Plantation Pipe Line Co.
Order on Petition for Declaratory Order
98 FERC ¶ 61,219 (2002)

Plantation sought a Commission order declaring that: (1) the abandonment of the existing 8-inch Plantation line and transportation service from Bremen, Georgia to Chattanooga and Knoxville, Tennessee, and Plantation's cancellation of its rates to those locations, would not be subject to Commission jurisdiction or challenge; (2) Plantation's contemplated joint rates (including volume and term-differentiated discounts) with a new affiliated pipeline entity serving Chattanooga and Knoxville, via Bremen, are just, reasonable, and not unduly discriminatory; and (3) the establishment of the proposed new pipeline and accompanying service from Bremen, to Chattanooga and Knoxville, would not affect the grandfathered status of, nor subject to challenge, Plantation's existing mainline rates from its origins to Bremen.

With respect to the facilities' abandonment and cancellation of the service provided by the 8-inch line, the Commission found that it did not have jurisdiction, stating that the Interstate Commerce Act (ICA) did not grant the Commission jurisdiction over "abandonments of facilities and the services associated with such facilities." (Id. at 61,864). Although the Commission has asserted jurisdiction in limited circumstances where services were not completely abandoned and rates for remaining services were affected, that was not the case here.

With respect to Plantation's proposed rate structure and joint rate levels, the Commission approved Plantation's joint rate methodology, which provided discounts based upon shippers' volume and term commitments. A joint rate is just and reasonable if it is less than or equal to the sum of the local rates on file with the Commission. Volume and term-differentiated discounts are permitted so long as they are available to all similarly situated shippers (*i.e.*, shippers willing to commit to specific volumes and terms). Thus, the Commission found that the joint rate methodology was not unduly discriminatory; however, the Commission could not find that specific joint rates were just and reasonable until Plantation submitted a joint tariff including the applicable joint rates. (Id. at 61,866, 61,867).

With respect to the grandfathered status of existing rates, the Commission found that since Plantation was not changing its grandfathered rates, there was no reason to require Plantation to justify the existing rates associated with the movement. (Id. at 61,867).

COMM-OPINION-ORDER, 98 FERC ¶61,219, Plantation Pipe Line Company, Docket No. OR02-1-000, (Feb. 28, 2002)

Plantation Pipe Line Company, Docket No. OR02-1-000

[61,863]

[¶61,219]

Plantation Pipe Line Company, Docket No. OR02-1-000

Order on Petition for Declaratory Order

(Issued February 28, 2002)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

On November 2, 2001, Plantation Pipe Line Company (Plantation) filed a petition for declaratory order, seeking declarations from the Commission regarding the lawfulness and regulatory effect of certain proposed joint rate arrangements in connection with proposed new pipeline service to Chattanooga and Knoxville, Tennessee which Plantation intends to offer in connection with a newly-formed pipeline affiliate. In addition, Plantation seeks a ruling that the proposed arrangements would not affect the existing status of its current rates to mainline destinations under the Energy Policy Act of 1992 (EPAct). Plantation states that given the major financial commitment necessary to finance this project, before it and its owners undertake such a commitment, Plantation needs regulatory assurance from the Commission in the form of an answer to the questions posed in its petition.

Protests were due to be filed on or before November 19, 2001. No comments, protests, or interventions were received.

Background

Plantation is a major pipeline common carrier of refined petroleum products in the southeastern United States. [1] Originally built over fifty years ago, Plantation's system includes approximately 3,100 miles of pipeline, delivering products in eight states. The mainline section of the pipeline extends from Baton Rouge, Louisiana to Greensboro, North Carolina, with several spur lines, and includes lateral lines to Roanoke, Virginia and Northern Virginia. Plantation's system parallels the Colonial Pipeline Company (Colonial) system for its entire length, and the two pipelines compete directly for the delivery of petroleum products from Gulf Coast refineries to markets throughout the entire Southeast.

