

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

ExxonMobil Oil Corporation,

Docket No. OR07-5-000

Complainant,

v.

Calnev Pipe Line, LLC  
Kinder Morgan GP, Inc.  
Kinder Morgan, Inc.

Respondents

ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued March 28, 2007)

1. On January 8, 2007, ExxonMobil Oil Corporation (the Complainant) filed a complaint against all of Calnev Pipe Line, LLC's (Calnev) oil pipeline rates.<sup>1</sup> The complaint alleges that Calnev's rates are unjust and unreasonable and none are grandfathered under section 1803 of the Energy Policy Act of 1992. The Complainant asserts that the numerous cost components should not be embedded in those rates or that those components have been incorrectly designed. These include: (1) the provision of an income tax allowance; (2) the calculation of any allowance for deferred income taxes; (3) the failure to exclude certain purchase accounting adjustments; (4) an inappropriate capital structure; (5) that Calnev's cost of equity is improperly premised on inclusion of master limited partnerships in any proxy group; (6) a debt structure that does not include all long term debt; and, (7) an improper allocation of overhead costs between Calnev and its parent partnership. The Complainant also challenges the increases Calnev filed under

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<sup>1</sup> Calnev operates from a connection with SFPP, L.P. at Colton, California, to Las Vegas, Nevada.

the Commission's indexing regulations in 2005 and 2006, claiming that these resulted in increased rates that were substantially in excess of Calnev's actual cost increases, that the current rate levels violate the so-called barrel-mile test, and that there is excess profit from Calnev's current rates. In this regard, the Complainant requests reparations for a period two years before the filing of the complaint. The Complainant also asserts that respondents Kinder Morgan GP, Inc. and Kinder Morgan, Inc. (jointly Kinder Morgan)<sup>2</sup> are responsible for potential refunds that may be due Complainant by Calnev and request the Commission to so hold.

2. On February 7, 2007, America West Airlines, Inc. and Southwest Airlines filed a joint motion to intervene. Calnev filed an answer to the complaint on February 7, 2007. Calnev asserts that the complaint is so general that it is difficult to answer its particulars, and that in any event the complaint lacks the specificity required by the Commission's complaint regulations.<sup>3</sup> Calnev also asserts that the Complainant incorrectly asserts that its rates are not grandfathered, nor does the Complainant properly analyze the relationship between the grandfathering provisions of the Energy Policy Act of 1992 and the Commission's indexing regulations. In this regard, it asserts that its index-based increases in 2005 and 2006 did not result in rates that were substantially in excess of its actual cost increases, and that the barrel-mile approach is inappropriate in addressing the issue of its indexed increases. Moreover, Calnev states that the calculations advanced with regard to that and other methods are internally inconsistent and technically flawed.

3. Calnev further asserts that the Commission previously authorized oil pipelines to pursue an income tax allowance in other orders and that its current rates are consistent with the Commission's prior rulings on income tax allowance issues. Kinder Morgan asserts that it is not an oil pipeline carrier as a matter of law and that the Commission has no jurisdiction to order the Kinder Morgan respondents to provide refunds or reparations to the Complainants. All the respondents therefore urge the Commission to deny the complaint on the merits or hold the complaint in abeyance until the Commission resolves such threshold legal issues as grandfathering and income tax allowances.

4. On February 23, 2007, the Complainant filed a motion seeking leave to answer Calnev's and Kinder Morgan's answers. It first argues that Calnev's and Kinder Morgan's answers are more in the nature of a motion to dismiss, and that the Commission should permit them to answer as a matter of right. It also reiterates the allegations

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<sup>2</sup> Kinder Morgan GP, Inc. and Kinder Morgan, Inc. are two corporate entities, one of which serves as the ultimate general partner of Calnev and the other of which manages its operations.

<sup>3</sup> *Citing* 18 C.F.R. § 385.206 (2006).

included in the complaint with further general arguments on the involvement of the Kinder Morgan respondents in the oil pipeline common carrier industry. In this instance, the proposed answer adds little to the clarity to the complaint and the Commission therefore denies the Complainant's February 23, 2007 motion.

5. The Commission will hold the complaint in abeyance. The complaint raises cost of service issues that turn on income tax allowance, grandfathering and reparation issues that are now under review by the D.C. Circuit in *ExxonMobil Oil Corporation, et al. v. FERC*, Nos. 04-1102, *et al.* The rulings on these appeals could materially affect the complaint at a threshold level, as may the Commission's ultimate determinations on cost of service issues in the dockets that are before the court in the cited appeal. The complaint also raises jurisdictional issues that are most efficiently addressed through a single order addressing all matters contained in the complaint. The Commission thus concludes it is premature at this time to determine whether to order an investigation and to set this complaint for hearing.

The Commission orders:

The complaint filed in the instant docket is held in abeyance pending further action by the Commission for the reasons stated in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.