135 FERC ¶ 61,273
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.

Calnev Pipe Line LLC Docket No. IS11-350-000

ORDER ON TARIFF FILING

(Issued June 30, 2011)

1. On May 20, 2011, Calnev Pipe Line LLC (Calnev) filed FERC Tariff No. 32.1.0 to implement an index-based increase of its rates under section 342.3 of the Commission's regulations.[1] Calnev also filed FERC Tariff No. 33.1.0, which contains an Index of Tariffs. Calnev proposes the tariffs be effective July 1, 2011. The filing is protested, but on review, the Commission accepts the tariffs effective July 1, 2011.

I. The Pleadings

2. Calnev's proposed tariffs would increase its rates effective July 1, 2011 by the index factor permitted this year under the Commission's oil pipeline indexing methodology, or by 6.8819 percent. Chevron Products Company (Chevron) and ConocoPhillips Company (ConocoPhillips) filed separate motions to intervene and protests. On June 13, 2011, Calnev filed a response to the protests.

3. The protesting parties both urge the Commission to issue an order accepting Calnev's index-based rate increases contained in Tariff No. 32.1.0 subject to refund.[2] In support of this position, Chevron and ConocoPhillips note that Calnev's underlying rates are currently under investigation in a series of complaint proceedings initiated in 2007 and 2009.[3] They state the Commission's regulations provide that a tariff filing made

[1] 18 C.F.R. § 342.3 (2011).

[2] Neither Chevron nor ConocoPhillips challenge the proposed index increase.

[3] *See Tesoro Refining and Marketing Co. v. Calnev Pipe Line LLC*, 134 FERC ¶ 61,214 (2011) (Order Consolidating Certain Complaint Proceedings and Establishing Hearing Procedures).

pursuant to the indexing procedures "proposing to change a rate that is under investigation and subject to refund, must take effect subject to refund."[4] Further, the protesting parties state that while Calnev's underlying rates are not currently subject to refund, the Commission should nevertheless impose a refund obligation in this index rate proceeding to protect shippers from a rate increase which may be unjust and unreasonable.

4. In its response to the protests, Calnev states that the Commission has ruled that the refund obligation will not attach to an index-based increase when an ongoing investigation stems from a complaint.[5] Further, Calnev argues that the Commission should reject Chevron's protest because Chevron fails to actually challenge the proposed rate increase, noting that a protest to a index rate filing must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable. Calnev points out that Chevron's protest does neither. Calnev further supports its proposed index-based rate increase noting that it experienced a 14.47 percent increase in its total cost of service from 2009 to 2010, which far exceeds the proposed 6.8819 percent rate increase.

II. Discussion

5. The Commission's indexing regulations allows oil pipelines to change their rates to account for inflation-driven cost increases (or decreases) without having to file a traditional cost-of-service rate case.[6] Section 343.2(c)(1) of the Commission's regulations establishes the standard for challenging a proposed index rate increase. Specifically, a challenge to a proposed indexed rate increase must show the rate increase to be so substantially in excess of the pipeline's actual cost increases that it renders the resulting rate unjust and unreasonable. Based on Calnev's representation that it experienced a 14.47 percent increase in its total cost of service from 2009 to 2010, it is clear that Calnev's proposed 6.8819 percent rate increase will not exceed its actual cost increases. Accordingly, the Commission finds that Calnev's proposed index-based rate increases have been made in compliance with the Commission's regulations.

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[4] Chevron Protest at P 9; ConocoPhillips Protest at P 7 (*quoting* 18 C.F.R. § 342.3(a)).

[5] Calnev Response at 3 (*citing Calnev Pipe Line L.L.C.*, 127 FERC ¶ 61,304, at P 3 (2009); *SFPP, L.P.*, 121 FERC ¶ 61,163, at P 5-6 (2007)).

[6] 18 C.F.R. § 342.2 (2011).

6. Regarding the sole issue raised by the protesting parties, Commission precedent is that the refund obligation will not attach to an index-based increase when an ongoing investigation of the pipeline's underlying rates stems from a complaint.[7] As noted by the protesting parties, the current ongoing investigation into Calnev's rates arose from complaints. The Commission therefore rejects the protesting parties' assertion that the instant tariff filing should be subject to refund.

The Commission orders:

Calnev's FERC Tariff Nos. 32.1.0 and 33.1.0 are accepted as filed effective July 1, 2011.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[7] *See Calnev Pipe Line L.L.C.*, 127 FERC ¶ 61,304, at P 5 (2009); *SFPP, L.P.*, 127 FERC ¶ 61,312, at P 22 (2009); and *SFPP, L.P.*, 121 FERC ¶ 61,163, at P 5-6 (2007) (holding that on the issue of when a refund obligation attaches to an index-based rate filing, the obligation does not attach to rates involved in a complaint proceeding).