[61,864]

Plantation states that in recent years, capacity to the Chattanooga and Knoxville markets has become increasingly constrained as a result of continued growth in the demand for petroleum products. Plantation states that both it and Colonial have been required to prorate nominations on their lines to these locations periodically since 1996 and continuously since 1999 (Colonial's capacity constraint is in the Knoxville market only). Plantation contends that there is a market for new and expanded pipeline service to Knoxville. As a result, Plantation states it is proposing a new pipeline to meet this demand and to provide a major competitive alternative to service on the other pipeline service provider, Colonial.

To provide expanded transportation capacity to the Chattanooga and Knoxville markets, Plantation proposes two steps. First, a new pipeline would be constructed from Bremen, Georgia to Chattanooga and Knoxville, following the existing right-of-way, to be owned and operated by a new, separate pipeline entity. Next, once the new pipeline facilities are operational--currently projected at the third quarter of 2003--all but a very short segment of the existing 8-inch line spur line running from Bremen to Chattanooga and Knoxville would be abandoned in place, as well as the service offered by Plantation from Baton Rouge, and from Pascagoula and Collins, Mississippi, to Chattanooga and Knoxville.

The new pipeline would file cost-based local rates for transportation service between the Bremen origin and the destinations of Chattanooga and Knoxville. Plantation and the new pipeline would file joint tariffs for transportation service from Baton Rouge and other origins on the Plantation system to Chattanooga and Knoxville. Further, Plantation proposes to give all shippers, new or existing, the opportunity during an open season to secure the right to use joint rates equal to or less than the current local rate levels, by establishing discounted joint rates to shippers that commit to specific volumes for a five-year period.

Discussion

Plantation states that the estimated cost of the new project is $110 million. Because the cost of the construction would be borne by Plantation's owners, Plantation states that its owners would be at considerable risk. As a result, Plantation contends it is necessary to have advance Commission approval in order to finance the new project. Further, Plantation states that commitments by shippers would be contingent upon Commission approval of the discounted joint rates underlying the agreements. Therefore, Plantation seeks a Commission order declaring that:

(1) the abandonment of the existing 8-inch Plantation line and transportation service from Bremen, Georgia to Chattanooga and Knoxville, Tennessee, and that Plantation's cancellation of its rates to those locations, would not be subject to Commission jurisdiction or challenge;

(2) Plantation's contemplated joint rates with a new affiliated pipeline entity serving Chattanooga and Knoxville, via Bremen, would be just, reasonable and not unduly discriminatory; and

(3) the establishment of the proposed new pipeline and accompanying service from Bremen, to Chattanooga and Knoxville, would not affect the grandfathered status of, nor subject to challenge, Plantation's existing mainline rates from its origins to Bremen.

We shall discuss each of these requests below.

1. *Facilities Abandonment and Cancellation of Service New Pipeline*

To provide expanded transportation capacity to Chattanooga and Knoxville, a newly formed Plantation affiliated pipeline would construct a 16-inch pipeline from Bremen to Chattanooga and Knoxville. After this pipeline has been constructed, Plantation proposes to abandon service through its existing 8-inch pipeline from Bremen to Chattanooga and Knoxville. [2] Plantation seeks an order from the Commission declaring that idling of those facilities presently used to serve Chattanooga and Knoxville and cancellation of the existing rates for service to those destinations will not be considered an abandonment of services subject to Commission jurisdiction.

The Interstate Commerce Act (ICA) [3] does not give the Commission jurisdiction over abandonments of facilities and the services associated with such facilities. Indeed, the Commission has found repeatedly that it has no jurisdiction over oil pipeline abandonments. [4]

Transporters are generally free to cancel services at their will, subject to certain conditions.

