

104 FERC ¶ 61,217  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Express Pipeline, LLC

Docket No. IS03-443-000

ORDER ACCEPTING TARIFF FILING

(Issued August 15, 2003)

1. This order accepts an international joint rate filed by Express Pipeline, LLC (Express) and finds that a rate on file with the National Energy Board of Canada (NEB) satisfies the Commission's expanded requirement that the local rates associated with a joint rate must be on file with the Commission or in combination with the NEB.

**Background**

2. On July 16, 2003, Express filed FERC No. 55, an international joint tariff between Express Pipeline Ltd. (Express Ltd.), Express, and Platte Pipe Line Company (Platte) containing joint uncommitted rates from Hardisty, Alberta, an origin on Express Ltd., to destinations on Express and Platte in Wyoming, Nebraska, Missouri and Illinois that implement a market-responsive volume discount program (the Express Choice program). Express filed the tariff pursuant to the shortened notice procedures under Section 6(3) of the Interstate Commerce Act (ICA) and Section 341.14 of the Commission's regulations (18 C.F.R. § 341.14 (2003)) so that the rates would be effective August 1, 2003.

3. Express states that it is seeking to increase throughput by encouraging shippers to tender petroleum pursuant to its uncommitted rates. Express states that since it commenced transportation service in April 1997, virtually all of its volumes have been transported pursuant to the 5, 10, or 15 year term rates. Express submits that the current uncommitted rate appears to require discounts to be market-responsive to shippers because Express is not transporting volumes equal to its capacity. Express states that each month it will post new, discounted rates (Express Choice rates) below the level of the otherwise applicable uncommitted rates. Express states that the Express Choice rate will apply to a monthly volume and specific destination and all types of petroleum. Express states that each month the rates will be determined through an interactive auction on its publicly available web site. Express states that after the price-determining process is concluded, it will file the Express Choice rates at the Commission by means of a new

international joint uncommitted tariff reflecting the new Express Choice rates. Express hopes that these discounted Express Choice rates will continue to encourage additional volumes to flow, to the benefit of shippers, Express, and the U.S. refining and distribution market.

4. Express states that on April 9, 2003, the Director of the Division of Tariffs and Market Development-Central issued an unpublished letter order in Docket No. IS03-198-000 rejecting FERC Tariff No. 47, an earlier proposed international joint rate filed by Express. The Director's letter explained that under Commission policy a joint rate is just and reasonable if it is less than or equal to the sum of the local interstate rates currently on file with the Commission.<sup>1</sup> The letter order stated that Express Ltd., one of the joint carriers in FERC Tariff No. 47, provides only service from Hardisty, Alberta, Canada to the International Boundary near Wildhorse, Alberta, Canada, which service is not subject to the Commission's jurisdiction under the Interstate Commerce Act. The letter order therefore found that Express Ltd. does not have local interstate rates on file with the Commission, and concluded that in the absence of local interstate rates for Express Ltd., there is no basis for the proposed joint rates.<sup>2</sup>

5. Express states that it did not seek rehearing of the letter order, but remains convinced that the international joint rates may be accommodated within the ICA and the Commission's current policies. Express requests that the Commission consider the instant tariff filing in light of the additional factual and legal justification it is providing here.

6. Express asserts that longstanding decisions of the U.S. Supreme Court establish that the Commission has full authority to determine the justness and reasonableness of international joint tariffs under the ICA.<sup>3</sup> Express submits that the Commission will have

---

<sup>1</sup>Big West Oil Company v. Frontier Pipeline Company and Express Pipeline Partnership, *et al.*, 94 FERC ¶ 61,339 (2001) (Big West Oil) and Texaco Pipeline Inc., 72 FERC ¶ 61,313 (1995) (Texaco).

<sup>2</sup> Unlike in the current filing, Express did not specify the rate under which Express Ltd. provides service to the International Boundary or offer any underlying support for the Canadian portion of the international movement.

