

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

**COMPLAINT OF VOPAK MODA
HOUSTON, LLC (VMH), AGAINST
MAGELLAN CRUDE OIL PIPELINE
COMPANY, LP**

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**GUD No. 10597
HEARINGS DIVISION**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to Chapter 551 (Open Meetings) of the Texas Government Code. The Railroad Commission of Texas ("Commission") adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

General

1. This docket involves a complaint and request for pipeline-to-pipeline interconnection filed by Vopak Moda Houston, LLC ("VMH"), against Magellan Crude Oil Pipeline Company, LP ("Magellan").
2. VMH is in the process of developing a deepwater bulk liquids storage and terminal facility located on the Houston Ship Channel (the "Vopak Deer Park Terminal" or "VMH Facility"), as well as associated inbound and outbound pipelines, to handle receipt, storage, and transportation to the distribution system of crude oil and refined products.
3. Magellan owns and operates the Houston Crude Oil Distribution System ("HDS"), which is one of several competing common carrier pipeline distribution systems in the Houston area.
4. The VMH Facility is located nearby to Magellan's Shell Dock Road Junction location, which is part of Magellan's HDS.
5. VMH plans to construct side-by-side common carrier pipeline segments, one inbound and one outbound, that will extend from its VMH Facility to Magellan's Shell Dock Road Junction facility, located approximately 5.7 miles away.
6. VMH plans to interconnect both its planned inbound and outbound pipeline segments with Magellan's HDS at the Shell Dock Road Junction facility.
7. In this case, VMH seeks a Commission order compelling this interconnection under the Texas Natural Resources Code, Chapter 111 (the "Common Carrier Act"), Sections 111.023 (Exchange of Facilities) and 111.137 (Enlargement and Extension of Facilities).

Parties**VMH**

8. Complainant VMH is a joint venture between Moda Midstream Operating, LLC ("Moda Operating"), and Vopak Terminals North America, Inc.
9. Moda Operating is a subsidiary of Moda Midstream, LLC ("Moda Midstream"), which is a liquids terminaling and logistics company—based in Houston and backed by a Texas-based private equity fund—that provides independent terminal, storage, and distribution solutions to refiners, petrochemical manufacturers, marketers and producers of crude oil, condensate, NGLs, refined products, and other bulk liquids.
10. Vopak Terminals North America, Inc., is a subsidiary of Koninklijke N.V. (together, "Vopak"), a publicly-traded company headquartered in the Netherlands and listed on the NYSE Euronext Amsterdam stock exchange. Vopak is an independent tank storage company that operates a global network of more than 60 tank terminals located in strategic marine locations in North America, Central America, South America, Europe, Africa, the Middle East, and Australia.

Magellan

11. Respondent Magellan is a Delaware limited partnership, of which Magellan Midstream Partners, LP, is the sole limited partner and Magellan Pipeline GP, LLC, is the general partner.
12. Magellan is a common carrier under Texas law, in the business transporting, storing, and distributing refined petroleum products and crude oil.
13. Magellan's crude oil business segment is comprised of about 2,200 miles of pipelines and storage facilities, including the HDS, used to transport crude oil from production and gathering facilities to refineries and other end-users
14. Magellan owns and operates the HDS, which is one of several competing common carrier pipeline distribution systems in the Houston area.

Procedural Background

15. On January 20, 2017, VMH filed its complaint.
16. On February 9, 2017, Magellan appeared in the docket, timely answered the complaint, and moved for its dismissal.
17. On May 1, 2017, after briefing and oral argument, Magellan's motion to dismiss was denied.

18. On August 22, 2017, the parties requested abatement of the proceeding, representing that they were "engaged in settlement discussions with the purpose of resolving the matters stated in [the complaint]," with VMH further requesting to keep the proceeding in place "should [VMH] need to pursue a resolution before the Commission."
19. On July 27, 2018, VMH again requested abatement, representing that the parties were still engaged in settlement negotiations and that "a settlement proposal is currently under advisement between the parties."
20. On November 14, 2018, VMH notified the presiding Administrative Law Judge ("ALJ") that settlement efforts with Magellan had failed and that "VMH intends to pursue relief in this docket."
21. On November 14, 2018, VMH separately filed a supplement to its complaint, requesting that the Commission include in a final interconnection order additional language requiring Magellan to make the interconnection lawfully and without discrimination.
22. Construing this supplement as a separate discrimination claim, Magellan moved for its dismissal.
23. On January 15, 2019, after briefing and oral argument, Magellan's motion to dismiss was partially granted as to this supplemental request.
24. On October 25, 2019, the ALJ issued the Notice of Hearing, setting the merits hearing to commence on November 19, 2019 (the "Notice of Hearing").
25. On October 31, 2019, the Notice of Hearing was published in *Gas Utilities Information Bulletin No. 1118*, available on the Commission's website.
26. On November 18, 2019, the ALJ issued several written evidentiary rulings on the admissibility of certain pre-filed witness testimonies offered by VMH and Magellan.
27. The merits hearing initially was held from November 19-20, 2019, in Austin.
28. Following the hearing, the evidentiary record remained open to allow the parties to make optional completeness filings with respect to certain exhibits.
29. On January 17, 2020, the ALJ: made additional evidentiary rulings pertaining to deposition designations and counter-designations offered into evidence by the parties; made legal findings that certain exhibits and portions of the hearing transcript contain highly-sensitive, confidential information under Chapter 552 (Public Information) of the Texas Government Code and ruled that these materials shall remain sealed permanently in Commission records; and closed the evidentiary record.

