sup>

The seventh factor was that the transportation of oil from the offshore facilities through the drying (dewatering) facilities to Pascagoula, Mississippi was continuous

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<sup>40</sup> *South Timbalier* at 61,727, n. 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 61,727.

<sup>43</sup> Rosefield affiliate, Rosefield Pipeline Company, LLC, the current owner of a portion of the South Timbalier System, submitted a cancellation of the South Timbalier to Fourchon Terminal pipeline routing, which became effective August 31, 2022. *See Rosefield Pipeline Co., LLC*, F.E.R.C. No. 1.1.0, submitted August 29, 2022, to be effective August 31, 2022, in Docket No. IS22-1007-000.

without material interruption.<sup>44</sup> It can no longer be said that there is a continuous movement from offshore through the dewatering facilities to Pascagoula. To begin with, the Rosefield Terminal Assets alleged to be jurisdictional do not include the transportation from offshore facilities, as those at issue here are not the same as those that were issue in 1984. Cantium utilizes its own pipeline to bring product to Fourchon, which is not the same OCS transportation at issue in *South Timbalier*. Rosefield has never held itself out to provide interstate transportation services through its storage facilities at the Fourchon Terminal. Likewise, Rosefield does not own or control the dewatering facilities identified as key to jurisdiction in the *South Timbalier* order. At the time of the *South Timbalier* Order there was a single continuous movement from offshore to Pascagoula, Mississippi. Today, crude that is moved through the Fourchon, Empire or Alliance Terminals can be distributed to multiple in-state destinations.

The eighth factor was that the movement of oil through the drying (dewatering) facilities at Fourchon was necessary and integral to interstate transportation of oil from offshore through Louisiana to Mississippi.<sup>45</sup> As has been established and is not disputed, the Rosefield Terminal Assets alleged to be jurisdictional do not include the dewatering facilities. Thus, it cannot be said that this factor applies to the Rosefield Terminal Assets.

The ninth factor was that the parties to the Consent Decree admitted that the drying (dewatering) facilities at Fourchon perform a transportation service within the meaning of Section 1 of the ICA.<sup>46</sup> Cantium has made no such admission in its Complaint. On its part, Rosefield with respect to the Rosefield Terminal Assets makes no such assertion. The

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<sup>44</sup> *South Timbalier* at 61,728.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 61,727.

previous owner's (CPL's) admission of this fact was clearly tied to the integrated nature of the system in 1984. As discussed herein, the routing(s) Cantium relies upon in making its claims involve its own pipeline system from the OCS to Fourchon, separate ownership of the Cantium Dewatering Facilities, and the Rosefield Terminal Asserts at Fourchon Terminal, no current access to the original CPL 20-inch Pipeline and no common carrier access to the previous Cal-Ky routing to Pascagoula.

**B. The Fourchon Terminal is Not Integral or Necessary for Transportation and Thus Cannot Be Subject to Commission Jurisdiction**

**1. The Commission Has Found Such Terminals to be Non-Jurisdictional**

The Commission's jurisdiction is derived from the ICA, which as discussed below is limited to interstate transportation by pipeline. FERC's oil pipeline regulations also apply only to "carriers" (*i.e.*, oil pipelines).<sup>47</sup> This is a key flaw in Cantium's Complaint: neither Rosefield nor its Fourchon Terminal are "an oil pipeline subject to the Commission's jurisdiction under the [ICA]."<sup>48</sup>

Rosefield's Terminal Assets are just that—a stand-alone terminal. The Commission has repeatedly found such terminals to be non-jurisdictional under the ICA.<sup>49</sup> The jurisdictional question here comes down to whether or not the Rosefield Terminal Assets are integral or necessary to interstate pipeline transportation services, and they are not.<sup>50</sup>

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<sup>47</sup> "*Carrier* means an oil pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act." 18 C.F.R. § 341.0(a)(1).

<sup>48</sup> 18 C.F.R. § 341.0(a)(1).

<sup>49</sup> *TEPCO; Tesoro Refining; NGL Supply Wholesale, pet. denied. NGL Supply Wholesale, LLC v. FERC*, No. 20-1330, 2022 WL 715081 (D.C. Cir. Jan. 25, 2022).

<sup>50</sup> *TEPCO*, 131 FERC ¶ 61,277, at P 12 (2010).

In TEPPCO, the applicant sought to remove from its FERC tariffs certain non-jurisdictional terminalling and odorization services (which, like the Fourchon Terminal services, were previously provided to shippers).<sup>51</sup> The Commission ultimately found that the terminal facilities “are not integral or necessary to the transportation function,” reasoning that they “are not on TEPPCO’s mainline system and consist of smaller pipes, metering facilities and storage tanks.”<sup>52</sup> As the Commission further explained:

The fact that storage tanks are also found at the terminal facilities shows that something other than jurisdictional transportation is occurring at these facilities. It is also important to note that throughout the industry and on TEPPCO’s system, other entities provide the same or similar terminalling services as TEPPCO and they do not have FERC tariffs on file. . . . The fact that TEPPCO previously provided the terminalling services as part of its tariff in conjunction with jurisdictional services does not make the services jurisdictional. The fact that the services were spun down to an affiliate of TEPPCO also does not provide a basis for asserting jurisdiction over these services. Thus the physical nature of the terminalling facilities themselves and the fact that these services are provided by non-jurisdictional entities supports the conclusion that they are not integral or necessary for jurisdictional transportation.”<sup>53</sup>

The similarities between the Rosefield Terminal Assets and the terminal in *TEPPCO* are striking. Both of these terminals consist of smaller pipes, metering facilities and storage tanks; they were previously operated by carriers that provided such terminalling services under FERC tariffs in conjunction with other jurisdictional services; and they were transferred to separate, non-carrier entities and subsequently removed from previous FERC tariffs.

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<sup>51</sup> *Id.* at P 2.

<sup>52</sup> *Id.* at P 12.

<sup>53</sup> *Id.*

Applying *TEPPCO* to another jurisdictional determination in *Tesoro Refining*—regarding in part, two spur lines transporting petroleum products from a refinery to a products terminal, and from there onto either intrastate or interstate pipelines—the Commission found that its “jurisdiction does not begin until the petroleum products enter an interstate pipeline connecting to Chevron’s terminal.”<sup>54</sup> The Commission more recently, in *NGL Supply Wholesale*, tied the *TEPPCO* and *Tesoro Refining* cases together in making yet another finding that neither an interconnection, nor the terminal facilities it’s a part of, provide jurisdictional transportation service. Denying the complaint in that proceeding, the Commission explained that:

The Commission has held that “terminal facilities” consisting of “smaller pipes, metering facilities and storage tanks, [and] truck unloading facilities” are non-jurisdictional if they occur “after jurisdictional transportation is completed.” Likewise, **the same facilities are not jurisdictional if they occur before jurisdictional transportation has commenced. Because Phillips 66 uses the facilities to tender its product to the pipeline for transportation, the facilities are necessarily located before the transportation has commenced.**<sup>55</sup>

In short, the Commission has made very clear that terminal facilities such as Rosefield’s, which do not serve any function necessary or integral to transportation, are not within the purview of the Commission’s jurisdiction under the ICA. Furthermore, as discussed in the next section, there does not currently exist any continuous interstate transportation to which Rosefield’s Terminal Assets could even be considered necessary

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<sup>54</sup> *Tesoro Refining*, 135 FERC ¶ 61,116, at P 16-17 (2011).

