100 FERC ¶ 61, 330
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Shell Pipeline Company L.P. Docket No. IS02-390-001

ORDER DENYING REHEARING

(Issued September 25, 2002)

1. On August 8, 2002, Phillips Petroleum Company, Tosco Corporation, and Toscopetro Corporation (collectively, Tosco) filed a petition for reconsideration of the Order Accepting Tariff Supplement issued August 1, 2002, in this proceeding (August 1, 2002 order).[1] Tosco contends that the August 1, 2002 order is based on a misapprehension of the underlying facts and fails to address an important issue relating to the Commission's oil pipeline ratemaking regulations. As discussed below, the Commission will treat the petition for reconsideration as a request for rehearing of the August 1, 2002 order and will deny rehearing. This order serves the public interest by affirming the cancellation of movements that Shell Pipeline Company LP (Shell) states it can no longer make, while allowing shippers to continue to transport crude oil to the same destinations under current local rates on file with the Commission.

**BACKGROUND**

2. On July 2, 2002, Shell filed Supplement No. 1 to its FERC Tariff No. S-37. Shell sought to cancel through movements of crude oil from origin points at Jal, New Mexico; and Hendrick/Wink, Midland, Colorado City, and Wichita Falls, Texas, to Patoka and Wood River, Illinois. Shell stated that it was selling certain assets that were essential to the through movement of crude oil between these points, although shippers would continue to be able to reach the Illinois destinations under a combination of its local rates.

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[1]Shell Pipeline Company LP, 100 FERC ¶ 61,139 (2002).

3. Tosco filed a protest and a request for rejection of Shell's filing. Tosco stated that it ships substantial volumes of crude oil to its Wood River refinery under Shell's FERC Tariff No. S-37 and that cancellation of the through rate would require it to pay considerably higher combined local rates from the origin points listed above to an intermediate point at Cushing, Oklahoma, and then onward to its refinery. Tosco asserted that Shell's proposal would violate the applicable increased ceiling level for its rates.

4. In the August 1, 2002 order, the Commission accepted Shell's filing, finding that the through rate that Shell proposed to cancel constituted a discount from the sum of its local rates from the origin points to the destination points listed above. The Commission pointed out that, while Shell had chosen to offer the discount for through movements, it was under no obligation to continue to do so and could end the discount at any time. However, the Commission emphasized that service to the destination points would continue to be available under local rates established in Shell's jurisdictional tariffs.

## PETITION FOR RECONSIDERATION

5. Tosco states that, on May 31, 2002, Shell filed a series of tariffs pursuant to its complete adoption of all tariffs published by Equilon Pipeline Company LLC. According to Tosco, the filing included FERC Tariff No. S-37, effective July 1, 2002, which contained 32 tariff rates for the transportation of crude oil from Jal, New Mexico, and from Hendrick/Wink, Midland, Colorado City, and Wichita Falls, Texas, to various destination points in Texas, Oklahoma, and Illinois.

6. Tosco asserts that nothing in FERC Tariff No. S-37 indicated that the rates to Wood River and Patoka were discount or incentive rates. Tosco maintains that all of the 23 rates published in FERC Tariff No. S-37, which involved service through intermediate delivery points, including the 10 rates to Illinois, were substantially less than the sum of the intermediate point-to-point rates.

7. Tosco states that Shell indicated in the filing at issue in this proceeding that "[c]ertain assets that are essential to the movement are being sold; therefore, no long haul movements can be made under this tariff." Tosco also states that Shell's letter accompanying Supplement No. 1 referred to alternative rate and routing information in Supplement No. 1 to FERC Tariff No. S-37 and to Tariff No. S-15, but did not describe the rates proposed to be cancelled as "discount" or "incentive" rates.

8. Tosco argues that it will be required to pay rates substantially higher than the through rates if it is required to ship from the origin points under intermediate tariff rates to Cushing, Oklahoma, and onward from Cushing under intermediate tariff rates to Wood River and Patoka. Specifically, Tosco contends that cancellation of the single tariff rate to Wood River will increase the effective transportation charge by 20.12 cents, or 32.2 percent, and that cancellation of the through rate to Patoka will increase the effective transportation charge by 19.71 cents, or 28.7 percent.

9. However, continues Tosco, Shell stated in its answer to the protest that the rates proposed to be cancelled were "discount" rates designed to provide an "incentive" for shippers. Despite that, states Tosco, Shell provided no reference to any tariff language, definition, transmittal letter, or other document identifying the rates in question as "discount" or "incentive" rates. Further, although Shell claimed that it "must" cancel the rates to Illinois because it was selling the pipeline assets upstream of Cushing, Tosco observes that Shell did not explain why it was canceling only the through rates to Wood River and Patoka while retaining the tariff rates to Cushing from the five upstream origin points in Texas and New Mexico.