[61,865]

Although the Commission does not have jurisdiction over a pipeline's abandonment of service, we have asserted jurisdiction over cancellation of services in limited circumstances where service was not completely abandoned. In *Amoco*, [5] the transporter proposed to cancel service at certain origin points along its mainline pipeline, while keeping the mainline pipeline in service for service downstream of the cancellation points. The Commission indicated there that it was not devoid of jurisdiction in those circumstances, since the mainline pipeline would still be in service. The Commission stated that such cancellation would affect throughput on its system, which in turn would affect Amoco's system-wide cost-of-service, and thereby may affect its rates. The Commission stated that it therefore had jurisdiction under Section 15(7) of the ICA, since the proposed cancellations would in fact affect rates.

However, *Amoco* involved cancellation of points of origin along a pipeline that would continue to be in service after the cancellations were made, for service to points downstream of the canceled points. That is not the case here. Rather, Plantation's petition indicates that it will abandon its pipeline and facilities used to transport petroleum products to Chattanooga and Knoxville, thereby making continued service to Chattanooga and Knoxville on this line impossible. Thus, cancellation of Plantation's rate schedule for service to Chattanooga and Knoxville would be a complete abandonment of service over which the Commission would have no jurisdiction.

2. *Approval of the Proposed Rate Structure and Joint Rate Levels*

Plantation proposes to form an affiliated pipeline to construct a new 16-inch pipeline that would originate at Bremen, and would serve Chattanooga and Knoxville. Service to the Chattanooga and Knoxville markets would be available via two types of rates: (1) the combination of Plantation's then-current Bremen destination rates, [6] plus the initial local rate to be established by the newly formed affiliate pipeline for service from Bremen to Chattanooga and Knoxville; [7] and (2) joint rates offered by Plantation and the new pipeline reflecting discounts for certain volume commitments. In order to provide adequate regulatory assurance to justify Plantation's owners' large investment in a new pipeline, Plantation is seeking Commission approval that the proposed joint rates would be lawful.

Plantation proposes to give all shippers, new or existing, the opportunity during an open season to secure the right for five years to use joint rates equal to or less than the then-current rate levels applicable under Plantation's tariff for service from various origin points to Chattanooga and Knoxville. Plantation states its proposed joint rates would be substantially less expensive than choosing Plantation's local rates to Bremen and the affiliate pipeline's rates to Chattanooga and Knoxville. The joint rates would be computed in the following manner:

(1) *current Plantation shippers to Chattanooga and Knoxville that agree during the open season to ship their* historical volumes to those destinations for five years would qualify for a joint five-year rate equal to Plantation's then-current through rates to those destinations. [8]

(2) all shippers, including any new shippers, that agree during the open season to guarantee incremental volumes over and above historical deliveries to these destinations for five years would qualify for a joint five-year rate reflecting discounts from the then-current through rates. The discounts would increase with the size of the volume commitment, starting at 2 cents/barrel for volumes exceeding 1,000 incremental barrels per day, and

increasing up to 12 cents/barrel for volumes exceeding 15,000 incremental barrels per day.

Those shippers who decide not to make a volume commitment for a five-year period would have the option of paying the combination of Plantation's Bremen destination rates and the initial rate to be established by the new pipeline from Bremen to Chattanooga and Knoxville, as indexed over the five years.

[61,866]

Our policy has been that a joint rate is just and reasonable if it is less than or equal to the sum of the ceiling levels associated with the individual local interstate rates currently on file with the Commission. [9] Plantation's discounted joint rate proposal meets these criteria, if as indicated by Plantation, the joint rates offered will be less than the ceiling levels associated with the combination of Plantation's local rates to Bremen and the new affiliated pipeline's rates on file with the Commission.

With regard to discounted rates, the Commission has permitted nondiscriminatory, discounted rates to attract a particular type or group of shipper(s) who are amenable to committing substantial volumes and/or to committing to substantial periods of time. In *Sea-Land Service, Inc. v. Interstate Commerce Commission* [10] the court stated that:

> Current law no longer considers contract rates to be *per se* violations of the common carrier duty of nondiscrimination. . . . Since 1978 . . . the Interstate Commerce Commission has held that contract rates are not inherently discriminatory provided that the carrier offering them makes them available to all similarly situated shippers of like commodities.

