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FEDERAL MARITIME COMMISSION

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

Docket No. 11-18

**VALERO REFINING - TEXAS, L.P.**

**COMPLAINANT**

v.

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

**RESPONDENTS**



**COMPLAINT**

Valero Refining – Texas, L.P. (“Valero” or “Complainant”), by and through the undersigned hereby files this Complaint against Port of Corpus Christi Authority of Nueces County, Texas (“PCCA” or “the Port”), pursuant to 46 U.S.C. § 41301(a), alleging violations of the Shipping Act of 1984, as amended (46 U.S.C. § 40101 *et seq.*)(the “Shipping Act”).

Complainant has been charged wharfage and other charges that are excessive and not reasonably related to the value of services rendered to Complainant. Through application of such charges, Complainant has been forced to subsidize costs associated with services provided to other users of port facilities. Such other users therefore receive greater levels of service and benefit from the PCCA at lower cost. The PCCA has refused to negotiate any modification of its wharfage and other fees and charges.

Complainant therefore seeks a cease and desist order and reparations for injuries caused to them by the PCCA's violations of the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2) and (3), including (a) subjecting Complainant to an undue or unreasonable prejudice or disadvantage; (b) granting an undue preference or advantage with respect to other users of its facilities; (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property; and (d) unreasonably refusing to deal or negotiate with Complainant regarding a modification of the unreasonable rates and charges.

**I. Complainant**

A. Complainant Valero Refining – Texas, L.P. is a Limited Partnership duly organized and existing under the laws of the State of Texas.

B. Valero's principal place of business is located at One Valero Way, San Antonio, TX 78249-1616.

C. Valero operates a petroleum refinery at two locations (the East and West Plants) along the Corpus Christi Ship Channel (the "Channel"). Vessels carrying crude oil call at both plants of Valero's refinery for the purpose of discharging their cargoes. The crude oil is refined into various petroleum products, and from there sold and distributed via rail, truck, pipeline and vessels to various buyers. The refineries and associated facilities are owned, operated, and maintained by Valero. Costs associated with the operation of the refineries are paid by Valero.

## **II. Respondent**

A. PCCA is a navigation district and political sub-division of the State of Texas under Article XVI, Section 59 of the Texas Constitution, with its principal place of business in Corpus Christi, Texas.

B. PCCA owns, operates and/or leases wharves, docks, warehouses, and other terminal facilities at the Port of Corpus Christi (including transit sheds, open storage facilities, freight handling facilities and equipment, a bulk handling terminal, warehouse facilities, a grain elevator, and a multi-purpose cruise terminal/conference center).

C. PCCA serves several common carriers registered with the Commission as vessel operating common carriers and that regularly call at the Port of Corpus Christi, including but not limited to Green Chartering AS, SCM Lines – Transportes Maritimos LDA, Grieg Star Shipping, Westfal-Larsen Shipping, Chinese-Polish Joint Stock Shipping Co., BBC Chartering & Logistics GmbH & Co. KG, and Industrial Maritime Carriers, LLC.

## **III. Jurisdiction**

A. The PCCA is, and holds itself out to be, a marine terminal operator within the meaning of the Shipping Act, 26 U.S.C. § 40102(14) because it is engaged in the business of providing wharfage, dock, warehouse and other terminal facilities in connection with common carriers, and in connection with common carriers and water carriers subject to Subchapter II of the Chapter 135 of Title 49.

B. The Commission has jurisdiction over this Complaint pursuant to 46 U.S.C. § 41301 because the Port is a marine terminal operator subject to the Shipping Act and the actions of the Port which are the subject of this Complaint constitute violations of the Shipping Act.

#### **IV. Statement of Facts**

A. Valero operates a petroleum refinery at two locations (the East and West Plants) along the Corpus Christi Ship Channel. The refineries and all their attendant facilities, including Valero's private docks and wharves (the "private docks"), are owned, operated, and maintained by Valero. Valero assumes the expense of maintaining its private docks and the Port provides virtually no services or improvements with respect to those private docks.

B. Vessels carrying crude oil for Valero call at Valero's refinery for the purpose of discharging their cargoes there and/or at the PCCA's public oil docks.

C. Valero is charged wharfage and dockage fees by PCCA with respect to vessels serving Valero at the PCCA's public docks.

D. Pursuant to restrictions included in the original mutual conveyances between the Nueces Navigation District (the predecessor to the PCCA) and the predecessor in interest to Valero, Valero is required to negotiate and enter into franchise agreements with the PCCA to allow vessels serving Valero at its refinery the right to access the Channel.