30. On April 27, 2020, VMH filed a motion to supplement the record, requesting that the hearing and evidentiary record be re-opened to allow the parties an opportunity to supplement the record with additional evidence on the effect of the coronavirus pandemic on U.S. crude oil storage and access to markets.
31. During a post-hearing conference held on May 14, 2020, the ALJ granted VMH's motion, directing that the hearing would re-open to permit both parties the opportunity to: (1) offer additional evidence, limited in scope to VMH's motion; and (2) cross-examine witnesses, if any, and make appropriate evidentiary objections.
32. On May 22, 2020, the ALJ issued the Notice of Re-Opening of Hearing, setting the merits hearing to re-open on June 2, 2020 (the "Notice of Re-Opening of Hearing").
33. On May 29, 2020, the Notice of Re-Opening of Hearing was published in *Gas Utilities Information Bulletin No. 1132*, available on the Commission's website.
34. On June 2, 2020, the hearing was re-opened for the limited purpose described above, and the record then re-closed the same day.
35. On November 5, 2020, the original Proposal for Decision ("PFD") was issued.
36. VMH and Magellan each timely filed PFD exceptions on December 4, 2020, and each timely filed replies on December 16, 2020.
37. On January 29, 2021, an amended PFD ("First Amended PFD") was issued.¹

VMH's Planned Storage Facility and Pipelines

38. VMH is in the process of planning and developing a deepwater bulk liquids storage and terminal facility on the Houston Ship Channel to handle receipt, storage, and transportation to the distribution system of crude oil and refined products.
39. Once complete, VMH's terminal and related facilities will store crude oil, ammonia, and vacuum gas oil ("VGO"), with facilities for storing ammonia and VGO operational by late 2020 and the facilities for storing crude oil operational and complete by 2022.
40. Only the crude oil aspects of the VMH terminal are relevant to this proceeding.

¹ Amended or new findings of fact and conclusions of law reflected in the First Amended PFD, adopted herein, include: FOF Nos. 36, 37, 42, 47, 51, 52, 53, 60, 61, 69, 74, 82, 85, and 91; and COL Nos. 8, 9, 10, 17, 18, 19, 21, 23, 26, 27, and 28.

41. The initial development of VMH's crude oil facilities includes 4 million barrels of crude oil storage, with capital spending associated with this phase to exceed \$250 million, which includes costs to construct marine facilities that are targeted to be utilized for the crude oil development and other product service.
42. VMH plans for these facilities, once connected to the HDS, to provide service to various Houston-area refineries, Exxon's Baytown refinery, and several coastal refineries.
43. VMH expects that crude oil will continue to flow to Houston for export and distribution to end users. Accordingly, VMH also has developed initial plans for "phase two" of its crude oil infrastructure, which includes doubling its crude oil storage capacity and additional marine infrastructure.
44. In addition to operating storage tanks and docks, VMH also plans to construct side-by-side common carrier pipelines that will connect its storage and terminal facility with Magellan's nearby Shell Dock Road Junction facility.
45. Both pipelines are planned to be approximately 5.7 miles in length, with the 30" inbound line and the 24" outbound line both having an estimated capacity between 360,000 and 480,000 barrels per day ("bpd").
46. Accomplishing interconnections for each of these two planned pipelines requires relatively minor connection equipment added to Magellan's HDS, including taps, flanges, and valves.
47. VMH has offered to pay the entire amount of the expenses associated with this work, including Magellan's portion, which VMH estimates will total approximately \$5 million.
48. VMH's storage facility is partially complete, but there is no crude oil stored there and VMH has not yet built its planned pipeline segments needed to reach Magellan's nearby HDS facility.
49. Although its planned storage and terminal facilities are not yet complete or operational, VMH has completed the below developmental benchmarks toward completion.
 - VMH has made capital investments of \$5-10 million in anticipation of the terminal.
 - VMH has obtained the property and has begun clearing the site.
 - VMH has secured a 50-year lease with Port of Houston for the necessary dock space.
 - VMH performed the necessary surveying, engineering, and design work for the tracts.
 - VMH has obtained air and dock permits.
 - VMH has performed the engineering and design for crude oil storage facilities.
 - VMH has performed initial dredging and construction on the dock.

