<u>Plains Pipeline, L.P.</u>
Letter Order
110 FERC ¶61,185 (2005)

Plains Pipeline, L.P. filed a tariff supplement to unbundle its previous rate into three rate components: 1) mainline transportation, 2) gathering, and 3) truck unloading.

Inasmuch as the unbundled rates provided that the shippers would pay less, under all possible transportation scenarios, than what they are paying under the current tariffs, and the proposed changes will not prevent shippers from continuing to move crude as they had in the past, the Commission accepted the filing. The Commission conditioned its acceptance upon Plains' complying with the Commission's indexing methodology, such that the overall cost to shippers under Plains' unbundled rates must not exceed the effective ceiling levels of its existing bundled rates for similar movements.

COMM-OPINION-ORDER, 110 FERC ¶61,185, Plains Pipeline, L.P., Docket No. IS05-135-000, (February 25, 2005)

Plains Pipeline, L.P., Docket No. IS05-135-000

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Plains Pipeline, L.P., Docket No. IS05-135-000

Letter Order

(Issued February 25, 2005)

By direction of the Commission: Magalie R. Salas, Secretary.

Reference: Plains Pipeline, L.P. Supplement No. 3 to FERC No. 42

1. On January 25, 2005, Plains Pipeline, L.P. (Plains) filed its Supplement No. 3 to its Rate Schedule FERC No. 42. Plains requested its proposed tariff become effective February 1, 2005. Continental Resources, Inc. (Continental), an oil production company operating throughout the Rocky Mountain, Mid-Continent and Gulf Coast regions of the United States, filed a protest and motion to reject the Plains filing on February 10, 2005. For the reasons appearing below, we conditionally accept the filing effective February 1, 2005, as proposed. This acceptance benefits the public because it reduces rates for transporting crude oil on Plains.

2. As stated in the letter accompanying the tariff filing, Supplement No. 3 to FERC No. 42 breaks down the mainline shipping charges to Baker, Montana, into three rate components: (1) mainline transportation; (2) gathering; and, (3) truck unloading. Plains states its proposal lowers overall shipping charges to the shipper. In addition, Plains proposes to establish services and rates at two origin points, ELOB Junction and Marmath Station, and submits an affidavit attesting that these newly established services and rates have been agreed to by at least one non-affiliated shipper. Plains requests special permission to file this tariff publication on less than 30 days notice, in order to fulfill a shipper's request.

3. As mentioned above, on February 10, 2005, Continental filed a protest, motion for intervention and motion for rejection of Plains' tariff filing. Continental contends that Plains' attempts to disguise the creation of a substantial number of new initial rates in Supplement No.3. Continental also contends that Plains inappropriately proposes, in Supplement No. 3, to require all crude oil tendered on the Trenton line at McKenzie and Williams Counties, North Dakota, and Richland and McCone Counties, Montana, contain a sulfur content of no more than 0.35 percent by weight. Finally, Continental alleges that Plains proposes to deduct one-quarter of one percent of all crude oil transported on Plains to allegedly cover "evaporation and loss during transportation," without providing cost justification for this charge. Continental also contends that, as applied to the Baker pipeline system, this evaporation and loss charge is a new rate.

4. On February 15, Plains filed a response to Continental's protest and motion to reject, in which it pointed out certain errors made by Continental in its seeking rejection of Plains' filing. Thereafter, on February 17, 2005, Continental filed an answer to Plains' answer, which it acknowledged is not permitted by the Commission's rules. The only new item contained in Continental's February 15 answer that was not in its original protest is Continental's admission that it had made a mistake as to the composition of the Plains' tariff filing. Continental therefore withdraws its motion to reject the tariff filing. The rest of this answer appears to be duplicative of what was contained in the protest. Therefore, Continental's motion to reject is deemed withdrawn.

5. Plains FERC Tariff No. 42 contains rates, terms and conditions for two pipelines. The Baker line has origin points in Harding County, South Dakota; Bowman County, North Dakota; and Fallon County, Montana, and a

destination of Baker Station, Fallon County, Montana. The Trenton line has origin points in McKenzie and William Counties, North Dakota; and Richland and McCone Counties, Montana, and a destination of Trenton Station, Williams County, North Dakota. In its instant submission, Plains proposes rate changes to its Baker line, but proposes no rate changes to its Trenton line.

6. The current and proposed mainline transportation charges are as follows:

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Currently Effective Tariff		Proposed Tariff		Current / Proposed
Origin	**Rate (¢ / bbl)**	**Origin**	**Rate (¢ / bbl)**	**Destination**
Harding Station Harding Co., SD	107.40*	Cancelled	Cancelled	Baker Station Fallon County, MT
Rhame Station Bowman Co., ND	81.36*	Rhame Station Bowman Co, ND	46.00	Baker Station Fallon County, MT
Marmath Station, Bowman Co., ND	45.00			
Fallor Co., MT	59.66*	ELOB Station, Fallon Co., MT	34.00	Baker Station Fallon County, MT
Baker Station, Fallon Co. MT	5.00			

* Currently effective rates are all at their Current Index Ceiling Levels.