<sup>55</sup> *NGL Supply Wholesale*, at PP 15-16 (*emphasis added*) (citing *TEPPCO*, 131 FERC ¶ 61,277, at P 12; *Tesoro Refining*, 135 FERC ¶ 61,226, at P 17).

and integral. In other words, the Rosefield Terminal Assets cannot be a link in a chain that doesn't exist.

**2. There Is No Continuous Interstate Transportation to Which the Fourchon Terminal Could Be Considered Integral and Necessary**

The fundamental question before the Commission is whether Rosefield's Terminal Assets constitute a link in continuous interstate transportation or whether the terminalling and storage activities at the Fourchon Terminal break the continuity of interstate movement.<sup>56</sup> Aside from Cantium's blanket assertions, the Complaint lacks any evidence whatsoever of intent on the part of any shipper for interstate transportation to which the Rosefield Terminals Assets serve as a link.

As described more fully above, the *South Timbalier* stipulation that Cantium relies upon concerned an integrated system as a whole, owned and operated entirely by CPL affiliates. At that time, it was CPL's intent to ship all of its Gulf of Mexico production to its refinery in Pascagoula, Mississippi. Neither Rosefield, nor any known shippers, share such intent. Additionally, the system at issue in the 1984 Consent Decree included CPL owned pipelines from the Gulf of Mexico to the CPL owned drying facility at Fourchon Terminal, and the current CPL 20-inch Pipeline and the then-jurisdictional Cal-Ky interstate pipeline from CPL's Empire Terminal to Pascagoula, Mississippi. Here, Rosefield's facilities are limited to storage tanks, meters and small-gauge terminal transfer lines at Fourchon. Other facilities that were covered by the 1984 stipulation, namely the pipeline system from the Gulf of Mexico at issue here is not the same as that in 1984, as Cantium uses its own pipeline not at issue in *South Timbalier*. The pipeline at issue here

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<sup>56</sup> See *Aircraft Service International, Inc. v. FERC*, 985 F.3d 1013, 1016 (D.C. Cir. 2021).

and the dewatering facilities are now both owned and operated by Cantium.<sup>57</sup> Notably, the *South Timbalier* stipulation specifically referred to the drying facilities (now the Cantium Dewatering Facilities)—not the terminal facilities that are now owned and operated by Rosefield (Rosefield Terminal Assets)—as necessary and integral interstate transportation.<sup>58</sup>

The general path that the oil follows in this case begins in the Gulf of Mexico.<sup>59</sup> From there, it is shipped to dewatering facilities that are owned and operated by Cantium.<sup>60</sup> It then enters Rosefield's storage tanks at the Fourchon Terminal, where it remains for an agreed-to period of time, and then through small-gauge terminal transfer lines at the Fourchon Terminal that connect to the BOA Pipeline and CPL's 20-inch Pipeline (although, as noted, no deliveries have been made to the 20-inch CPL pipeline since 2021 because there is insufficient pumping capacity to make such deliveries).<sup>61</sup> The BOA Pipeline delivers oil to the Alliance Terminal<sup>62</sup> (and the 20-inch CPL Pipeline, although not currently accepting crude oil from Rosefield, delivers to the Empire Terminal). Both of these terminals (Alliance and Empire) are located in Plaquemines Parish, Louisiana.

The oil delivered to the Alliance and Empire Terminals remains there for unknown periods of time, as the ultimate destinations for such oil is not yet determined until after

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<sup>57</sup> See Complaint at n. 11; Henagan Affidavit at PP 12-15.

<sup>58</sup> *South Timbalier*, at 61,728 (“the movement of oil through the drying facilities at Pass Fourchon is necessary and integral to the interstate transportation of oil from offshore through Louisiana to Mississippi.”)

<sup>59</sup> Henagan Aff. at P 18.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at PP 18 and 23.

<sup>62</sup> See Arrowhead Tariff at P 18.

delivery to such terminals.<sup>63</sup> Upon further information and belief, Cantium passes title to the oil to a separate shipper before it ever reaches the Alliance and Empire Terminals. In fact, Cantium has provided no evidence that it even holds title to any of the oil stored at Rosefield's Fourchon Terminal tanks. Aside from the fact the Alliance and Empire Terminals serve as marketing hubs and represent yet another break in transportation, the only transportation by pipeline to points interstate from either of them is CPL's own pipeline (a version of which is referred to as the Cal-Ky Pipeline in the *South Timbalier* stipulation) which ships CPL's products from CPL's terminal (*i.e.*, Empire) to CPL's refinery in Pascagoula, Mississippi, and does not appear to have a FERC tariff. Aside from barge tankers (which are not subject to the Commission jurisdiction under the ICA, as discussed in section below), the only other avenues to ship from Alliance or Empire are to other *intrastate* terminals or refineries.

If it is Cantium's position that the Fourchon Terminal is a link in continuous interstate transportation, then it would stand to reason that such continuous transportation would begin with its own pipeline system from the Bay Marchand Field from the Gulf of Mexico. It would also have to include the Cantium Dewatering Facilities used for processing Cantium's Bay Marchand production. And with regard to the movements via the BOA pipeline, such reasoning would also include the Alliance Terminal. Yet, none of these services or facilities are covered under a Commission tariff.

In other words, Cantium's position is that interstate transportation (via the BOA Pipeline) only takes place **from (a)** the point where oil comes to rest in Rosefield's storage tanks at the Fourchon Terminal in Lafourche Parish, Louisiana (after exiting Cantium's

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<sup>63</sup> Henagan Aff. at P 22.



Dewatering Facilities), to (b) the point where it again comes to rest for an unknown duration at the Alliance Terminal in Plaquemines Parish, Louisiana. This is non-sensical. The facilities at the Fourchon Terminal are no more “transportation” than the Cantium Dewatering Facilities or the Alliance Terminal facilities, both of which do not operate under a FERC Tariff. As for the CPL 20-inch Pipeline to the Empire Terminal in Plaquemines Parish, Louisiana, nobody has shipped, requested to ship or expressed a desire to ship on the CPL 20-inch Pipeline from the Fourchon Terminal to the Empire Terminal for three years, since 2021, as it is incapable of flowing due to insufficient pump pressure.<sup>64</sup>

There is no continuity of jurisdictional, interstate pipeline transportation that takes place under a FERC tariff before oil reaches Rosefield’s Terminal Assets. Nor is there any such transportation taking place following the Fourchon Terminal (be it via the BOA Pipeline and Alliance Terminal or the 20-inch CPL Pipeline and the Empire Terminal) to which Cantium can claim is their intent. If the Rosefield Terminal Assets are an integral or necessary link to any transportation (which it is not), then such transportation is far too discontinuous to be considered FERC-jurisdictional.

**C. Barge Transportation From the Alliance Terminal Is Not Subject to FERC Jurisdiction**

Because it has not made any movements on the CPL 20-inch Pipeline since 2021, the Complaint focuses primarily on potential jurisdictional interstate transportation from the Alliance Terminal. But, the only movements from the Alliance Terminal to out-of-state destinations occur by barge and not by pipeline. FERC does not have authority over transportation by waterways, thus it must be concluded that the Fourchon Terminal does

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<sup>64</sup> See *id.* at P 23.

not form a link in the chain of *pipeline* transportation to destinations out of Louisiana, and, as a matter of law, FERC lacks jurisdiction over the Fourchon Terminal.