50. With respect to VMH's separate planned project of constructing side-by-side pipelines connecting its storage and terminal facility with Magellan's nearby Shell Dock Road Junction facility, VMH has completed the below developmental benchmarks toward completion.
 - VMH has acquired the necessary rights-of-way.
 - VMH as obtained T-4 pipeline permits from the Commission.
51. Regarding anticipated use, VMH: entered commercial discussions with storage customers and shippers; has customers for portions of its terminal and executed a term sheet for more than 1,000,000 barrels of crude oil; communicated with multiple customers who expressed interest once interconnection with Magellan's HDS is secured; and communicated with customers who demanded to VMH that VMH be connected to the HDS.
52. The term sheet, discussed above, was non-binding and involved multiple pipelines in addition to Magellan; VMH did not establish that it currently has binding agreements or commitments from any prospective customer to use its planned terminal or pipeline facilities nearby to Magellan's Shell Dock Road Junction facility.
53. VMH expects that all its potential customers would require that the storage provide maximum connectivity to the Houston-area refining complex, including the interconnections to Magellan's HDS.
54. VMH's planned storage facility, once built, would compete with Magellan for business.

Magellan's Houston Crude Oil Distribution System (HDS)

55. Magellan's crude oil business segment is comprised of about 2,200 miles of pipelines and storage facilities, including the HDS, used to transport crude oil from production and gathering facilities to refineries and other end-users.
56. Magellan's HDS is one of several competing common carrier pipeline distribution systems in the Houston area.
57. Magellan's HDS connects its East Houston terminal through several interchanges to various points, including multiple refineries throughout the Houston area and crude oil import and export facilities.
58. The HDS also is connected to other third-party pipelines and facilities that allow access to crude oil from the Permian and Eagle Ford basins, and from the Cushing, Oklahoma, crude oil trading hub.
59. Magellan's business footprint in the Houston crude market is significant, with diverse revenue sources including both transportation and storage facilities.

60. Magellan has three existing Houston-area crude oil storage facilities that would compete for business with VMH's planned storage terminal, once it is operational: the East Houston Terminal, which has over 6.5 million barrels of crude oil storage; the Seabrook Logistics Terminal, which is jointly owned by Magellan and operates over 2.4 million barrels of storage capacity, as well as a deep-water vessel berth; and the Galena Park Terminal, which offers crude oil and refined products storage and marine docks.
61. Magellan has made connections with other unaffiliated pipelines, delivers crude oil to competing storage terminals in which Magellan has no ownership interest, and earns the majority of its revenue in the Houston market from deliveries to third-party terminals or refineries.

Relevant Factual Background

62. Beginning in 2016, VMH has engaged in lengthy discussions with Magellan for amenable terms of an interconnection.
63. In March 2016, a VMH executive first approached Magellan to request an interconnection at Magellan's HDS facility at Shell Dock Road Junction.
64. After this initial request, Magellan indicated that it may be interested in the interconnection if Magellan obtained equity in the VMH project.
65. After a few months passed, in June 2016, VMH had a follow-up phone call with Magellan, which again was noncommittal about its willingness to provide an interconnection.
66. In August 2016, VMH followed up with an email request to Magellan to see if it had assessed the possibility of the interconnections.
67. In September 2016, VMH had a phone call with Magellan, in which Magellan acknowledged that no system analysis had been done regarding the interconnections, though Magellan did ask for information regarding types of crude, origin points, and other operational information potentially relevant to the interconnections.
68. VMH then provided Magellan with this requested information regarding the characteristics of the oil that would be delivered to VMH through Magellan's HDS. After no response was received from Magellan, in December 2016, VMH met with Magellan and expressed concerns about Magellan "slow rolling" VMH's request.
69. In January 2017, VMH submitted a demand for interconnections with Magellan and had an extensive discussion with Magellan about the interconnection, after which a VMH executive was briefed internally: that Magellan expressed concern about the interconnection's impact on long-haul shippers that deliver

barrels into Magellan's HDS and about "putting a competitor in business by providing the interconnections"; and that Magellan wanted a significant "take or pay" commitment from shippers, as well as published pipeline tariff rates, as part of the interconnections.