7. Plains propose a truck unloading fee of 7.5 cents per barrel for all shipments unloaded from tank cars and tank truck facilities. In addition, Plains proposes the following gathering charges:

Gathered In	Delivered To Origin Point At	Rate (¢ / bbl)
Harding Co., SD	Rhame Station, Bowman Co., ND	30.00
Bowman Co., ND	Rhame Station, Bowman Co., ND	20.00

Bowman Co., ND	Marmarth Station, Bowman Co., ND	10.00
Fallon Co., ND	ELOB Station, Fallon Co., ND	10.00

In its protest, Continental contends that Plains attempts to establish new tariff rates with the Commission for mainline transportation, as well as gathering and truck unloading fees. Continental urges the Commission to require Plains to provide cost justification for each new rate and charge that it proposes to implement. In its tariff filing, Plains states that it used the provisions of Section 342.2(b) of the Commission's regulations to establish these new tariff rates.[1] Citing Section 342.2(b), Continental requests that the Commission suspend each of Plains' new initial rates and require Plains to submit cost justification that complies with the Commission's regulatory requirements to support them. Continental states that it does not believe Plains can cost justify any of the new initial rates as the Commission's rules and regulations require, because revenues on Plains have substantially increased as a result of throughput increasing approximately 50 percent from January 1, 2004 to the present date.

8. In its response, Plains states that Exhibit A to the transmittal letter accompanying its tariff makes clear that all of the rates at issue represent significant reductions of the rates that shippers would pay for the identical service under the prior tariff. Plains avers that under the previously effective tariff structure, it posted a flat rate for service from each origin to Baker Station that included all services necessary to provide transportation between those points, including truck unloading and gathering, as required. Plains states that it has restructured its rates in two ways: (1) by "unbundling" its rates; and (2) by lowering all the rates across the board, so that all shippers will pay less under the new rate schedule, even if they use all of the services that Plains previously offered.

9. Plains contends Continental's request that the Commission suspend the rates at issue would be contrary to the interests of shippers, since it would deny them the benefits of the lower rates in the tariff. Plains further asserts that a suspension would be pointless because Section 15(7) of the Interstate Commerce Act only permits the Commission to order refunds of increased rates.

10. The Commission finds that Continental's arguments supporting its request for suspension and cost justification of Plains' proposed rates are without merit. A review of Plains' submission shows that shippers will pay less for transportation under the proposed unbundled rates than they are currently paying under Plains' effective rates. The following table compares the currently effective rates to the proposed rates for all possible movements of crude petroleum from various origin points in Harding County, South Dakota; Bowman County, North Dakota; and Fallon County, Montana to the destination point at Baker Station, Fallon County, Montana. As can be seen, all possible transportation scenarios result in lower rates for shippers under Plains' proposal and are significantly lower than the current rates which are all at their index ceiling levels.

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	EffectiveTariff	Proposed Tariff			
Origin	BundledRate (¢ / bbl)	Transportation (¢ / bbl)	Gathering (¢ / bbl)	TruckUnload (¢ / bbl)	TotalRate (¢ / bbl)
Harding Co., SD	107.40*				
Harding Station		46.00	30.00	7.5	83.5
Harding Station		46.00	30.00		76.0

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Bowman Co., ND	81.36*				
Rhame Station		46.00	20.00		66.0
Rhame Station		46.00		7.5	53.5
Marmarth Station		45.00	10.00		55.0
Marmarth Station		45.00		7.5	52.5
Fallon Co., MT	59.66*				
ELOB Junction		34.00	10.00		44.0
Baker Station		5.00		7.5	12.5

* Currently effective rates are all at their Current Index Ceiling Levels.

11. Plains points out in its response, that it formerly provided service from Marmarth Station under the rate for the Rhame Station, Bowman County origin, and similarly provided service from ELOB Junction under the rate for the Fallon County origin. In its protest, Continental also notes that the proposed Marmarth Station origin point was one of the points at Rhame that Continental used to deliver crude oil into the Baker line. As a result, these two origin points represent reductions in the rates of existing services, rather than new services.

12. In an *SFPP* case, the Commission discussed SFPP's addition of East Hynes as an origin point, concluding it was merely the addition of a Los Angeles origin station to an existing rate cluster, as claimed by SFPP, and that it did not involve a change to a rate or service that SFPP already was providing.[2] The Court of Appeals affirmed the Commission's conclusions regarding East Hynes.[3] Similarly, we conclude that the new Marmarth Station origin point belongs to the existing rate Bowman County rate cluster, and ELOB Junction origin point is part of the Fallon County, North Dakota rate cluster. As such, Continental's protest on the basis of these two points being initial rates is moot. Also as can be seen in the above table, we note that the proposed rates for Marmarth Station and ELOB Junction are below the current index ceiling levels of their respective rate clusters.