### 1. FERC's Statutory Authority is Limited to Transportation by Pipeline

The Commission's authority over oil pipelines comes from not only the ICA, but also the Department of Energy Organization Act of 1977 ("DOE Act"). The ICA originally governed:

common carriers engaged in ... [t]he transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water ... from one State ... to any other State ... or ... to or from a foreign country, but only insofar as such transportation takes place within the United States.<sup>65</sup>

Authority over oil pipelines under the ICA initially rested with the Interstate Commerce Commission ("ICC"), which also regulated other types of carriers including railroads, motor carriers, water carriers and pipelines that transported commodities other than oil.

In 1977, the DOE Act transferred to the newly-created U.S. Department of Energy and FERC "such functions set forth in the [ICA] and vested by law in the [ICC] as relate to *transportation of oil by pipeline*."<sup>66</sup> A year later, the provisions of the ICA that applied to carriers other than oil pipelines were repealed and recodified. The prior version of the ICA, as it existed on October 1, 1977, remained in effect only as it "*related to the transportation of oil by pipeline*."<sup>67</sup>

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<sup>65</sup> 49 U.S.C. app. § 1 (1988).

<sup>66</sup> DOE Act (*emphasis added*); see also *Coastal States Marketing, Inc. v. Texas-New Mexico Pipeline Co.*, 23 FERC ¶ 61,321 at 61,708 (1983) (discussing subsequent delegation by Secretary of Energy to FERC of all authority over transportation of oil by pipeline except for certain authority under the Clayton Act).

<sup>67</sup> See Pub. L. No. 95-473, § 4(c), 92 Stat. 1337 (1978) (*emphasis added*).

The DOE Act therefore makes the ICA provision governing the transportation of oil “partly by pipe line and partly by railroad or by water” no longer applicable for purposes of FERC’s jurisdiction for the same reason that the provision governing transportation of “other commodit[ies]” no longer applies.<sup>68</sup> In short, the ICA as it applies to FERC governs the “transportation of oil ... by pipe line ... from one State ... to any other State [or] foreign country,” which means FERC’s jurisdiction is limited to cases where oil is physically transported from one State to another State or foreign country *by pipeline*, not where a single-state pipeline forms a link in the chain of interstate transportation with non-pipeline carriers.

**2. Supreme Court Precedent Further Makes Clear that FERC Has Jurisdiction Only When All the Links in the Chain of Interstate Transportation are FERC-Regulated Pipelines**

Supreme Court precedent further supports the proposition that FERC has jurisdiction over single-state oil pipeline movements only where they form a link in the chain of interstate transportation with other common carriers regulated by FERC – in other words, with other pipelines.<sup>69</sup> In *Pennsylvania Railroad*, a company mined coal in Pennsylvania and moved it by means of its own barges and other facilities across the river to Ohio. In Ohio, the coal was tendered to a rail carrier for transportation to destinations in Ohio.<sup>70</sup> In finding the Ohio rail movements to be intrastate, the Supreme Court explained that the relevant question was not “whether the movement of coal is to be classified as

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<sup>68</sup> See, e.g., *CF Indus., Inc. v. FERC*, 925 F.2d 476 (D.C. Cir. 1991) (FERC lacks authority over pipeline transportation of anhydrous ammonia, because FERC’s jurisdiction is limited to transportation of oil by pipeline and anhydrous ammonia is not oil).

<sup>69</sup> *Pennsylvania Railroad Co. v. Pub. Util. Comm’n of Ohio*, 298 U.S. 170 (1936) (“*Pennsylvania Railroad*”).

<sup>70</sup> See *Pennsylvania Railroad*, 298 U.S. at 171-74.

commerce or even as commerce between states,” but rather “whether it is that particular form of interstate commerce which Congress has subjected to regulation in respect of rates by a federal commission.”<sup>71</sup> The Court stated that it was not aware of any case in which “transportation by a common carrier [has] been combined with carriage by an owner for the purpose of subjecting the whole to the operation of the statute when the parts would be exempt.”<sup>72</sup> The Court therefore concluded that since the movement by an owner of its own goods in its own vessels is not common carriage regulated by the ICA, the movement from Pennsylvania to Ohio could not be combined with the rail movement within Ohio to create regulated interstate transportation.

The Court also distinguished certain prior Supreme Court decisions that found single-state railroads to be jurisdictional where they connected to water carriers that transported the applicable commodities in foreign commerce.<sup>73</sup> The Court explained that where a shipment by railroad preceded or followed shipment to a *foreign country*, the ICA explicitly subjected the single-state rail movements to ICA jurisdiction.<sup>74</sup> The statutory provision relied on by the Court was ICA § 1(2), which applies to “transportation of passengers and property” and thus govern railroads, but is not applicable to oil pipelines.<sup>75</sup>

The Court further explained that its holding was not inconsistent with *Atlantic Coast* and other similar Supreme Court decisions.<sup>76</sup> *Atlantic Coast* established the general

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<sup>71</sup> *Id.* at 174.

<sup>72</sup> *Id.* at 176.

<sup>73</sup> *Id.* at 176 (citing *U.S. v. Erie R. Co.*, 280 U.S. 98 (1929); *Texas & New Orleans Ry. Co. v. Sabine Tram Co.*, 227 U.S. 111 (1913)).

<sup>74</sup> *Id.* at 176.

<sup>75</sup> Compare ICA § 1(1)(a) (referring to “transportation of passengers or property” by rail) with ICA § 1(1)(b) (referring to “transportation of oil” by pipe line).

<sup>76</sup> See *Pennsylvania Railroad*, 298 U.S. at 175-76.

principle that whether a movement is interstate or intrastate depends upon the “essential character of the commerce,”<sup>77</sup> but did not directly address the issue here. In *Atlantic Coast*, the Supreme Court analyzed whether certain rail movements within Florida preceded by water movements from Louisiana and Mexico were interstate or intrastate. The Court found the rail movements to be intrastate because of a break in the chain of transportation at the dock storage facilities and did not address whether the rail movements could be combined with the prior water movements to establish jurisdiction. Indeed, in *Atlantic Coast*, the Court expressly declined to consider the jurisdictional status of the transportation of oil by pipeline from the vessels to the storage tanks and rail loading facilities, given that question was not before it.<sup>78</sup>

In short, *Pennsylvania Railroad* stands for the proposition that the only “common carrier” movements that can be linked to form interstate transportation are those regulated by FERC under the ICA. Because the DOE Act limits FERC’s jurisdiction to transportation of oil by pipeline, single-state pipeline movements may only be linked with other pipeline movements.<sup>79</sup>

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<sup>77</sup> 275 U.S. at 268.

<sup>78</sup> 275 U.S. at 270.

<sup>79</sup> Even if it were possible to form interstate transportation by linking pipeline movements with other modes of transportation provided they are “common carriers” even if regulated by a federal agency other than FERC, oil tankers and barges are not common carriers even under that definition. The STB has jurisdiction over water carriers in interstate commerce and the Federal Maritime Commission (“FMC”) has jurisdiction over common carriage by water in foreign commerce. 49 U.S.C. § 13521; 46 U.S.C. § 13101. Both agencies, however, exempt contract and private carriage from regulation. Compare 49 U.S.C. §§ 13541(f), 14101; 49 C.F.R. § 1312.1, with 46 U.S.C. §§ 40102(4-6), 40501; 46 C.F.R. §§ 515.2(f), 520.2. Barges and tankers that transport oil are either privately-owned or privately chartered for the use of a particular shipper. Such chartered vessels are considered private carriage as opposed to common carriage. *Horizon Lines, LLC v. U.S.*, 414 F. Supp. 2d 46, 56-58 (D.D.C. 2006); see also *U.S. v. Stephens Bros. Line*, 384 F.2d 118, 124 n.16 (5th Cir. 1967) (a carrier transporting a single commodity for a single shipper under a single contract is not engaged in common carriage, and that the “best example of such a carrier is a tanker”). Thus, vessels that transport property of a single shipper per voyage by contract or charter or move only bulk cargo (including oil) are not considered common carriers and are exempt from regulation by both the STB and FMC.