70. VMH provided Magellan a proposed connection agreement, which VMH considers to be consistent with Magellan's other connection agreements, but Magellan rejected that proposal.
71. Magellan provided VMH a proposed connection agreement, as well, and VMH rejected Magellan's proposal.
72. Impeding negotiation efforts between VMH and Magellan is a tariff term recently added by Magellan to its tariff applicable to shippers on the HDS (the "HDS Tariff"), whereby Magellan downgrades the product grade of crude that leaves Magellan's facilities from West Texas Intermediate Crude ("WTI"), a higher value product grade, to a lower grade of product, Domestic Sweet, which may be less valuable.

VMH's Requested Interconnection

73. Currently, there are no common carrier facilities that are connected between VMH and Magellan at any location.
74. VMH seeks an interconnection with Magellan's HDS at the Shell Dock Road Junction facility.
75. The added facilities and equipment VMH requests that Magellan install are minimal—including essentially just taps, flanges, and valves—and would be necessary to accomplish hookups to VMH's planned inbound and outbound pipelines once they are constructed.
76. The added facilities and equipment requested of Magellan are not specialty or otherwise unusual equipment that may be unfamiliar to a large common carrier pipeline such as Magellan, but rather are standard industry equipment that Magellan already is required to install for some shippers.
77. The physical scope of VMH's requested enlargement or extension of Magellan's Shell Dock Road Junction facility is reasonable.
78. VMH has offered to pay for the entirety of the connection equipment that it wants Magellan to install.
79. With VMH paying for these new facilities and equipment, they would cost Magellan nothing.
80. The expenses involved for Magellan to enlarge or extend its Shell Dock Road Junction facility, as requested by VMH, will not impair Magellan's ability to perform its duty to the public.

81. VMH established that a new storage facility in Houston, once built, would give shippers more options for storing their crude.
82. VMH's facilities do not reach Magellan's Shell Dock Road Junction location.
83. VMH's planned crude oil storage facility is not yet built and is not yet operational.
84. VMH's planned inbound and outbound common carrier pipelines are not yet built and are not yet operational.
85. Because VMH's planned inbound and outbound pipelines are not yet built, it is not physically possible at this time for Magellan and VMH to accomplish an interconnection or exchange crude petroleum tonnage at Magellan's Shell Dock Road Junction facility.
86. VMH has not attempted to exchange petroleum tonnage with Magellan, or vice versa.
87. No patron, shipper, customer, or pipeline has delivered to Magellan crude petroleum for transportation to or from VMH's planned storage facility.
88. No patrons or shippers have asked Magellan to move their crude product from Magellan's HDS to VMH's storage facility, or vice versa.
89. Magellan has not rendered any service for VMH, directly or indirectly.
90. The weight of evidence here does not support that Magellan's treatment of WTI nominations under its HDS Tariff violates any regulatory duties.
91. At this time, a necessity does not exist for the Commission to require connections and facilities at Magellan's Shell Dock Road Junction location for the interchange of crude petroleum with VMH.
92. At this time, VMH's requested enlargement or extension of Magellan's Shell Dock Road Junction facility would not prevent waste.
93. At this time, VMH's requested enlargement or extension of Magellan's Shell Dock Road Junction facility is not required in the public interest.

CONCLUSIONS OF LAW

General

1. Magellan is a common carrier under Texas law.
2. As a common carrier, Magellan is subject to the jurisdiction of the Commission all the duties of common carrier pipelines, including all those contained in the Common Carrier Act.
3. The Commission has exclusive original jurisdiction over all matters decided in this docket.

Notice and Procedure

4. All required notices were issued and/or provided in accordance with the requirements of Subtitle A (Administrative Procedure and Practice) of the Texas Government Code and applicable Commission rules.
5. This proceeding was conducted in accordance with Subtitle A (Administrative Procedure and Practice) of the Texas Government Code and applicable Commission rules.
6. The PFD was served on all parties in accordance with Commission Rule § 1.121 (Proposals for Decision).
7. Each party was provided the right to file PFD exceptions and replies, consistent with Under Commission Rule § 1.122 (Filing of Exceptions and Replies).
8. The First Amended PFD was served on all parties in accordance with Commission Rule § 1.121(f), and it contained substantive amendments.
9. Each party was provided the right to file exceptions and replies to the amendments contained in the First Amended PFD, in accordance with Commission Rule § 1.121(f).
10. Findings of fact and conclusions of law adopted herein that reflect amendments resulting from the First Amended PFD are noted with specificity, in accordance with Commission Rule § 1.121(f).