> The court then addressed under what conditions contract rates would be acceptable under the Interstate Commerce Act:
>
> Although one normally regards contract relationships as highly individualized, contract rates can still be accommodated to the principle of nondiscrimination by requiring a carrier offering such rates to make them available to any shipper willing and able to meet the contract's terms. If those terms result in lower costs or respond to unique competitive conditions, then shippers who agree to enter into the contract are not similarly situatec with other shippers who are unwilling or unable to do so. [11]

For volume incentive rates, (*i.e.*, reduced or discounted rates offered in exchange for shipper commitments to move specified large volumes) the Commission has held that if an oil pipeline files an incentive rate that is less than the applicable ceiling, no further regulatory action will normally be required, so long as the ceiling rate is not exceeded. [12] As discussed above, Plantation has proposed to offer a joint rate that is less than the combination of Plantation's and the new pipeline's ceiling rates. Under its proposal, Plantation intends to offer additional incentive discounts yielding rates below the joint rate. As a result, Plantation's offered incentive rates could not exceed the combination of the two pipelines' ceiling rates.

Term-differentiated incentive programs—like incentive volume rate programs—require certain prerequisites to be met before a shipper can be eligible for the discount. In such cases shippers agree to ship on a pipeline for a specific period of time. As a result, the Commission has viewed such shippers as not being similarly situated as compared to those shippers who have not committed to a specific term and who retain the choice to ship on the pipeline or not. The Commission has found no discrimination results from differential pricing in these circumstances. [13] Plantation's proposal similarly allows shippers who commit substantial volumes for a period of time to derive some benefit, namely, a lower transportation rate, from that commitment.

Plantation's Petition includes estimated cost, revenue, and throughput data in support of the new pipeline's initial local rates. Plantation states that the information was filed for illustrative purposes in order to assist the Commission's review of its Petition, including the joint rates. Plantation states that it is not asking the Commission to rule on the initial cost-of-service rates of the new pipeline at this time. Plantation states that after the construction of the proposed pipeline, the new company would file its application for initial rates, including cost-of-service support if necessary.

The Commission is therefore not expressing here any view on the level of the cost- of-service-rates for the proposed affiliated pipeline listed by Plantation in its application. The new pipeline's actual rates will not be established until after construction of the Bremen-to-Chattanooga and Knoxville line is completed. The appropriate rate level must be determined when the new pipeline files to establish initial rates.

What we are approving here is Plantation's joint rate methodology, which would provide discounts based upon shippers' volume and term commitments. The Commission finds Plantation's joint rate methodology to be not unduly discriminatory. However, the Commission cannot make a finding that the proposed joint rates are just and reasonable at this time.

[61,867]

In order to provide the proposed joint service to Chattanooga and Knoxville, Plantation or its proposed affiliated pipeline must submit a joint tariff including the joint rates that will be applicable to service to Chattanooga and Knoxville. *At that time, the Commission can determine whether the joint rates are just and reasonable, consistent* with the Commission's joint rate policy discussed above.

3. *Grandfathered Status and Challenge of Existing Rates*

Plantation proposes to idle and abandon the existing spur of its pipeline extending north to Chattanooga and Knoxville from Bremen, and interconnect its mainline with a new affiliated pipeline to be built along this same route. Plantation proposes to continue to offer service to Chattanooga and Knoxville via new joint rates with the proposed pipeline. Plantation is not proposing to alter its existing rates on its mainline system. Plantation seeks an order declaring that the establishment of the proposed new pipeline and accompanying service from Bremen, Georgia to Chattanooga and Knoxville, Tennessee would not affect the grandfathered status of, or make subject to challenge, Plantation's existing mainline rates from its origins to Bremen.