### 3. FERC Precedent Further Supports the Conclusion that the Commission Lacks Jurisdiction Here

FERC decisions applying the “link in the chain” principle generally involve connections between single-state pipelines and other *pipelines* and are thus consistent with FERC’s statutory authority as discussed above.<sup>80</sup> There are a few prior cases where the Commission has assumed, with little or no discussion, that barge and tanker movements can be combined with pipeline movements to form interstate commerce.<sup>81</sup> None of those cases, however, addressed the limits of FERC statutory authority discussed above, and in all but one case the pipeline movements were ultimately found to constitute intrastate transportation on other grounds, either because of a break in the chain of transportation at the dock storage facilities,<sup>82</sup> or because no barge or tanker movements to or from other states or foreign countries had been made in recent years.<sup>83</sup> In *Interstate Storage*, FERC declined to overturn a prior ICC determination that certain single-state pipeline movements that followed barge movements from another state constituted transportation in interstate commerce. FERC’s decision did not consider or address the statutory argument discussed above, and instead rested on FERC’s finding that the continuity of transportation was not broken at the barge dock primarily because there was no long-term storage or change in

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<sup>80</sup> See *Texaco Refining and Marketing*, 80 FERC ¶ 61,200, at 61,802 (1997) (“*Texaco Refining*”); *Guttman Energy, Inc. v. Buckeye Pipe Line Company, L.P.*, 147 FERC ¶ 61,088, at PP 17-19, 25 (2014); *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 25 (2006).

<sup>81</sup> See *Northville Dock* 14 FERC at 61,207; *Interstate Storage and Pipeline Corp.*, 28 FERC ¶ 61,120 (1984) (“*Interstate Storage*”); *Interstate Energy Company*, 32 FERC ¶ 61,294 (1985) (“*Interstate Energy*”); *Kenai Pipe Line Company*, 138 FERC ¶ 61,034 (2012) (“*Kenai*”).

<sup>82</sup> See *Northville Dock*, 14 FERC at 61,208-209; *Interstate Energy*, 32 FERC at 61,692.

<sup>83</sup> *Kenai*, 138 FERC at PP 16-20, see *Hydrocarbon Trading and Transport Company, Inc. v. Texas Eastern Transmission Corporation*, 28 FERC ¶ 61,013 at 61,469-71, (1984) (“*Hydrocarbon Trading*”), where it appears that water carriers may have been links in potential interstate transportation; however, the case ultimately terminated without the jurisdictional issue being decided.

ownership at the dock.<sup>84</sup> *Interstate Storage*, therefore, is not controlling in light of the limitation on FERC's authority by the DOE Act.

Moreover, two recent FERC cases further make clear that the Commission's jurisdiction does not extend to inter-modal movements but begins and ends with pipeline transportation. In *TEPPCO*,<sup>85</sup> as discussed above, FERC held that it lacked jurisdiction over certain services offered at destination terminals connected to a propane pipeline where the propane was loaded onto trucks for further delivery because the Commission held that "jurisdictional transportation is completed when the product enters the terminal facilities."<sup>86</sup> Similarly, in *Tesoro Refining*, as also previously discussed, the Commission held that its "jurisdiction does not begin until the petroleum products enter an interstate pipeline" and ends when the product transported enters the terminal after delivery from the pipeline.<sup>87</sup>

In short, because the only movements from the Alliance Terminal to out-of-state destinations occurs by barge and not by pipeline, the Fourchon Terminal does not form a link in the chain of *pipeline* transportation to destinations out of Louisiana. Thus, as a matter of law, FERC lacks jurisdiction over the Fourchon Terminal.

#### **D. Cantium's Alleged Shipments Do Not Meet the Essential Character Test**

The ICC has held 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

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<sup>84</sup> *Interstate Storage*, 28 FERC at 61,208-210.

<sup>85</sup> 130 FERC ¶ 61,257 (2010), *reh'g denied*, 131 FERC ¶ 61,277 (2010).

<sup>86</sup> *TEPPCO*, 131 FERC ¶ 61,277, at P 12.

<sup>87</sup> 135 FERC ¶ 61,116, at P 17 (2011),

the time of shipment.<sup>88</sup> The Commission presumes that “all interstate movements are jurisdictional” unless the facts show a “sufficient break” in the continuity of transportation to demonstrate that shippers lack a fixed and persisting intent to transport product interstate.<sup>89</sup> FERC has found a sufficient break in interstate transportation may be shown if the product comes to rest at a terminal, storage facility, or distribution point, and:

- (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.<sup>90</sup>

In the case before the Commission in the Complaint, there appears to be a break in transportation before any product could reach any point interstate at the Alliance Terminal, if not earlier.

With regard to the first factor, at the time of nomination for services at the Fourchon Terminal, Rosefield is provided no specific order to be filled for a specific quality of crude to be moved through to a specific destination beyond the terminal storage, either at the Fourchon Terminal or the Alliance Terminal. With regard to the second factor, the Alliance Terminal was only recently converted to a terminal, as it had been operated by its previous owner as a refinery for many years. In its current configuration the Alliance Terminal (also

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<sup>88</sup> 353 I.C.C. at 407.

<sup>89</sup> *Guttman*, 161 FERC ¶ 61,180 at P 49 (citing *Texaco*, 80 FERC at 61,805).

<sup>90</sup> *See Northville Dock*, 14 FERC at 61,207; *see also Texaco Refining* 80 FERC at 61,805 (citing *Hydrocarbon Trading; Aircraft Service International Group, Inc. v. Central Florida Pipeline LLC*, 169 FERC ¶ 61,119, at P 109 (2019), *aff'd sub nom., Aircraft Service International, Inc. v. FERC*, No. 20-1013 (D.C. Cir. Jan. 22, 2021)).



known as the Belle Chasse Terminal) sits on 3,200 acres, has 1 million barrels of active storage capacity and two crude oil loading docks.<sup>91</sup> Given these characteristics, the Alliance Terminal, almost certainly qualifies under the test as a point of distribution from which specific amounts of crude are sold or allocated. With regard to the third factor, Cantium admits that transportation in the furtherance of distribution from the Alliance Terminal is only determined after delivery to the Alliance Terminal.<sup>92</sup>

The preceding factors demonstrate that the alleged continuity of Cantium's transportation from the Rosefield Terminal Assets is again broken at Alliance, that the initial shipments have come to rest, and that any alleged interstate journey has (again) ceased before any crude has left the state.