E. The PCCA also charges Valero a franchise fee of 50% (fifty percent) of the wharfage tariff rate for the applicable commodity for access to the Channel for vessels serving Valero at the private docks.

F. PCCA assesses wharfage against Valero for use of wharves at the PCCA's public docks pursuant to Port Tariff 100-A, Section Five, Loading, Unloading and Wharfage Rates Item 501 B. This provision pertains to all liquid bulk cargo including but not limited to crude and refined petroleum, petroleum products, petrochemicals, chemicals and other bulk liquids except liquefied natural gas (LNG). In just over 10 years, the PCCA has increased wharfage rates for liquid bulk cargo by approximately 110%. Specifically, in 2000, the wharfage rate for liquid bulk cargo was \$.04 per 42 gallon barrel, in 2005 the rate increased to \$0.06 per barrel, in 2007 the rate increased to \$0.08 per barrel, in 2010 the rate increased to \$0.0828 per barrel, and effective January 1, 2011, the rate was again increased to \$0.0839 per barrel.

G. As defined in the PCCA's tariff, "wharfage is solely the charge for use of a wharf and does not include charges for any other service."

H. Valero is also assessed a Security Surcharge as a percentage of all wharfage and dockage. The Security Surcharge is currently 7.5% (as of April 1, 2011.) It was previously assessed in the amount of 11.0% (2006), 11.5% (2007), 12.0% (2008), and 10% (2009-2010).

I. The PCCA has applied the Security Surcharge to all wharfage fees collected, including those collected for Valero's private facilities pursuant to Valero's franchise agreements with the PCCA.

J. In 2010, the Port reported that Valero paid \$9,261,166 in wharfage fees, which accounted for 25.11% of total revenues collected by the Port from all port tenants.

K. Despite the significant wharfage fees assessed against Valero since 2006, PCCA has not provided nearly commensurate services to Valero. Further, to the extent the Port provides maintenance or security services to Valero, such services are covered by separate fees.

L. In 2009, the most recent year for which the PCCA has reported such figures, the PCCA reported that it raised \$16,624,977 in operating revenue at its public oil docks, in comparison to \$1,761,772 in operating expenses and \$1,782,106 in non-operating expenses allocated to such facilities. This resulted in net income of approximately \$13 million for the PCCA at these facilities. The PCCA also reported that it generated operating revenue of \$10,988,948 from the private oil docks as compared to expenses allocated to such facilities of \$90,994 resulting in net income of approximately \$10,897,954. In total, the PCCA raised over \$23 million in net income from oil dock users in 2009, while expending less than \$2 million.

M. The net income generated from the oil docks is significantly higher than that generated at other facilities. For example, in 2009, besides the oil docks, the next highest income generating facility for the Port was the Bulk Terminal. The Port reported that the Bulk Terminal generated operating revenue of \$5,457,384 and expenses of \$4,063,317 resulting in net income of \$1,393,961 for the Port. All other port facilities generated even lower net

income for the Port than the Bulk Terminal including net losses at the Port's refrigerated warehouse facilities, conference center, and Naval Station Ingleside.

N. In 2009, the Port reported that operating expenses attributed to the public oil facilities by the Port constituted just 3.7% of the Port's total operating expenses. The operating expenses associated with the private oil facilities, where all costs for maintenance and upkeep of the facilities are paid by the owner of the facility, constituted less than 1% of the Port's total operating expenses.

O. Other users of the port pay significantly less in fees than the oil users (including Valero), but receive greater benefits. In 2009, operating expenses at the PCCA's dry cargo facilities, refrigerated warehouse facilities, and bulk terminal were each higher than those at the oil facilities, but the non-oil facilities generated significantly less operating revenue and net income. In effect, the fees paid to the PCCA by Valero subsidize the services provided by PCCA to other port users. As such, similarly situated users of these other Port facilities receive the benefit of comparable or greater service without the attendant cost of the significantly higher wharfage fees assessed to Valero.

P. Further, upon information and belief, wharfage revenues collected by the PCCA are not segregated or placed into restricted accounts. Rather, wharfage revenues are treated as fungible monies and placed in the PCCA's general revenue fund to not only pay wharfage related expenses but are also used to: 1) increase the PCCA's capital reserves, 2) support various capital

improvement projects that will not benefit Valero, and 3) pay operating expenses for unrelated facilities at the Port which also do not benefit Valero.

Q. Valero has attempted to negotiate with the PCCA a modification of the wharfage rate for liquid bulk cargo based on the attendant costs to the PCCA and benefits received by Valero.