Under the EPAct, Plantation's rates for transportation from points of origin to Bremen are "grandfathered" and, thus, are deemed to be just and reasonable. [14] There is no reason to require Plantation to justify the existing grandfathered rates associated with this movement or any other destination point on its system. Plantation is not proposing to change its grandfathered rates. Plantation is simply proposing to form a new affiliated company to own the proposed pipeline running from Bremen to Chattanooga and Knoxville. The mere connection to the proposed affiliated pipeline running from Bremen to Chattanooga and Knoxville would not affect the grandfathered status of the rates for movements from current origin points to Bremen.

The Commission orders:

The petition for declaratory order filed by Plantation on November 2, 2001, is granted as discussed in the body of this order.

– Footnotes –

[61,863]

[1] Plantation is currently owned by Kinder Morgan Operating L.P. "D" (27%), Kinder Morgan Operating L.P. "A" (24%) (collectively "KinderMorgan") and ExxonMobil Pipeline Company (49%); KinderMorgan is the operator.

[61,864]

[2] Plantation plans to abandon 181 of 190 miles of existing pipeline running from Bremen to Chattanooga and Knoxville. Plantation states that deliveries to urban terminals at Chattanooga would be made using the remaining 9 miles of existing 8-inch line which will be sold to, and incorporated in, the new pipeline.

[3] 49 App. U.S.C. §1 (1994).

[4] *See ARCO Pipeline Company*, 55 FERC ¶61,420 (1991); *Texaco Pipeline Inc.*, 58 FERC ¶62,051 (1992); *ARCO Pipeline Company*, 66 FERC ¶61,159 (1994); and *Colonial Pipeline Company*, 89

[61,865]

FERC ¶61,095 (1999), *reh'g denied*, 95 FERC ¶61,355 (2001).

[5] *Amoco Pipeline Company*, 83 FERC ¶61,156 (1998).

[6] The reference to "then-current" in our discussion refers to Plantation's rates at the time of the inception of the new service. Plantation states it expects to increase both cost-based and discounted rates over the first five years of its proposal in accordance with the Commission's indexing methodology (18 C.F.R. §342.3 (1999)).

[7] Plantation states that the new pipeline would file its initial rate pursuant to 18 C.F.R. §342.2, which allows a pipeline to file a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service, but requires a cost justification if a protest is filed.

[8] The tariff would define the base period for the measurement of historical volumes as July 1, 2000 through June 30, 2001.

[61,866]

[9] *See Texaco Pipeline, Inc.*, 72 FERC ¶61,313 (1995); and *Big West Oil Company v. Frontier Pipeline Company*, 94 FERC ¶61,339 (2001).

[10] 738 F.2d 1311, 1316 (D.C. Cir. 1984) (*Sea-Land*).

[11] *Id.* at 1317.

[12] *Explorer Pipeline Company*, 71 FERC ¶61,416 (1995); and *Williams Pipe Line Company*, 80 FERC ¶61,402 (1997).

[13] *Express Pipeline Partnership*, 76 FERC ¶61,245 (1996); and *Mid-America Pipeline Company*, 93 FERC ¶61,306 (2000).

[61,867]

[14] 42 U.S.C. §7172 note (1994).

COMM-OPINION-ORDER, 99 FERC ¶61,229, Express Pipeline LLC, Docket No. IS02-216-000, (May 31, 2002)

Express Pipeline LLC, Docket No. IS02-216-000

[61,949]

[¶61,229]

Express Pipeline LLC, Docket No. IS02-216-000

Order Accepting Tariff Supplements

(Issued May 31, 2002)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

1. On April 16, 2002, Express Pipeline LLC (Express) filed tariff supplements to cancel two joint and proportional pipeline tariffs for the transportation of crude oil and syncrude from Canada to Salt Lake City, Utah. [1] The proposed cancellations are protested by certain shippers. As discussed below, we will accept the cancellations, to be effective June 1, 2002, as proposed. This order is in the public interest because it enables continuation of service consistent with the provisions and requirements of the Interstate Commerce Act.