Ultimately, the basic consideration is whether specific quantities of product are nominated for transportation through the applicable storage facility "by immediate continuity of transportation."<sup>93</sup> In other words, a distinction is drawn between: (1) an intent by the shipper to move a specific quantity of product through to its ultimate destination as expeditiously as possible, and (2) an intent to move that volume to storage and then decide how and when to use, sell or further transport it.<sup>94</sup>

With regard to Cantium's alleged shipments, it is clear that there is no intent to

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<sup>91</sup> See Harvest Midstream December 22, 2022 Press Release, "Harvest Announces Agreement to Acquire Belle Chasse Terminal Facility from Phillips 66", available here: <https://www.harvestmidstream.com/news/harvest-midstream-announced-an-agreement-with-phillips-66-to-purchase-the-belle-chasse-terminal/>

<sup>92</sup> See Henagan Aff. at P 22 "Cantium ships a portion of its crude oil via the BOA Pipeline to the dock at the Alliance Facilities, where Cantium and Harvest Marketing & Trading, LLC ("Harvest Marketing") (acting as Cantium's agent) identify and determine the interstate destination of this crude oil based on market conditions and opportunities." (*emphasis added*).

<sup>93</sup> *Atlantic Coast*, 275 U.S. at 269 (*emphasis added*).

<sup>94</sup> See, e.g., *Northville Dock*, 14 FERC at 61,209 (finding chain of interstate transportation broken where shipper used tankage "as a true point of inventory and storage").

move a specific quantify of product directly through the Alliance Terminal from the BOA Pipeline to ocean-going barges. Instead, as the Complaint makes clear, the shipper moves the crude oil to the Alliance Terminal where it comes to rest while the decision is then made what to do with the crude oil.

The same analysis and conclusion could be made with regard to the Empire Terminal. But, as stated elsewhere, Cantium has made no claim that it currently ships or has an intent to ship on the CPL 20-inch Pipeline.

#### **VI. CANTIUM'S REQUEST FOR FAST TRACK PROCESSING SHOULD BE REJECTED**

In Order No. 602, the Commission explained that:

Fast Track processing will be employed in only limited circumstances because of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding. The Commission strongly encourages potential complainants to seek Fast Track processing sparingly and only in the most unusual cases that demand such accelerated treatment. A misuse of Fast Track processing could ultimately tax the Commission's limited resources and jeopardize the availability of the Fast Track procedures.<sup>95</sup>

Cantium's request for Fast Track processing cannot be squared with the standards set forth in Order No. 602. The only basis for its request is that the Rosefield Terminal Assets rate increase represents an increase in costs to Cantium. Cantium has provided no evidence that it pays the rates under the Rosefield non-jurisdictional tariff. Cantium has indicated its Bay Marchand Field production represent a significant portion of its business. But, given current crude oil prices are around \$80 a barrel, Cantium has not provided a

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<sup>95</sup> See *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071, 30,766, *order on reh'g & Clarification*, Order No. 602-A, FERC Stats. & Regs. ¶ 31,076, *order on reh'g*, Order No. 602-B, FERC Stats. & Regs. ¶ 31,083 (1999).

basis for believing the current Rosefield Terminal Assets rates represent anything more than a *de minimis* portion of Cantium's costs. For these reasons, this can hardly be considered one of "the most unusual cases that demand such accelerated treatment."

## VII. DISPUTED FACTUAL ASSERTIONS

Pursuant to Rule 213(c)(1), Rosefield Fourchon Operating, LLC provides herein clear and concise statement of disputed factual allegation in numbered paragraphs contained in the Complaint:

- P2. Rosefield disputes the assertion that Cantium is a shipper, that Rosefield is operating as a carrier engaged in interstate transportation, and that its rates are excessive and unlawful.
- P2. Rosefield disputes the allegations of illegal transportation in interstate commerce at unjust, unreasonable and unlawful rates, in violation of law, regulation and precedent.
- P3. Rosefield disputes any perceived allegation that it transports Cantium's crude oil from the Bay Marchand Field to the Fourchon Terminal. Rosefield disputes the allegation that the CPL 20-inch moves crude from the Fourchon Terminal to Pascagoula, Mississippi as the Empire Terminal within Louisiana serves as the endpoint for the CPL 20-inch. Rosefield disputes the allegation that the BOA Pipeline moves crude interstate as the Alliance Terminal serves as the endpoint for the BOA Pipeline. Rosefield acknowledges that both of these pipelines currently have FERC Tariffs on file. But also notes that the BOA Pipeline interstate tariff (Arrowhead Offshore Pipeline, LLC F.E.R.C. No. 5.0.0) was first issued on October 31, 2023, with an effective date of November 1, 2023. This is more than two months after Chevron's cancellation of Terminalling charges in its August 22,

2023 filing (Chevron Pipe Line Company F.E.R.C. No. 1155.29.0), to which Cantium failed to timely object.

- P5. Rosefield disputes the assertion that dewatering facilities were transferred to Rosefield.
- P6. Rosefield disputes the assertion that Rosefield's services and facilities at the Fourchon Terminal remain integral to the interstate transportation of crude oil and that the two connected pipelines provide interstate delivery.
- P7. Rosefield disputes the complete veracity of the rates for terminalling services asserted as those recited do not include those for dewatering facilities owned and operated by Cantium that were previously applied under the CPL FERC Tariff.
- P11. Rosefield disputes the assertion that Cantium ships through the Fourchon Terminal and that Cantium suffers economic harm.
- P13. Rosefield disputes the assertion that the Commission required CPL to post a tariff for the Rosefield Terminal Assets services. The Order cited approved a non-precedential settlement of an investigation wherein CPL agreed to post a tariff covering the all the prior Fourchon Terminal facilities.
- P14. Rosefield disputes the assertions regarding the focus of *South Timbalier*; that Rosefield continues to offer this service; that Rosefield offers interstate service; that Arrowhead Offshore previously maintained a FERC tariff for transportation in interstate commerce on its BOA pipeline capacity; and that Rosefield now operates the entire operations at Fourchon.
- P18. Rosefield disputes the assertion that it provides jurisdictional access to the Pascagoula, Mississippi Refinery.

- P19. Rosefield disputes the assertion that Cantium has shipped on or has any intent or ability to ship via the CPL 20-Inch to Pascagoula, Mississippi.
- P20. Rosefield disputes the assertion that it moves interstate shipments or provides jurisdictional access to interstate destinations via the BOA Pipeline. Rosefield disputes the assertion that Cantium has any intent to ship interstate via the BOA Pipeline.
- P21. Rosefield disputes any inference that the Cantium Dewatering Facilities located at Fourchon are owned or controlled by Rosefield or that such dewatering services are provided under the Rosefield non-jurisdictional tariff. Such facilities are owned and operated by Cantium, and Rosefield is not aware of any tariff either jurisdictional or non-jurisdictional published for such services.
- P22. Rosefield disputes the assertion that Cantium ships its crude on the BOA Pipeline and that it ships directly to the barge dock at the Alliance Terminal.
- P23. Rosefield disputes the assertion that Cantium ships via the BOA Pipeline.
- P27. Rosefield disputes that the Fourchon Terminal is integral to pipeline transportation. Rosefield also disputes any inference that the CPL 20-inch makes deliveries to Pascagoula, Mississippi, or that the BOA Pipeline makes deliveries directly to barge dock facilities at the Alliance Terminal.
- P28. Rosefield disputes that the Fourchon Terminal is necessary for pipeline transportation.
- P29. Rosefield disputes that the Fourchon Terminal is necessary and integral to a shipper's ability to access interstate pipelines, or that, even if this were true, it would result in the Fourchon Terminal providing interstate transportation service

under the ICA. Rosefield further disputes the assertion that as a result it must charge just and reasonable rates in accordance with a FERC tariff.