Burden of Proof

11. Under Commission Rule § 1.23(b) (Burden of Proof), Complainant VMH carried the burden of proving its claims under Section 111.023 (Exchange of Facilities) and Section 111.137 (Enlargement and Extension of Facilities) by a preponderance of the evidence.

Section 111.023 (Exchange of Facilities)

12. VMH did not meet its burden of proof in establishing that it is entitled to relief under Section 111.023 (Exchange of Facilities), including under Section 111.023, subpart (b).

Section 111.137 (Enlargement and Extension of Facilities)

13. VMH met its burden of proving, by a preponderance of the evidence, that the physical scope of its requested enlargement or extension of Magellan's Shell Dock Road Junction facility is reasonable.
14. VMH met its burden of proving, by a preponderance of the evidence, that the expenses involved for Magellan to enlarge or extend its Shell Dock Road Junction facility, as requested by VMH, will not impair Magellan's ability to perform its duty to the public.
15. VMH failed to meet its burden of proving, by a preponderance of the evidence, that its requested enlargement or extension of Magellan's Shell Dock Road Junction facility is required in the public interest.
16. VMH did not meet its burden of proof in establishing that it is entitled to relief under Section 111.137 (Enlargement and Extension of Facilities).

VMH's Requested Interconnection

17. Section 111.023 (Exchange of Facilities), subparts (a) and (c), directly impose duties on common carrier pipelines.
18. Section 111.023 (Exchange of Facilities), subpart (b), grants authority to the Commission.
19. The Commission's authority under Section 111.023 (Exchange of Facilities), subpart (b), may be considered with respect to VMH's request.
20. Relief under Section 111.137 (Enlargement and Extension of Facilities) can include new facilities and equipment needed to accomplish a pipeline-to-pipeline interconnection.
21. Section 111.137 (Enlargement and Extension of Facilities) can apply to common carrier types other than common purchasers.
22. The language of Section 111.137 (Enlargement and Extension of Facilities) speaking to the "expense involved" for the common carrier refers to the costs of the newly enlarged or extended facilities, not to the common carrier's operational expenses thereafter to conduct its normal business operations.

23. For purposes of resolving claims brought under Section 111.137 (Enlargement and Extension of Facilities), administrative adjudication is not the appropriate forum for the Commission to establish new, generally-applicable public policy or public interest objectives.
24. For claims under Section 111.137 (Enlargement and Extension of Facilities), remedying a broken regulatory duty by the common carrier pipeline can be a valid and appropriate public interest objective, as already considered and affirmed by the Texas Supreme Court.
25. For claims under Section 111.137 (Enlargement and Extension of Facilities), preventing waste can be a valid and appropriate public interest objective, as already considered and established by the Legislature.
26. At this time, Magellan owes no legal duties under Section 111.023 (Exchange of Facilities) with respect to VMH's planned storage terminal or planned inbound and outbound pipelines.
27. The condition precedent contained in Section 111.023 (Exchange of Facilities), subpart (b)—that both pipelines share a common locality—is lacking.
28. A necessity does not exist here for the Commission to exercise its authority under Section 111.023 (Exchange of Facilities), subpart (b).
29. At this time, Magellan owes no legal duties under Sections 111.015 (Transportation Without Discrimination) or 111.017 (Equal Compensation for Like Service) with respect to VMH's planned storage terminal.
30. At this time, Magellan owes no legal duties under Sections 111.015 (Transportation Without Discrimination) or 111.017 (Equal Compensation for Like Service) with respect to VMH's planned inbound and outbound pipelines.

IT IS THEREFORE ORDERED that the findings of fact and conclusions of law herein are adopted, consistent with the First Amended PFD, and that VMH's claims for interconnection and related relief under the Common Carrier Act are **DENIED**.

IT IS FURTHER ORDERED that all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not granted or approved in this Order, are hereby **DENIED**.

IT IS FURTHER ORDERED this Order will not be final and effective until 25 days after the date this Order is signed. If a timely motion for rehearing is filed by any party at interest, this Order shall not become final and effective until such motion is overruled, or if such motion is granted, this Order shall be subject to further action by the Commission. The time allotted for Commission action on a motion for rehearing in this docket prior to its being overruled by operation of law is hereby extended until 100 days from the date this Order is signed.

SIGNED on March 9, 2021.

RAILROAD COMMISSION OF TEXAS

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CHAIRMAN CHRISTI CRADDICK

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