10. Tosco argues that the Commission's decision to accept Supplement No. 1 to Shell's FERC Tariff No. S-37 was based on the false assertion by Shell that the cancelled rates were "discount" rates. Tosco maintains that nothing in FERC Tariff No. S-37 indicated that rates to Wood River and Patoka were "discount" or "incentive" rates or otherwise any different from the other rates which were being increased to their new ceiling levels. According to Tosco, Shell's cancelled rates cannot be considered "discount" or "incentive" rates merely because they are less than the sum of intermediate rates. Otherwise, continues Tosco, 23 of the 32 rates published in FERC Tariff No. S-37 would be "discount" or "incentive" rates because they are less than the combined rates for service between intervening delivery points.

11. Tosco next argues that this case raises an important issue relating to the Commission's regulatory scheme, which allows oil pipelines to increase rates within applicable indexed ceiling levels, but yet requires special justification (i.e., settlement rates, market-based rates, or a substantial divergence in cost) for exceptions to the applicable ceiling. Tosco contends that Shell adopted a rate structure consisting of 293 rates and calculated ceiling rates for each service. Further, continues Tosco, all 10 of the rates in question were included in the adoption, and all 10 rates were increased to the applicable ceiling level effective July 1, 2002.

12. Tosco asserts that the Commission recently has recognized that the cancellation of oil pipeline tariff rates can affect the rates, terms, and conditions of service, thus requiring suspension and investigation.[2] Indeed, states Tosco, the Commission has previously suspended and investigated the proposed cancellation of incentive rates.[3] Tosco maintains that Shell's cancellation of the rates to Wood River and Patoka will require shippers to pay a combination of intermediate rates substantially above the ceiling levels for the prior single rates to the same destinations, which will result in rate increases above applicable ceilings without compliance with any of the three exceptions provided in the Commission's regulations.

## DISCUSSION

13. The Commission will deny rehearing of the August 1, 2002 order. The arguments advanced by Tosco have no merit.

14. Tosco is incorrect in its assertion that cancellation of the through routes will violate the applicable rate ceilings. Tosco has cited no authority for its claim that Shell improperly failed to designate the rates at issue as discount or incentive rates. Indeed, a pipeline is not required to do so. FERC Tariff No. S-37 was clear on its face that certain routes had lower rates than others. Tosco is a sophisticated shipper and presumably elected to use the through movements because it recognized that the rates for the through movements were lower than for the movements involving an intermediate point. That, however, does not require a finding that Shell's elimination of the lower through rates causes the combination of local rates through the Cushing intermediate point to exceed applicable ceiling levels. The individual local rates remaining in FERC Tariff No. S-37 continue to be in compliance with the Commission's indexing policies and regulations. Tosco and other shippers continue to have access to the Wood River and Patoka destination points, and although their total transportation costs will increase, that fact is not attributable to any action by Shell to increase applicable ceiling rates on file with the Commission.

15. The West Texas order cited by Tosco is distinguishable on its facts in that West Texas proposed to cancel two destination points that it claimed had not been used in more than 12 months. A shipper protested the cancellation, arguing that it recently had

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[2]Tosco cites West Texas LPG Pipeline Limited Partnership, 100 FERC ¶ 61,038 (2002).

[3]Tosco cites All American Pipeline Co., 69 FERC ¶ 62,225 (1994).

attempted to use one of the destination points, but that service was refused. The protesting party also alleged that it had attempted to resolve its differences with West Texas and that it was willing to bear a portion of the costs of maintaining the destination point. The protesting party further contended that elimination of the two destination points would require shippers to stay on the West Texas pipeline beyond where they wished to have the product delivered. In response, West Texas stated in part that its decision to cancel the destination points was prompted by quality issues. In that case, the Commission found that it had insufficient information to resolve the dispute over the cancellation of the destination points. However, in the instant case, shippers will continue to have access to the Wood River and Patoka destination points, and the record discloses no evidence of quality issues in Shell's decision to cancel the through movements.[4]

16. Although it involved joint rates rather than the rates on a single pipeline, a recent order issued by the Commission is consistent with the Commission's decision here. In Express Pipeline LLC,[5] the Commission approved the cancellation of joint rates, even though shippers could be required to incur higher costs for transportation to the same destination under a combination of local rates. As the Commission stated:

> 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.... 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 the Commission under the ICA.[6]

In the Texaco order cited in the Express order, the Commission stated as follows:

> [S]ection 342.3(a) provides: A rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level.... We interpret

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[4]The All American order likewise is distinguishable on its facts. In that case, the protest did not go to cancellation of the incentive rates. All American Pipeline Co., 69 FERC ¶ 62,225 (1994).

[5]99 FERC ¶ 61,229 (2002).

[6]Id. at P-10, citing Texaco Pipeline Inc., 72 FERC ¶ 61,313 (1995).

> this section of the regulations to mean, in the context of a joint rate proposal, that the ceiling level for a joint rate is the sum of the ceiling levels associated with individual tariff rates currently on file.[7]

That interpretation is equally valid in the instant case. The applicable ceiling level for Shell's through movements to Wood River and Patoka would be the combination of the local rates on file with the Commission. Shell's cancellation of the through movements means that it is entitled to charge rates for movement to Wood River and Patoka that do not exceed the combination of the local rates.

<u>The Commission orders</u>:

Rehearing of the August 1, 2002 order is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,
Deputy Secretary.

[7] Texaco Pipeline Inc., 72 FERC ¶ 61,313 (1995).