

132 FERC ¶ 61,198  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

MarkWest Michigan Pipeline Company, L.L.C.                      Docket No. IS10-548-000

ORDER ACCEPTING AND SUSPENDING TARIFF, SUBJECT  
TO REFUND AND ESTABLISHING HEARING  
AND SETTLEMENT JUDGE PROCEDURES

(Issued August 31, 2010)

1. On July 30, 2010, MarkWest Michigan Pipeline Company, L.L.C. (MarkWest) filed FERC Tariff No. 6 proposing a straight uniform increase to all rates on its crude oil gathering pipeline in Michigan (Gathering System). The gathering system connects various origins in Central Michigan and delivers a common stream of crude oil to tankage connected to the Enbridge Pipeline (Lakehead) at Lewiston, Michigan. MarkWest filed FERC Tariff No. 6 under section 342.4(a) of the Commission's regulations (18 C.F.R. § 342.4(a) (2010)), which requires MarkWest to demonstrate substantial divergence between its actual costs and its indexed ceiling rates to show that the current rate ceiling levels preclude MarkWest from charging a just and reasonable rate within the meaning of the Interstate Commerce Act (ICA). MarkWest states it calculated the new rates in accordance with the ratemaking methodology prescribed by the Commission in Part 346 of 18 C.F.R., Oil Pipeline Cost-of-Service filing requirements. MarkWest also states that FERC Tariff No. 6 contains rates to certain receipt points that are higher than the rate charged at a destination point that involves a longer haul. Therefore, MarkWest requests a waiver of section 4 of the ICA, 49 U.S.C. App. § 4 to permit it to establish such rates. MarkWest requests the Commission permit the proposed tariff to become effective September 1, 2010. As discussed below, the Commission will accept and suspend FERC Tariff No. 6, subject to refund, establish a hearing and settlement judge procedures.

## **Background**

2. MarkWest states its Gathering System's throughput declined from 7,680,000 barrels in 2000 to 4,486,000 barrels in 2009. As a result, MarkWest states a substantial divergence between its actual costs and its ceiling rates caused it to underrecover its costs for operating the Gathering System by 25 percent in 2009. Based on MarkWest's analysis of declining throughput over the last decade, and the decline in the first six months of 2010, MarkWest expects throughput will continue to decline in the future, which will further exacerbate under recovery of its costs.

3. The Commission granted MarkWest a waiver of this year's negative index adjustment by order issued on June 24, 2010, in Docket No. OR10-15-000<sup>1</sup> to permit to continue its existing rates and not apply the index multiplier to decrease its ceiling levels. The Commission based its decision on its prior orders and precedent<sup>2</sup> since MarkWest included a cost of service demonstrating under recovery between its actual costs and recovered revenues.<sup>3</sup> No party filed for rehearing.

4. In the instant filing, MarkWest filed a new cost of service to support the proposed rate increase to the Lewiston interconnection with the Lakehead pipeline. Sunoco Partners Marketing & Terminals L.P. (Sunoco) and Breitburn Operating L.P., Merit Energy Company, and Muskegon Development Company (jointly, Protesting Parties) filed motions to intervene and protests.

5. In addition, Sunoco also filed a late protest and a request that the Commission consolidate MarkWest's May 28, 2010 waiver request with the instant filing. The Commission rejects this request since it granted MarkWest's request to waive the index requirements on June 24, 2010, *supra* P 3.

---

<sup>1</sup> 131 FERC ¶ 61,267 (2010).

<sup>2</sup> See *Pioneer Pipe Line Co.*, 87 FERC ¶ 61,368 (1999); *Platte Pipe Line Co.*, 87 FERC ¶ 61,370 (1999).

<sup>3</sup> 18 C.F.R. § 342.3(e) (2010).

**Protests**

6. In its protest, Sonoco argues that MarkWest's: (1) rate base has been inflated; (2) cost of service should not include amortization of deferred return or AFUDC; (3) cost of capital has been inflated by including recovery of deferred return, (4) failed to demonstrate its entitlement to a full income tax allowance; (5) return on equity is overstated; (6) overhead expenses are overstated; (7) test period "may have" been selected to be unrepresentative; (8) throughput, as adjusted, is too low; and (9) rate design shifts costs unreasonably.

7. Sunoco requests the Commission suspend the tariff for one day as authorized by section 15(7) of the ICA, subject to refund for the full seven (7) months permitted.

8. The Protesting Parties state MarkWest's argument to allow an increase to its ceiling index rates based on a claim of uncontrollable circumstances under which it cannot recover its prudently incurred costs under index rates is premised primarily on conjecture. It asks the Commission to set all rate issues for hearing including, but not limited to whether MarkWest's: (1) proposed rate base has been artificially inflated; (2) capital structure has been unjustly manipulated to artificially increase the equity component; (3) proposed rate of return on equity is excessive in today's market conditions; and (4) operating costs have been properly allocated.

9. Protesting Parties request the Commission suspend the rate increase for the maximum seven-month statutory period, pursuant to section 15(7) of the ICA to prevent dislocations and undue hardship on shippers and consumers, which refunds alone will not remedy.

**MarkWest's Response**

10. In response, MarkWest asserts its cost of service is properly, and indeed conservatively, calculated under the Commission's established methodology. MarkWest urges the Commission to reject the protests and accept FERC Tariff No. 6. In the alternative if the Commission does not reject the protests, MarkWest requests the Commission deny the request for a maximum seven months suspension period. MarkWest states the Protesting Parties failed to allege, let alone establish, the "extraordinary circumstances" and "irreparable harm" required by the Commission for it to depart from its standard practice of allowing oil pipeline rate filings to become effective as proposed, subject to refund.

### **Discussion**

11. The Commission finds that MarkWest has made an adequate initial showing that its filing meets the requirements of a cost-of-service filing, under 18 C.F.R. § 346.1 of the Commission's regulations based on the cost figures provided in its filing. The issues in this case pertain to the data and rate design methodology that MarkWest uses to determine its proposed rate and the resolution of these factual disputes will have a rate impact on shippers using its Gathering System. The Commission also finds that the protests raise material issues of fact concerning the justness and reasonableness of the rates. However, there is insufficient data at this time to resolve these disputes. Therefore, the Commission will establish hearing procedures to examine all the issues raised by the filing.

12. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case relate to the support for MarkWest's cost-of-service rate proposal and new tariff rates may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter.<sup>4</sup> To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>5</sup> If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.<sup>6</sup>

### **Suspension**

13. Based upon a review of the filing, the Commission finds that MarkWest's tariff filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act, the Commission will

---

<sup>4</sup> See 18 C.F.R. § 343.5 (2010).

<sup>5</sup> 18 C.F.R. § 385.603 (2010).

<sup>6</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience *available at* [www.ferc.gov/legal/oalj/bio/judges.htm](http://www.ferc.gov/legal/oalj/bio/judges.htm).

accept FERC Tariff No. 6 for filing and suspend it to be effective September 1, 2010, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, MarkWest's FERC Tariff No. 6 is accepted for filing and suspended, to become effective September 1, 2010, subject to refund, and grants the request for waiver of section 4 of the ICA.

(B) Pursuant to the authority contained in the ICA, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by MarkWest's filing.

(C) The hearing established in Ordering Paragraph (B) is held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(E) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.