- P31. Rosefield disputes that the Fourchon Terminal remains a necessary component of interstate transportation subject to FERC's ICA jurisdiction.
- P33. Rosefield disputes Cantium ships through the Fourchon Terminal and that these factors demonstrate that movement through the Fourchon Terminal are interstate in nature.
- P34. Rosefield disputes Cantium's fixed and persisting intent is to ship certain of its volumes interstate and that it is doing so through the Fourchon Terminal. Rosefield also disputes that Cantium and Harvest Marketing identify, discuss and agree on the interstate destination of shipments prior to nominating volumes for transportation in advance of services provided by Rosefield at the Fourchon Terminal.
- P35. Rosefield disputes that Cantium ships on the BOA Pipeline and any inference that Cantium paid interstate tariff rates on the BOA Pipeline prior to the November 1, 2023 effective date of Arrowhead Offshore Pipeline, LLC F.E.R.C. No. 5.0.0.
- P36. Rosefield disputes the assertion that Cantium ships to the Alliance Terminal, that it ships directly to the Alliance Terminal barge dock, and that there is no change in ownership to the Alliance Terminal barge dock. Rosefield disputes that Cantium shipments to the Alliance Terminal are intended for interstate destinations. Rosefield disputes the assertion that Cantium remains the shipper of record and retains title of such crude.
- P37. Rosefield disputes the assertion that there is no break in transport at the Fourchon

Terminal, at Alliance Terminal and at Empire Terminal, all within the state of Louisiana.

P38. Rosefield disputes the characterization of its Fourchon Terminal tanks as “breakout storage”.

P41. Rosefield disputes that CPL previously allocated its rates for two services at the Fourchon Terminal, and the calculation of CPL’s terminal rate, as they previously covered three rather than two services, the third omitted service being dewatering provided by Cantium that now has no available published tariff either jurisdictional or non-jurisdictional.

P42. Rosefield disputes the inference that it is required to post a FERC tariff for its Fourchon Terminal services. Rosefield disputes the assertion that it provides jurisdictional crude transportation services via the Fourchon Terminal.

P43. Rosefield disputes the characterization of its Fourchon Terminal rates as a combination of the prior CPL Tariff rates.

P44. Rosefield disputes the characterization of its Fourchon Terminal rates as an increase in disregard to any previous ceiling placed on CPL’s jurisdictional services.

P59. Rosefield disputes the characterization of Cantium’s documents as supplying facts, which Rosefield disputes herein.

### **VIII. ADMISSIONS AND DENIALS**

Rosefield Fourchon Operating, LLC hereby incorporates and re-alleges the arguments and defenses raised in the foregoing Answer. Pursuant to Rule 213(c)(2), in the following section Rosefield Fourchon Operating, LLC further provides admissions and denials of each material allegation of the Complaint:

P1. Rosefield denies the assertions of interstate transportation without a tariff on file

with the Commission and excessive and unlawful rates.

- P2. Rosefield denies the assertions of illegal transportation in interstate commerce without a FERC Tariff; unjust, unreasonable and unlawful rates; and alleged violations.
- P6. Rosefield denies the assertions that: Rosefield Terminal Assets remain integral to interstate transportation; it uses its facilities to move crude destined for interstate delivery; and that any such deliveries are delivered interstate in a manner subject to FERC jurisdiction.
- P8. Rosefield denies the assertions of unjust and unreasonable rates in violation of the ICA.
- P11. Rosefield denies the assertions that: Cantium suffers harm under Rosefield's non-jurisdictional tariff; that the rates therein are not just and reasonable, and that such terminalling services constitute jurisdictional transportation services.
- P23. Rosefield denies the assertion that the Rosefield Terminal Assets are "integral" to Cantium's interstate shipments.
- P24. Rosefield denies the assertion that current movement of crude through the Fourchon Terminal remains necessary and integral to interstate transportation.
- P25. Rosefield disputes the assertion that FERC has jurisdiction over transportation of oil partly by railroad or water.
- P26. Rosefield disputes the applicability of the cited cases.
- P27. Rosefield disputes that the Fourchon Terminal is integral to pipeline transportation.
- P35. Rosefield disputes the legal relevance of current or past downstream pipeline jurisdictional status to the "character of the billing, specifically whether it is local



or through” factor in determining the essential character of transportation.

- P36. Rosefield disputes the assertion that there is no change in ownership during any course of transportation from the Alliance Terminal to any points interstate, and challenges as illusory Cantium’s contract with Harvest Marketing.
- P37. Rosefield disputes the assertion that there is no break in transportation and the applicability or precedential effect of the forty year-old *South Timbalier* Order.
- P38. Rosefield disputes the applicability of the cited case concerning breakout storage tanks, not present at Rosfield’s Fourchon Terminal, and the applicability or veracity of the cited portion of the forty year-old *South Timbalier* Order.
- P39. Rosefield disputes the assertion that it provides interstate service at the Fourchon Terminal. Rosefield disputes the characterization of its non-jurisdictional tariff as an increase in absence of support, scrutiny or opportunity for shipper protest.
- P40. Rosefield disputes the assertion that its Fourchon Terminal rates are unlawful, unjust, unreasonable or grossly excessive.
- P44. Rosefield denies any inference that a FERC Tariff ceiling rate applies to its services at Fourchon Terminal.
- P45. Rosefield denies the allegation that it has a burden to support or justify its rates for service at Fourchon Terminal under the cited, or any other FERC precedent or regulations.
- P46. Rosefield denies any inference that its rates for service at Fourchon Terminal are subject to FERC jurisdiction regarding allowed recovery or otherwise.
- P47. Rosefield denies the inference that FERC has jurisdiction to direct it to file a FERC tariff for interstate service through the Fourchon Terminal, that the services

provided by Rosefield are subject to FERC jurisdiction, or that FERC has jurisdiction to set rates for services provided by Rosefield at the Fourchon Terminal. Further, Rosefield denies Cantium has the right to investigate or further challenge Rosefield's rates with the Commission.

- P48. Rosefield denies that Fast Track Processing of the Complaint is warranted.
- P49. Rosefield denies that it is in violation of the ICA as alleged.
- P50. Rosefield denies the Fourchon Terminal continues to be an integral part of a continuous interstate transportation of oil, that it is in violation of the ICA, FERC regulations or precedent; that any of its actions are harmful to Cantium; or that Cantium is a captive customer, or further that Cantium has made a credible argument of it being a captive customer.
- P51. Rosefield denies these allegations.
- P52. Rosefield denies these allegations.
- P53. Rosefield denies the allegation of harm as asserted. Cantium has made no showing of actual economic harm in its recitation of the difference between the previous CPL rates and current Rosefield rates.
- P54. See response to P53.
- P55. Rosefield denies the applicability of ICA Sections 6(1) and 6(7), and Cantium's assertion of rights under the ICA and FERC regulations.
- P57. Rosefield denies the Commission has authority under the ICA for the issues brought in the Complaint or to issue an order regarding Rosefield's provision of services at the Fourchon Terminal. Rosefield also denies its facilities at the Fourchon Terminal constitute oil pipeline assets subject to FERC jurisdiction. Rosefield

further denies the Commission has authority to direct Rosefield to pay reparations, refunds, or damages with interest.

P58. Rosefield denies Cantium has a right to reserve rights to challenge Rosefield rates at FERC.

P63. Rosefield denies Cantium has provided adequate justification for Fast Track processing.

