

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.

Tesoro Marketing and Refining Company
Complainant

Docket No. OR07-7-000

v.

Calnev Pipe Line, LLC
Respondent

ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued April 2, 2007)

1. On January 30, 2007, Tesoro Refining and Marketing Company (Tesoro) filed a complaint against all of Calnev Pipe Line, LLC's (Calnev) oil pipeline interstate rates.¹ The Commission will hold the complaint in abeyance pending resolution of certain issues now pending before the U.S. Court of Appeals for the District of Columbia Circuit.²

The Complaint and Responsive Pleadings

2. The complaint alleges that Calnev's rates are unjust and unreasonable under section 1803 of the Energy Policy Act of 1992. The complaint, as amended on March 16, 2007, asserts that Calnev's revenues are substantially in excess of its costs, and as such that Calnev's rates are unjust and unreasonable. The complaint, as amended, asserts that Calnev's rates, as indexed, exceed the carrier's actual costs and should be reduced for that reason. The complaint alleges that Calnev over-recovered its cost of service by approximately 25 percent in 2004 and 2005. It asserts that this over-recovery would be greater if Calnev excluded an income tax allowance from its cost of service and properly calculated its cost of capital and certain overhead allocation factors. The complaint, as amended, also asserts there has been a substantial change to the economic circumstances

¹ The complaint specifically addresses Calnev's FERC Tariff Nos. 17, 19, and 21.

² *I.e. ExxonMobil Oil Corporation, et al. v. FERC*, Nos. 04-1102, *et al.*, argued December 12, 2006 (*ExxonMobil*).

that are the basis for the grandfathered component of Calnev's rates due to an increase of some 67 percent between 1992 and 2005. Thus, the grandfathered portion of Calnev's rates results in profits and returns to Calnev that are unjust and unreasonable. Finally, Tesoro notes that there are other proceedings pending against Calnev's rates and it has no objection to having the proceedings consolidated as long as the Commission recognizes the appropriate complaint period.

3. On March 1, 2007, Calnev filed an answer to the complaint. Calnev asserts that Tesoro incorrectly asserted that all portions of Calnev's rates were subject to review, thus confusing the portion of its revenue derived from indexed increases to its grandfathered rates and the portion of revenues derived from the grandfathered rates themselves. It therefore concludes that the complaint is legally insufficient. Moreover, it asserts that purported over-recovery of its costs stems primarily from the rates that are grandfathered and therefore it is unlikely there will be any relief unless the Complainant establishes substantially changed circumstances. 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 cost-of-capital, overhead cost allocations, and other cost-of-service issues.

4. On March 1, 2007, ExxonMobil Oil Corporation (ExxonMobil) filed a timely motion to intervene, which is granted along with all other timely interventions. ExxonMobil notes that it protested Calnev's 2006 index proceeding in Docket No. IS06-296-000 and filed a more general complaint against Calnev in Docket No. OR07-05-000. ExxonMobil states that it has no objections to the dockets being consolidated as long as Tesoro accepts the record established to date in Docket No. IS06-296-000. On March 16, 2007, Tesoro filed an amendment to its January complaint that, as was discussed, more explicitly addressed the issue of substantially changed circumstances. It also filed a motion for leave to respond to Calnev's answer. The Commission accepts Tesoro's proposed answer because it mostly addresses the amendment to its complaint.

Discussion

5. The Commission will hold the complaint in abeyance. The complaint raises cost of service issues that turn on income tax allowance and grandfathering 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. Moreover, there are other proceedings involving Calnev pending at this time that present these issues and the Commission can more efficiently address them in a single order once the court rules on the matters now before it in *ExxonMobil*. The Commission therefore concludes it is premature at this time to order an investigation or 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.