<sup>3</sup>Citing, *Canada Packers Ltd. v. Atchison*, 385 U.S. 182, 183-84 (1966) (holding that "where a carrier performing transportation within the United States enters into a joint through international rate covering transportation in the United States and abroad, the . . . [ICC] does have jurisdiction to determine the reasonableness of the joint through rate") (citing to *News Syndicate Co. v. New York Central Railroad Co.*, 275 U.S. 179 (1927)). See also *Lewis-Simas-Jonas Co. v. Southern Pacific Co.*, 283 U.S. 654, 659 (1931).

full authority to remedy any unlawfulness that might be found to occur as a result of the international joint rate, and the participation of a carrier subject only to the National Energy Board (NEB) would not reduce or impair the Commission's ability to require Express to provide a complete remedy. Express contends that NEB tariffs and regulations should satisfy the requirement that local rates justify a joint international rate. Express states that the NEB oversees oil pipeline rates in Canada under a similar statutory mandate to that of the ICA, which requires that rates be "just and reasonable" and free of "unjust discrimination," among other standards parallel to those of the Commission. Express states that any shipper dissatisfied with the lawfulness of the local rates in Canada may file a complaint with the NEB and seek to reduce the local tariff north of the U.S. border. Express asserts that shippers have the right to enforce lawful local rates for the portion of the international joint rate subject to NEB jurisdiction. Express submits that under the Big West Oil holding, any U.S. carrier that enters into a joint rate based on such a local rate would be under an obligation to reduce the international joint rate when the sum of the local rates (including the NEB local rate) would fall below the joint rate level. Express argues that the local rates under NEB jurisdiction would function in the same manner as local rates under Commission jurisdiction for purposes of assuring a just and reasonable rate.

7. Express accepts the obligation to file at the Commission any revised local NEB tariffs accompanied by a schedule demonstrating the new tariff does not result in unreasonable rates. Express also acknowledges that if the sum of the Commission and NEB tariffs falls below the international joint rate, Express will be obligated to promptly re-file rates in compliance with the Texaco standard, and to pay refunds with any applicable interest, if any, to shippers. Express asserts that these undertakings, together with the Commission's inherent authority to provide full relief to shippers for the joint rate, fully support the Commission's acceptance of the proposed international joint rate.

### **Discussion**

8. The Commission's policy on joint rates, as enunciated in Big West Oil and Texaco, states that a joint rate is just and reasonable if it is less than or equal to the sum of the local interstate rates currently on file with the Commission. The issue presented by Express' filing is whether the rate on file with the NEB for movements of petroleum on Express Ltd. from Hardisty, Alberta to the International Boundary near Wildhorse, Alberta satisfies the requirement that the local rate be on file with the Commission, and thus whether the resulting international joint rate can be held to be reasonable.

9. As the court in Canada Packers Ltd. stated:

News Syndicate Co. squarely held that where a carrier performing transportation within the United States enters into a joint through international rate covering transportation in the United States and abroad,

the Commission does have jurisdiction to determine the reasonableness of the joint through rate and to order the carrier performing the domestic service to pay reparations in the amount by which that rate is unreasonable.<sup>4</sup>

10. It is clear that the Commission has the authority to determine the reasonableness of an international joint rate for transportation on oil pipelines. Pursuant to this authority, the Commission finds that the NEB rate for movements on Express Ltd. satisfies the expanded requirement that the local rates comprising a joint rate be on file with the Commission or in combination with the NEB. The Commission makes this decision for a number of reasons. Express has submitted the NEB tariff as part of its filing. The NEB has similar procedures as the Commission for ensuring that rates are “just and reasonable” and that carriers do not engage in “unjust discrimination.” Any shipper using the joint international rate would have the opportunity to challenge the Canadian portion of the rate before the NEB. If the NEB rate is reduced, Express would be required to make adjustments to the joint international rate filed with the Commission if the joint rate exceeded the sum of the local rates. Because of these protections, the Commission finds that it can fulfill its obligation of ensuring that the rates on file with the Commission are just and reasonable.

11. Express included a number of attachments to its filing comparing the joint rate to the combination of the local rates for movements of various grades of petroleum from Hardisty, Alberta to various destinations in the United States. The attachments show that the joint international rates proposed in FERC No. 55 are anywhere from 32 cents to \$1.43 less than the total of the local rates. Thus, with the Commission’s acceptance of the NEB rate as a local rate, Express satisfies the Commission’s requirement that a joint rate is just and reasonable if the joint rate is less than or equal to the sum of the respective local rates.

The Commission orders:

Express’ FERC No. 55 is accepted to be effective August 1, 2003.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

---

<sup>4</sup> 385 U.S. at 183-84 (1966).