R. In addition to all the foregoing fees and charges, pursuant to a Frequent Users Agreement between the Port and various users of the Port's public oil docks including Valero, Valero is liable for maintenance costs at the same public docks for which it is already assessed wharfage and dockage charges. Under this agreement, for example, Valero paid \$117,423.74 and \$27,556.44 for maintenance at the public docks in 2009 and 2010 respectively.

S. On June 14, 2011, the Port Commissioners voted to approve a \$15.5 million expenditure for its share of the expenses for the extension of the La Quinta Ship Channel and ecosystem restoration. This project is the first of several associated with the Port's Channel Improvement Project.

T. The Port reported that the Channel Improvement Project includes widening and deepening the ship La Quinta Ship Channel to handle larger vessels; constructing barge lanes to separate ship traffic, and extending the channel to provide access for a proposed multi-purpose dock and container handling facility.

U. Valero does not anticipate that it will benefit or use the La Quinta Channel or the proposed dock or container facility.

V. The Port has not reported the source of the funds for the recently approved \$15.5 million La Quinta expenditure.

W. The PCCA has refused to deal or negotiate with Valero on any modification of the fees and charges applicable to it.

**V. Violations of the Shipping Act**

A. As a result of the foregoing facts and allegations, which are incorporated by reference in this section of the Complaint, the Port has violated and continues to violate the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c).

B. As set forth in those factual allegations, Valero seeks a cease and desist order and reparations for injuries caused to it by the PCCA's violations of the Shipping Act, 46 U.S.C. §§ 41102(c) and 41106(2), including on a continuing basis (a) subjecting Valero to an undue or unreasonable prejudice or disadvantage; (b) granting an undue preference or advantage with respect to certain users of its facilities; and (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property.

C. Specifically, the Port has violated the above provisions because Valero has been charged wharfage and other charges calculated as a percentage thereof that are excessive and not reasonably related to the value of services rendered to Valero. Through application of such charges, Valero has

been forced to subsidize costs associated with services provided to other users of port facilities.

D. To the extent that the PCCA's cash reserves are to be used to approximate the PCCA's total operating expenses, the charges levied against Valero to build such reserves are not reasonably related to the operating expense associated with Valero's operations at the port.

E. To the extent that the PCCA's cash reserves will fund the La Quinta Channel extension or Channel Improvement Project, neither of which will be used by or benefit Valero, the charges levied against Valero are not reasonably related to the operating expense associated with Valero's operations at the port.

F. Despite Valero's requests that the PCCA take action to remedy the unfair and prejudicial treatment of Valero such that the fees and charges assessed to Valero represent a reasonable approximation of the services actually received, the PCCA has continued the foregoing undue and unreasonable preferences in favor of the non-liquid bulk users of the port, to the prejudice and disadvantage of Valero.

G. PCCA has violated the Shipping Act, 46 U.S.C. § 41106(3), by unreasonably refusing to deal or negotiate with Valero regarding a modification of the wharfage rate for liquid bulk cargo. The PCCA's refusal to negotiate is not based on any legitimate business rationale and therefore is unreasonable.

H. There is no transportation factor justifying the foregoing unjust and unreasonable practices, undue or unreasonable prejudices against Valero, or the undue or unreasonable preferences advantaging other users of the port.

I. The PCCA's actions are the proximate cause of damage to Valero.

## **VI. Injury to Complainant**

A. As a result of the Port's aforementioned violations of the Shipping Act, Valero has sustained and continues to sustain injuries and damages, including but not limited to higher costs, unreasonable franchise fees, and other undue and unreasonable payments and obligations to the PCCA. Valero estimates that damages to it are in the millions of dollars. A more precise amount will be determined at hearing.

## **VII. Prayer for Relief**

A. **WHEREFORE**, Complainant prays that the Respondent PCCA be required to answer the charges herein; that after due hearing in Washington, D.C., an order be made:

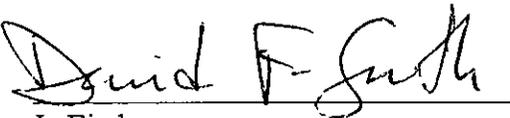
1. Commanding the PCCA to cease and desist from engaging in the aforesaid violations of Shipping Act; putting in force such practices as the Commission determines to be lawful and reasonable; and

2. Commanding the PCCA to pay to Valero reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees; and

3. Commanding any such other relief as the Commission determines appropriate.

B. Statement regarding alternative dispute resolution procedures: Valero has met with the PCCA in an attempt to resolve this dispute, but the PCCA has rebuffed Valero's efforts. Therefore, Valero does not believe that alternative dispute resolution procedures would be productive and Valero has not consulted with the Commission's dispute resolution specialist.

Respectfully submitted,

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