#### **IX. SUPPORTIVE DOCUMENTS AND CONSENT TO PROCESS**

Pursuant to Rule 213(c)(4), this Answer includes documents that support the facts set forth herein. While Rosefield believe this Answer demonstrates that the Complaint is without merit and should be dismissed, if the Commission were to set the Complaint for hearing and settlement procedures, Rosefield is willing to participate in good faith in such proceedings.

#### **X. CONCLUSION**

**WHEREFORE**, for the foregoing reasons, Rosefield Fourchon Operating, LLC respectfully request that the Commission dismiss Cantium, LLC's Complaint in its entirety, and in the alternative issue an Order on the Merits finding the Commission lacks jurisdiction over the Rosefield Terminal Assets.

Dated: February 27, 2024

Respectfully submitted,

/s/ Matthew R. Rudolphi

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### **CERTIFICATE OF SERVICE**

Pursuant to Rule 2010 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 27<sup>th</sup> day of February 2024.

/s/ Matthew R. Rudolphi  
Matthew R. Rudolphi

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**LOUISIANA PUBLIC SERVICE COMMISSION**  
**GENERAL ORDER**  
**LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE**

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*Docket No. R-33390 Rules Applicable To Common Carrier Petroleum Pipelines*

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(Decided at the Commission's Business and Executive Session held February 26, 2015.)

***Purpose***

The Louisiana Public Service Commission ("Commission" or "LPSC") initiated this rulemaking with the goal of formally adopting rules and policies specific to the regulation of petroleum pipeline common carriers. This General Order supersedes any previous orders and minute entries pertaining to petroleum pipelines. The requirements in this General Order apply prospectively to all persons engaged in the transportation of petroleum by pipeline as common carriers for hire ("Carriers").

***Jurisdiction***

The Louisiana Constitution and the Louisiana Revised Statutes Title 45, Chapter 5, Part I, provide that common carriers are subject to regulation by the Commission: La. Const. Art. IV, section 21 (B) provides, in pertinent part,

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

La. R.S. 45:252 provides,

All pipe lines through which petroleum is conveyed from one point in this state to another point in the state are declared to be common carriers as defined in R.S. 45:251 and are placed under the control of and subject to regulation by the Louisiana Public Service Commission.

***Rules***

**Section I. Registration as Petroleum Pipeline Common Carrier**

Prior to initiating service, a Carrier shall submit a registration with the Commission and attach tariff(s) that comply with the requirements in Section 3 and Section 4 of this General Order. The registration shall be in the form of a letter and include the Carrier's name, organizational structure identifying ownership of the pipeline system(s), pipeline system name(s), pipeline system map(s), and regulatory contact information.

Carriers with existing tariffs or approved tariff exceptions on file with the Commission are not required to submit a registration letter or re-submit tariffs. Tariffs or approved tariff exceptions already on file with the Commission will remain in effect.

#### Section 2. Notification Requirements

No later than 60 days after the effective date of a change, a Carrier shall notify the Commission of a change to any of the information that the Carrier provided in its registration as a common carrier pipeline, including notification that the Carrier terminates its registration with the Commission as a common carrier, i.e. all tariffs and contracts have been cancelled and the Carrier has terminated common carrier operations in Louisiana.

#### Section 3. Tariffs

All Carriers shall maintain tariffs on file with the Commission or obtain approval for a tariff exception. Tariff filings shall contain a transmittal letter which must contain the Commission tariff number, describe the purpose of the filing, and explain any changes to the Carrier's rates, rules, terms or conditions of service.

Carriers shall ensure that tariffs on file with the Commission are accurate at all times. Tariffs must be consecutively numbered and identify where changes have been made in existing rates, rules, regulations or practices. Changes may be indicated in a manner such as highlight, background shading, bold, underline, strike-through, or use of the following terms:

Description	Symbol
Increase	[I]
Decrease	[D]
Change in wording only	[W]
Cancel	[C]
Unchanged Rate	[U]
New	[N]

Tariff filings shall be reviewed at the Staff level, except rate increases requiring Commission approval as stated in Section 4.D of this General Order. Absent written notice to the contrary from Staff within 30 days after receipt of the filing, tariff filings reviewed at the Staff level are deemed accepted by the Commission 30 days after receipt.<sup>1</sup>

#### *A) Tariff Contents*

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<sup>1</sup> The Commission's acceptance of a tariff for filing shall not be construed as a waiver of the requirements of this General Order; and such acceptance is without prejudice to any orders which have been or may be made by the Commission.



All tariffs shall contain the following information:

Responsible Party. The name of the Carrier, the mailing address of the Carrier, and the name, e-mail address, and phone number of the Carrier's designee responsible for maintaining the Carrier's compliance with Commission orders.

Statement of Rates. Rates must be stated explicitly in dollars and cents, per barrel or other specified unit. The name of the pipeline and designations of the places from and to which the rates apply must be arranged in a simple and systematic manner.

Rules. Rules affecting the jurisdictional transportation rates or services provided for in the tariff. Tariffs must include rules governing jurisdictional matters such as prorationing of capacity, receiving, tanking, delivering, transferring and loading, commingling, quality control, carrier liability, and all other jurisdictional charges, services, allowances, absorptions and rules which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of service to the shipper. Rules may be separately published in a general rules tariff. Rate tariffs that do not contain rules must make specific reference, by LPSC tariff number, to the governing general rules tariff. The Rules may also cover non-jurisdictional services offered by Carriers and their related fees, such as inventory management services and gravity bank services.

Effective Date. The effective date of the tariff.

Type of Commodity. The type(s) of commodity being transported through the pipeline.

*B) Cancellation of Tariff.* A Carrier must cancel a tariff when all of the services reflected in the tariff are terminated or no longer provided by that Carrier. The Carrier must submit notification of the cancellation to the Commission within 30 days of the termination of service or provision of service by that Carrier. The cancellation notification must include a statement certifying that the Carrier's current shippers affected by the cancellation have been notified of the cancellation. This paragraph does not apply to temporary suspensions of service.

*C) Tariff Exception.* A Carrier may request approval from the Commission's Executive Secretary to provide service on a particular pipeline segment pursuant to the terms of transportation contracts with individual shippers rather than a tariff. The request shall include the list of shippers, an explanation regarding why individually negotiated contracts will meet the needs of the Carrier and the shippers, and whether there are parties other than the listed shippers seeking transportation on the pipeline.

Carriers operating under the tariff exception must comply with all requirements of this General Order except those related to tariff and rate filings. These Carriers are also obligated to report to the Commission the addition of or the refusal of service to new shippers and the termination, expiration, or renegotiation of contracts with existing shippers.

#### Section 4: Tariff Rates

Carriers shall charge rates that are just and reasonable, and not unreasonably discriminatory, for services offered under the same or similar circumstances.

A) *Discounted Rates.* The tariff may include discounted rates for i) long-term service ii) high volumes, iii) underwriting the provision of service on a pipeline system by providing assistance in financing construction, repair, or maintenance of the pipeline system, or iv) promoting the use of under-utilized pipeline capacity. The tariff shall clearly state which rates are discounted rates and the type of discount, as opposed to general tariff rates. The shippers receiving discounted rates may have a higher priority in an allocation situation, but remain subject to allocation.