Background

2. The pipeline carriers that participate in the joint rates provide interconnected transportation of crude oil and syncrude from Canada to the United States, as follows: Express extends from the U.S. border to Casper, Wyoming, where it connects, through a "pumpover" facility operated by Platte Pipe Line Company (Platte), with a pipeline owned by Frontier Pipeline Company (Frontier). The Frontier pipeline extends from Casper to Kimball Junction, Utah. A line owned by Anshutz Ranch East Pipeline, Inc. (Anshutz) extends across Kimball Junction and connects with a pipeline owned by Chevron Pipeline Company (CPL). The CPL line extends from Kimball Junction to refineries in the Salt Lake City area.

3. The joint tariff agreement that governs the current joint rate was entered into effective April 1, 1998, and is between Express, Frontier and Anshutz. [2] This joint rate agreement will terminate on May 31, 2002. Although the joint

[61,950]

tariff also includes CPL as a participating carrier, CPL is not a party to the joint tariff agreement. CPL is, however, a party to a written agreement with Frontier and Anshutz. Express contends that the Chevron/Frontier/Anshutz agreement is subordinate to the Express/Frontier/Anshutz joint tariff agreement, which comprehensively provides for the administration of the entire joint tariff and sets forth Express's role as tariff administrator. [3]

Description of the Filing

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4. On April 16, 2002, Express filed tariff supplements to cancel FERC Nos. 29 and 30. Express states that the rates set forth in FERC Nos. 29 and 30 resulted from an agreement between the carriers to establish joint rates at a discount from the otherwise applicable local rates of Express, Platte, Frontier, Anshutz and CPL. Express further states that the agreement will terminate as of June 1, 2002 and that, consequently, the joint rate will be cancelled effective June 1, 2002. Express indicates that, following June 1, 2002, shippers will still be able to transport petroleum on all of the routes to which the cancelled joint tariffs apply. [4]

Interventions and Protest

5. On May 1, 2002, a joint protest and motion to intervene was filed by Big West Oil LLC, Chevron Products Company and Tesoro Refining and Marketing (Protesters). In addition, CPL filed a motion to intervene, stating that it does not concur in the tariff cancellation filings. Frontier and Anschutz filed letters simply stating that they have not concurred in the proposed joint tariff cancellation.

6. Protesters contend that the public interest will be adversely affected by the Express tariff cancellation, which the Protesters claim will result in increases of up to 40% in the cost of transporting crude and syncrude to the Salt Lake City market. Protesters also contend that the cancellation will result in the diversion of crude and syncrude away from the Salt Lake City market, disrupting and creating other problems for refiners and consumers in Utah and Idaho. Protesters note that, upon cancellation of the Express joint tariff, they will be required to deal with five different pipelines to obtain crude and syncrude from the sources in Canada. Protesters assert that Express' tariff cancellation represents a retaliatory maneuver against the shippers who protested Express' local rates before this Commission. Finally, Protesters contend that the cancellation will result in undue preferences and discrimination against Salt lake City refiners and is anti-competitive.

7. Protesters request that the Commission suspend the proposed cancellations for a period of seven months and institute an expedited hearing and an investigation into its lawfulness. On May 6, 2002, Express filed answers to the protest and to the filings of CPL, Frontier, and Anschutz. Express supplemented its answer on May 8, 2002, filing corrections to the affidavits filed on May 6. On May 15, 2002, Protesters filed an answer to Express' answer. On May 16, CPL filed a motion for leave to file a response to Express' answers, and on May 20, Express filed its own motion for leave to file an answer and its answer to the pleadings filed by Protesters on May 15 and by CPL on May 16. These pleadings were all supported by affidavits of personnel within the respective companies in support of the respective positions taken in the pleadings. Finally, on May 22, 2002, Protesters filed a motion for leave to respond and a response to Express' May 20 answer. While our rules do not generally permit these types of pleadings, [5] we find that they are helpful to us in reaching our decision in this matter and are therefore received as a part of the record in this case. [6]