13. Continental also protests the 5 cents per barrel fee for transportation originating at the Baker Station, Fallon County to a Baker Station, Fallon County destination. Continental contends this is a pump-over fee in order to transfer crude oil from the Plains system into Butte pipeline at Baker, rather than a decrease of Plains' existing rate for transportation from the Fallon County origin to Baker Station. Continental requests the Commission reject this rate as failing to comply with Section 342.2 of the Commission's regulations because it fails to support this initial rate by an affidavit or a cost-of-service justification.

14. We concur with Plain's characterization of the proposed Baker Station, Fallon County origin point as a reduction from its previously effective Fallon County origin rate. Previously, Plains charged shippers transporting crude oil from anywhere within the Fallon County rate cluster a bundled transportation rate of 59.66 cents per barrel for a movement to the Baker Station destination point. The above table shows that shippers now have the opportunity to move crude oil from the Baker Station origin point in Fallon County to the Baker Station destination

point at 12.5 cents per barrel. This rate consists of an unloading charge of 7.5 cents per barrel and a mainline transportation fee of 5 cents per barrel. As a result, shippers wanting to make this movement will benefit from this substantial rate reduction. Therefore, we will deny Continental's request to reject this proposed rate.

15. Continental claims it is unjust and unreasonable for Plains to cancel the mainline service from Harding Station, South Dakota to Baker Station, Montana. Continental contends that Plains' proposed gathering line service of 30 cents a barrel from Harding Station to Rhame, with mainline service continuing from Rhame to Baker, imposes a new gathering fee on shippers accessing the Plains mainline at Harding. Continental requests the Commission reject the purported cancellation of Harding as a mainline origin, or alternatively suspend the Harding cancellation.

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16. As was discussed earlier, Plains proposes to unbundled its transportation rates. Under it proposal, Plains proposes to treat the portion of its line running from Harding Station to Rhame as a gathering line. This proposed change will not prevent shippers from continuing to move crude from Harding Station to Baker Station. Now instead of paying 107.40 cents per barrel for this movement, shippers will pay either 83.5 cents per barrel, consisting of an unloading charge of 7.5 cents per barrel, a gathering charge of 30 cents per barrel and a transportation rate of 46 cents per barrel; or 76 cents per barrel, if unloading into the Harding Station to Rhame gathering line is not required. Contrary to Continental's assertion that Plains proposes a new 30 cents per barrel gathering fee, Plains reduces the costs to a shipper moving crude oil from Harding Station to Baker Station by 23.9 cents per barrel or 31.40 cents per barrel. As a result, we find Continental's arguments lacking and we will deny Continental's request that we reject or suspend Plains' proposed cancellation of Harding as a mainline origin.

17. Continental states it is unjust and reasonable for Plains to require in Supplement No. 3 to FERC Tariff No. 42 that all crude oil tendered for shipment to Trenton Station, North Dakota from McKenzie and Williams Counties, North Dakota or Richland and McCone Counties meet a 0.35 percent sulfur requirement. It also states that it is unjust and reasonable for Plains to require in Supplement No. 3 to FERC Tariff No. 42 that every shipper provide 0.25 percent of its crude oil shipments to Plains in order to cover loss and evaporation during shipment.

18. Plains did not file in Supplement No. 3 to FERC Tariff No. 42 for any of the above requirements. These requirements were being brought forward unchanged from Supplement No. 2 to FERC Tariff No. 42 which became effective on February 1, 2005. The protest period for Supplement No. 2 ended on January 25, 2005, and no protests were filed. Moreover, the Commission accepted Supplement No. 2 and it no longer is subject to suspension. Therefore, we deny Continental's protest challenging the sulfur specification provision.

19. The Commission accepts Plains Supplement No. 3 to FERC No. 2 effective, February 1, 2005, as proposed. However, we condition our acceptance upon Plains' unbundled rates complying with the Commission's index methodology in the future. This means that the overall cost to shippers under Plains' unbundled rates must not exceed the effective ceiling levels of its existing bundled rates for similar movements. For example, the total unbundled cost for the movement of crude oil from Harding Station to Baker Station may not exceed the index ceiling level of 107.40 cents per barrel (as adjusted each July 1) that is established for this movement. The current index ceiling levels for transportation of crude oil from Bowman County, North Dakota; and Fallon County, Montana to Baker Station are 81.36 cents per barrel and 59.66 cents per barrel, respectively.

[1] Section 342.2 states that "A carrier must justify an initial rate for new service by: (a) Filing cost, revenue, and throughput data supporting such rate as required by Part 346 of this chapter; or (b) Filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, provided that if a protest to the initial rate is filed, the carrier must comply with Paragraph (a) of this section."

[2] 86 FERC ¶61,022, at pp. 61,062-63 (1999).

[3] *BP West Coast Products, LLC v. Federal Energy Regulatory Commission*, 374 F. 3d 1263 (2004) at 1273.

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