B) *Premium Rates.* The tariff may include premium rates for Firm Service. Firm Service is defined as a transportation service that allows a shipper to contract for reserved capacity for a set term based on a maximum monthly volume, with the terms and conditions of such service defined in a Firm Service contract. The tariff shall clearly state which rates are premium rates for Firm Service, as opposed to general tariff rates. When allocation of capacity is required per the terms of the Firm Service contract, the sum of the volumes of Firm Service shippers shall not exceed 90% of the total available monthly capacity.

C) *Rate Decreases.* A Carrier may decrease its rates, fares, or charges by filing an updated tariff with the Commission but will be subject to all provisions of this General Order if the Carrier seeks to increase such rates, fares or charges at a later date. The transmittal letter shall confirm that notification of the rate change has been provided to the Carrier's current shippers affected by the rate decrease and describe the form of notification provided to such shippers.

D) *Rate Increases.* As stated in the following paragraphs, a Carrier may increase its rates through Indexing, Commission Approval, or Limited Temporary Surcharge.

Indexing. A Carrier may file a revised tariff no later than September 1 of each year reflecting a rate increase that is tied to the indexed annual percentage rate increase last published

by the FERC.<sup>2</sup> Staff may accept tariffs reflecting increased rates based on indexing that are submitted after September 1 for good cause shown. The transmittal letter shall confirm that notification of the rate change has been provided to the Carrier's current shippers affected by the rate increase and describe the form of notification provided to such shippers. Carriers that do not have a FERC-approved tariff may also use this indexing method.

Except for good cause, and Staff approval, a Carrier who implements a rate increase or temporary surcharge pursuant to Commission Approval, as stated in the next paragraph, shall not, for a period of twelve months following implementation of that rate increase or temporary surcharge, submit a revised tariff for another increase on the same service based on indexing.

Commission Approval. A Carrier may request Commission approval of a rate increase or temporary surcharge by submitting a written letter request. The request shall provide the amount of the requested rate increase or temporary surcharge, a justification for the increase or surcharge, a proposed revised tariff, and confirmation that the Carrier's current shippers affected by the rate increase or temporary surcharge have been notified of the request with a description of the form of notification provided to shippers.

Limited Temporary Surcharge. A Carrier may file a revised tariff reflecting a temporary surcharge for the purpose of amortizing capital expenditures associated with the pipeline. The transmittal letter shall include: 1) an explanation of the need for the capital expenditure and its amortization, and 2) confirmation that the temporary surcharge has been approved by the Carrier's current shippers affected by the surcharge.

#### Section 5. Transfer of a Pipeline Segment

##### A) Notice Only

Under the circumstances stated below, a Carrier shall provide written notice to the Commission prior to selling, merging, consolidating, or otherwise transferring a pipeline segment which has rates and services subject to the jurisdiction of the Commission. The notice shall be a joint filing of the transferor and transferee and provide a summary of the pipeline segment transfer transaction.

If the transferee will ship its own product only, the notice shall include:

- 1) For a pipeline segment with a tariff on file with the Commission, a statement that the transferor agrees to follow the provisions of this General Order for cancelling its tariff.

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<sup>2</sup> The FERC indexing rate is currently adjusted annually based on changes in the Producer Price Index for Finished Goods ("PPI-FG").

- 2) For a pipeline segment with a tariff exception, a statement that the transferor agrees to notify the current shippers affected by the transfer within 30 days of the transaction.

If the transferee is a Carrier, or will become a Carrier as a result of the transfer, the notice shall include:

- 1) A statement that the transferee will submit a registration with the Commission and follow the provisions of this General Order.
- 2) For a pipeline segment with a tariff on file with the Commission,
  - i) a statement that the transferee adopts the rates in the transferor's tariff and agrees to file its own tariff, or statement that the transferee does not adopt the rates and a copy of a new tariff with documentation showing approval of the new tariff by current shippers, and
  - ii) a statement that the transferor agrees to follow the provisions of this General Order for cancelling its tariff.
- 3) For a pipeline segment with a tariff exception, i) a statement that the transferee adopts the same set of circumstances and provisions in the tariff exception as previously approved by the Executive Secretary, and ii) a statement that the transferor agrees to notify the current shippers affected by the transfer within 30 days of the transaction.

#### ***B) Staff or Executive Secretary Approval Required***

Under the circumstances stated below, a Carrier shall provide a written request prior to selling, merging, consolidating, or otherwise transferring a pipeline segment which has rates and services subject to the jurisdiction of the Commission. The request shall be a joint filing of the transferor and transferee and provide a summary of the pipeline segment transfer transaction.

If the transferee is a Carrier, or will become a Carrier as a result of the transfer, who does not meet the requirements for Notice Only transfer as stated above, then the transferor and transferee must obtain Staff approval prior to the transfer of a pipeline segment operating pursuant to a tariff and must obtain Executive Secretary approval prior to the transfer of a pipeline segment operating pursuant to a tariff exception.

A Carrier is not required to meet the requirements of General Orders dated June 16, 1953; October 28, 1968; March 18, 1994; and February 4, 2013.

#### **Section 6. Assumptions of Liability**

A Carrier is not required to meet the requirements of the General Orders dated June 5, 1996 and November 13, 1996 regarding issuance of securities and the assumption of liabilities or obligations by public utilities.

#### **Section 7. Annual Reports**

Each year, within 120 days after the close of that year's business, a Carrier shall submit an annual report in the form provided by the Commission. The report shall include capital investment, depreciation, operating expenses, operating revenues, volume transported, pipeline

segment acquisitions and dispositions, changes to name or ownership, year-end date, and shall be sworn to by the officer having personal knowledge of the facts set forth in the report.

Section 8. Shipper Complaints

The Commission will consider petitions filed by shippers in the manner provided by La. R.S. 45:251 et seq.

Section 9. Fees

A Carrier shall submit the following fees with filings:

Registration	\$200.00
Application for rate increase - indexing or limited temporary surcharge	\$ 50.00
Application for rate increase - non-indexing	\$300.00
Notice of name change	\$150.00
Transfer of assets - Notice Only	\$150.00
Transfer of assets - Approval Required	\$250.00
Late annual report	\$500.00
Citation Fee	\$ 25.00

Section 10. Fines

No Carrier shall willfully violate any provision of this General Order, or fail to perform any duty imposed by this General Order. Upon being found guilty, a Carrier who violates this General Order shall be fined no less than \$100 and no more than \$5,000 for each offense.

*"This space is intentionally left blank."*

***Commission Action***

On motion of Commissioner Campbell, seconded by Commissioner Skrmetta, with Commissioner Holloway and Commissioner Boissiere concurring and Commissioner Angelle temporarily absent, the Commission voted to approve Staff's recommendation and adopt the proposed general order.

**IT IS THEREFORE ORDERED:**

This General Order is effective immediately.

**BY ORDER OF THE COMMISSION  
BATON ROUGE, LOUISIANA**

March 9, 2015

/S/ CLYDE C. HOLLOWAY  
DISTRICT IV  
CHAIRMAN CLYDE C. HOLLOWAY

/S/ SCOTT A. ANGELLE  
DISTRICT II  
VICE CHAIRMAN SCOTT A. ANGELLE

/S/ FOSTER L. CAMPBELL  
DISTRICT V  
COMMISSIONER FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE  
DISTRICT III  
COMMISSIONER LAMBERT C. BOISSIERE, III

  
EVE KAHAO GONZALEZ  
SECRETARY

/S/ ERIC F. SKRMETTA  
DISTRICT I  
COMMISSIONER ERIC F. SKRMETTA