Discussion

[61,951]

8. Section 15(3) of the Interstate Commerce Act (ICA) provides that

> [t]he Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing . . . establish . . . joint rates. . . . If any tariff or schedule canceling any through route or joint rate, . . . without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest. . . . [7]

Upon review of the filings in this case, we conclude that the public interest does not require continuation of the joint rates proposed to be cancelled, and that the Commission can authorize the proposed cancellation without suspension and investigation of the cancellation tariffs. This is because there is a through route already established from the U.S. border to Salt Lake City, and service over that route will continue to be available under the local rates of the individual carriers, just as it has been under the joint rates. Express recognizes that there will be continued service by stating that "after cancellation, the shippers will continue to have full access to continued transportation under just and reasonable local rates." (Answer at 1) Protesters also acknowledge this by pointing out as one of their bases for the protest the fact that the shippers will have to deal with five different carriers on their shipments to Salt Lake City. (Protest at 4).

9. Protesters contend that the cost of transportation from the Canadian Border to Salt Lake City will increase from 20% to 40%. (Protest at 24) Express, however, disputes this and protesters' claim of consequential hardship. Express contends that the cancellation effective June 1, 2002, in fact will result in Protesters paying local rates whose sum will be lower than the joint rates that these shippers had routinely paid for nearly five years during the period between April 1, 1997 and January 30, 2002. Moreover, Express notes, Protesters in their May 15 answer have reduced their claim from a 20% to 40% increase to a 12% increase, reflecting a difference between the sum of the local rates post cancellation and the joint rates in effect in 2001. As Express points out, however, Protesters have improperly compared the total of the local uncommitted rates with the joint 15-year term rates to arrive at the 12% figure. A proper comparison shows that, contrary to Protesters' contention, the sum of the applicable local rates is in fact lower than the joint rates. [8]

10. Even if Protesters were correct and shippers could be paying more under local rates for transportation to Salt Lake City than under the current joint rates, that is only because the joint rates constitute a discount from the sum of the individual local rates, which are established under the provisions of the ICA. Shippers receive these types of discount only under certain circumstances, such as when the carriers agree to offer a discount to encourage increased throughput. That discount is based on a voluntary agreement among the pipeline carriers that none of the carriers is obligated to continue when their agreement terminates. Once the discount is ended, shippers might be charged more, but in no instance can shippers be charged more than the rates set forth in the individual carriers' tariffs, all of which are subject to the jurisdiction of this Commission under the ICA. [9]

11. As to the level of those rates, the local rates of two of the participating carriers have been the subject of recent settlements reached by two of these same shipper refiners who have filed the protests here. [10] These settlements resulted in the parties' agreement to resolve the local rate issues between Big West and Chevron Products Company, and the local carriers, Frontier and Anschutz. These local rates provide for the maximum rates that can be charged. The local rates of two of the other carriers involved, Platte and Express, are the subject of challenge in complaints filed by these same shippers in Docket Nos. OR02-5-000 and OR02-8-000. [11] To the extent

[81,952]

that Protesters have concerns about the rates to be paid Express and Platte, they have raised them in those proceedings.

12. Once the contract between Express, Frontier and Anschutz terminates by its terms, there will be no contractual underpinning for the current joint rate. Express is well within its rights not to renew the contract, and the Commission cannot compel the continuation of the contract once the contract expires. The Commission could, nevertheless, under Section 15(3) of the ICA require that joint rates be maintained. As already discussed above, however, there is no basis for our concluding that the public interest requires continuation of joint rates, since there will be transportation to Salt Lake City available over the same through route as at present at local tariff rates.

