

139 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enterprise TE Products Pipeline Company LLC

Docket No. IS12-437-000

ORDER ACCEPTING TARIFF FILING

(Issued June 29, 2012)

1. On June 1, 2012, Enterprise TE Products Pipeline Company LLC (“Enterprise TE”) filed FERC Tariff No. 54.19.0¹ to implement an index-based rate increase pursuant to section 342.3 of the Commission’s regulations.² The filing was protested. As discussed below, the Commission accepts FERC Tariff No. 54.19.0, effective July 1, 2012.

I. The Pleadings

2. Enterprise TE’s proposed tariff would increase its rates effective July 1, 2012, by 8.6 percent, the Oil Pipeline Index Multiplier for index year July 1, 2012 to June 30, 2013.³ Motions to intervene and protests were filed by Markwest Hydrocarbons, Inc. (“Markwest”) and The Propane Group, which is comprised of over 80 propane shippers, propane customers, and national and state propane associations (collectively “Protesters”). BP Products North America Inc. (“BP Products”) filed a motion to intervene but did not file a protest. On June 20, 2012, Enterprise TE filed a response to the motions to intervene and protests.

3. The protests raise two fundamental arguments. The first is that Enterprise TE’s proposed rate increase is contrary to the Commission’s regulations. Protesters argue that the Commission’s alternatives for increasing a pipeline’s rates are “mutually exclusive”

¹ Enterprise TE Products Pipeline Company LLC, FERC Oil Tariff, Tariffs, Rates, Rules, & Regs- LPG, FERC No. 54.19.0, 54.19.0.

² 18 C.F.R. § 342.3 (2011).

³ See *Notice of Annual Change in the Producer Price Index for Finished Goods*, issued May 15, 2012 in Docket No. RM93-11-000, 139 FERC ¶ 61,123 (2012) (establishing multiplier of 1.086011).

and therefore Enterprise TE forfeited the opportunity to seek an index-based rate increase when it filed for a cost-of-service rate increase in Docket No. IS12-203.

4. The second argument raised by Protesters is that Enterprise TE's proposed rate increase circumvents the Commission's order suspending Enterprise TE's proposed cost-of-service rate increase filed in Docket No. IS12-203-000.⁴ The Propane Group claims that allowing an index-based rate increase during the seven-month suspension period established in Docket No. IS12-203-000 would nullify the purpose of the Suspension Order. The Propane Group further argues that the investigation of Enterprise TE's costs in Docket No. IS12-203 eliminates the need to rely on an industry average increase such as the rate adjustment derived for rate indexation.

5. In its response, Enterprise TE argues that its proposed rate increase complies with the Commission's indexing regulations and is consistent with the Suspension Order. Enterprise TE states that nothing in the Commission's regulations prevents it from indexing existing rates where the pipeline's cost-of-service rate increase has been suspended and have not become effective. Enterprise TE also argues that an index-based rate increase, instead of circumventing the Suspension Order, simply allows for it to adjust its underlying rates for inflation before the proposed cost-of-service rates go into effect. Enterprise TE also claims the protests fail to meet the requirements of section 343.2(c)(1) of the Commission's Rules and Regulations and therefore the Commission should dismiss them.

II. Discussion

6. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2011), all timely filed motions to intervene and any unopposed motions to intervene out of time filed before this order issues are granted.

7. As stated by Enterprise TE, protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission's regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter must allege reasonable grounds for asserting that...the rate increase is so substantially in excess of the actual cost increase incurred by the carrier that the rate is unjust and unreasonable....⁵

8. While Enterprise TE is correct that the Protesters did not make such allegations, the Commission's rules also allow for protests in non-rate matters alleging that a

⁴ *Enterprise TE Products Pipeline Co.*, 139 FERC ¶ 61,036 (2012) ("Suspension Order").

⁵ 18 C.F.R. § 343.2(c)(1) (2011).

pipeline's operations or practices violate the Commission's regulations.⁶ The issue in this proceeding is whether an index-based rate increase to an underlying rate may be filed while there exists a suspended cost-of-service rate increase to that underlying rate. As the Protesters allege that the proposed index-based rate increase violates the Commission's regulations, as well as potentially circumvents the Suspension Order, the Commission finds dismissal of the protests is not warranted.

9. While we will not dismiss the protests, we will accept the proposed index-based rate tariff. Section 342.3(a) of the Commission's Rules and Regulations states a rate charged may be changed, at any time, to a level which does not exceed the ceiling level. Enterprise TE's proposed rate does not exceed the ceiling level. Nothing in the Commission's rules prevent a pipeline from seeking an index-based rate increase on an existing rate while also filing for a cost-of-service rate increase. Indeed, section 342.3(a) allows the carrier to index a rate under investigation, subject to refund.

10. Enterprise TE's proposed index-based rate increase does not circumvent the Suspension Order in Docket No. IS12-203. The Suspension Order found that Enterprise TE's proposed cost-of-service increase warranted a seven-month suspension period. The Suspension Order did not address the existing rate, and it is to the existing rate that Enterprise TE applies an index-based adjustment increase. Section 342.3(a) permits Enterprise TE to apply the oil pipeline index to its currently effective rates.⁷

The Commission orders:

Enterprise TE's FERC Tariff No. 54.19.0 is accepted, effective July 1, 2012.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ 18 C.F.R. § 343.2(c)(3) (2011).

⁷ Our acceptance of the index-based rate increase in this proceeding does not prevent Protestors from raising any issue as to the justness and reasonableness of the proposed cost-of-service rate increase in the Docket No. IS12-203-000 proceedings, to the extent they are parties there.