13. Finally, Protesters contend that the cancellation will be unduly preferential and discriminatory and will lead to a diversion of supplies away from Salt Lake City refiners. They contend that the sum of the local rates for transportation to other delivery points will be substantially cheaper than to Salt Lake City, and thus will encourage refiners located elsewhere on the Express delivery system to obtain more of the supplies of crude and syncrude. (Protest at 29-31) However, as Express points out, the calculations used by Protesters do not reflect all the transportation costs of getting product to the other markets, and therefore the computation of the claimed cost of getting the product to other refineries is flawed. (*See* Answer, Affidavit of Fischer at point 10) Moreover, Salt Lake

shippers will have service available at established tariff rates. We find that Protesters have therefore failed to establish that continuation of the joint rates is economically necessary in the public interest.

The Commission orders:

The tariff supplements listed in footnote number one are accepted, to be effective June 1, 2002.

-- Footnotes --

[61,949]

[1] Supplement No. 1 to FERC No. 29 and Supplement No. 1 to FERC No. 30.

[2] This is a binding contractual agreement among the carriers to file joint rates from the U.S. border to Salt Lake City reflecting a discount below the sum of their local rates. Between April 1, 1997 and March 31, 1998, a predecessor joint rate agreement governed the

[61,950]

joint rates, which did not include participation in the joint rate by CPL.

[3] Affidavit of Ralph J.W. Fischer, Paragraph 3. But see answer of CPL of May 16, 2002, mentioned below.

[4] Such transportation, according to Express, may be effectuated using Express Pipeline LLC FERC No. 15, Platte Pipe Line Company FERC No. 1472, Frontier Pipeline Company FERC No. 25, Anshutz Ranch East Pipeline FERC No. 9 and Chevron Pipeline Company FERC No. 714. On April 29, 2002, Express filed a Notice of Withdrawal of FERC No. 15, a tariff in effect subject to refund in Docket No. IS02-81-000 (98 FERC ¶61,008 (2002)), thereby reinstating the prior, lower local uncommitted rates set forth in FERC No. 4.

[5] 18 C.F.R. §385.213 (2001).

[6] The CPL May 16 answer for the most part attempts to clarify the relationship between the various carriers, and their willingness or unwillingness to extend the term of the existing joint tariff agreements. CPL also notes that it had only a few days' prior notice from Express that it planned to file the joint tariff cancellation on April 16, 2002. Without deciding whether CPL has accurately described the contractual arrangements and discussions among the parties, we will assume that all the matters raised by CPL are true. Except for clarifying the relationship between the parties, however, they have no bearing on our decision and CPL's answer of May 16 is not further discussed.

[61,951]

[7] 49 App. U.S.C. §15(3) (1988).

[8] As confirmed by the Commission's review of the applicable tariffs on file, for light crude, the joint uncommitted rate was $2.4482, and the sum of the local uncommitted rates will be $2.3835 (Express--$1.078 under reinstated FERC No. 4; Platte--$0.3201; Frontier--$0.60; Anschutz--$0.255; and Chevron $0.1304); the joint 15-year term rate was $2.1244, and the sum of the local rates for 15-year term shippers will be $2.1025 (Express--$0.797; Platte --$0.3201; Frontier--$0.60; Anschutz--$0.255; and Chevron--$0.1304). A comparison of the rates for moving other grades of crude shows the same result.

[9] *See Texaco Pipeline Inc.*, 72 FERC ¶61,313 (1995).

[10] *See Big West Oil Company, et al. v. Frontier pipeline Company and Express Pipeline Partnership*, 98 FERC ¶63,013 (2002) and *Big West Oil Company, et al. v. Anshutz Pipeline, Inc.* and *Express Pipeline Partnership*, 98 FERC ¶63.027 (2002). These initial decisions terminating proceedings have become final Commission decisions pursuant to Rule 708(d) of the Commission's Rules of Practice and Procedure. 18 C.F.R. §385.708 (d) (2001).

[11] While CPL (whose rate constitutes less than 10% of the sum of the local rates) had filed a notice of

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rate increase in Docket No. IS02-92-000, it withdrew its proposed increase on January 28, 2002 after such increase was protested by two of the shippers involved in this proceeding. Thus, it is charging local rates which are not currently subject to challenge.