111 FERC ¶ 61,375
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Plains Pipeline, L.P. Docket No. IS05-135-001

ORDER ON REHEARING

(Issued June 8, 2005)

1. On March 22, 2005, Continental Resources, Inc. (Continental) filed a request for rehearing of the Commission's order issued February 25, 2005 in *Plains Pipeline, L.P.* (Plains), 110 FERC ¶ 61,185 (2005) (February 25 Order). The February 25 Order conditionally accepted Plains' Supplement No. 3 to its FERC No. 42 Tariff, effective February 1, 2005 as proposed, subject to Plains' unbundled rates complying with the Commission's index methodology for oil pipeline rate changes in the future. Continental's request for rehearing was directed only to Plains' Baker line, which originates at Harding Station, South Dakota and terminates at Baker, Montana. For the reasons appearing below, our February 25 Order is clarified and rehearing is denied.

Background

2. Supplement No. 3 to FERC No. 42, which was filed on January 25, 2005, unbundled Plains' mainline shipping charges to Baker, Montana, into three rate components: (1) mainline transportation; (2) gathering; and, (3) truck unloading. Plains stated that its proposal lowers overall shipping charges to the shipper. In addition, Plains proposed to establish services and rates at two origin points, ELOB Junction in Fallon County, ND, and Marmath Station in Bowman County, ND, and submitted an affidavit attesting that these newly established services and rates were agreed to by at least one non-affiliated shipper.

3. As to the Baker System, Continental protested Plains' filing, asserting that Plains was attempting to disguise the creation of a substantial number of new initial rates without providing the requisite cost justification for such new rates; that Plains proposed to deduct a certain percent of oil transported to cover evaporation and losses

during transportation without providing cost justification for that charge; and that, as applied to the Baker pipeline system, this charge was a new rate.

4. In the February 25 Order, the Commission analyzed Continental's protest point by point and found that Continental's protest was without merit. The Commission found that what Plains proposed to do was to break down its then-bundled transportation rates into their component parts. The Commission found that this did not constitute establishing new rates, and that under all possible transportation scenarios, shippers will pay less for transportation under Plains' unbundled rates than they were then paying under Plains' bundled effective rates, which were all at their index ceiling levels.

5. Further, as to Continental's contention that Plains' service from Marmarth Station and ELOB Junction constituted new rates, the Commission found, based on an *SFPP* case,[1] that the new Marmarth Station origin point belonged to the existing Bowman County rate cluster, and the ELOB Junction origin point was part of the existing Fallon County, North Dakota rate cluster. The Commission rejected Continental's contention that service from these two points constituted initial rates.

6. Similarly, the Commission concluded Continental's characterization of Plains' 5 cents per barrel charge for transportation originating at the Baker Station, Fallon County, North Dakota, and ending at Baker Station, Fallon County, North Dakota, as a "pump-over" charge was incorrect. The Commission found that the Baker Station, Fallon County origin point rate was a reduction from Plains' previously effective Fallon County origin rate. Plains had charged shippers transporting crude oil from anywhere within the Fallon County rate cluster a bundled transportation rate of 59.66 cents per barrel for a movement to the Baker Station destination point. Under the new, unbundled rate structure, shippers now have the opportunity to move crude oil from the ELOB Station origin to the Baker Station destination at a rate of 34 cents per barrel, and from the Baker Station origin to the Baker Station destination at 5 cents per barrel. Plains adds to both rates an unloading charge of 7.5 cents per barrel. As a result, shippers wanting to make this movement within the former Fallon County rate cluster benefit from a substantial rate reduction.

7. After a thorough analysis of all points raised by Continental in its protest, the February 25 Order accepted Plains' Supplement No. 3 to FERC No. 42 effective, February 1, 2005. However, the Commission conditioned this acceptance upon Plains' unbundled rates complying with the Commission's index methodology in the future, explaining that the overall cost to shippers under Plains' unbundled rates must not exceed the effective ceiling levels of its existing bundled rates for similar movements.

[1] 86 FERC ¶ 61,022 at 61,062-63 (1999).

Discussion and Decision

8. Our review of Continental's request for rehearing shows that, for the most part, Continental raises no new arguments that were not thoroughly considered and discussed in our February 25 Order. As to those issues, Continental raises nothing new which persuades us to reverse our prior order. We confirm our prior decision that the rates proposed by Plains are not new rates requiring cost justification, and the 5 cent per barrel charge at the Baker Station does not constitute a new pump-over charge. Rehearing of those issues is denied.

9. Continental's contention in its request for rehearing that it is being prejudiced as a shipper is unfounded. Continental's expressed concern is that it will not be using the gathering services offered by Plains in areas around the Marmath and Rhame Stations, and that the transportation rate it must pay for transportation on the Marmarth/Rhame – to – Baker Station contains the gathering charge. This is simply incorrect. In Plains' answer to Continental's protest, filed February 15, 2005, Plains explained that: "In an effort to attract additional throughput to its system, Plains has restructured its rates in two ways. First, it has lowered all rates across the board, so that all shippers will pay less under the new rate schedule….Second, *Plains has 'unbundled' its rates so that, for example, a shipper that has its own gathering system in the vicinity of the Rhame Station would pay only the mainline rate, plus a fee for tank car or tank truck unloading, if applicable. It would not pay the rate applicable to gathering services*." [2] Lest there be any doubt, the Commission clarifies the February 25 Order to state that shippers will be required to pay only for those services of Plains used under its unbundled rate filing. This was the obvious intent of Plains in unbundling its rates. Therefore, Continental's request for rehearing on this point is denied.

10. Continental states that, "Under the February 25 ruling, Plains is able to allocate a portion of its prior rate ceiling to whichever individual unbundled service it wishes." [3] Continental also asserts that, because these are "new" rates, "The previous unbundled ceiling rates that Plains has abandoned are now simply irrelevant." [4] Continental is wrong in its interpretation of what the Commission intended by its February 25 Order. First, as fully discussed in the February 25 Order, and as reflected herein, these are not "new" rates, but unbundled rates which *in toto* are limited to the previous ceiling level for the bundled rates. In addition, Plains cannot change the proportions of the components of the original bundled rate. Thus, Plains does not

[2] Answer at p. 4, emphasis supplied.

[3] Rehearing, at p. 9.

[4] Rehearing, at p. 10.

have the authority to allocate any portion of its prior bundled rate ceiling to whichever individual unbundled service it wishes. Our admonition to Plains in the February 25 Order, that Plains' unbundled rates must comply with the Commission's index methodology for oil pipeline rate changes in the future, also means that Plains must allocate any increases in the component rates to the unbundled rates for each component proportionally to what the components represented in the original bundled ceiling rates. We clarify our February 25 Order on rehearing thereof to make this clearer. Therefore, rehearing on this issue is denied.

11. Continental is also concerned that, under its interpretation of the February 25 Order, Plains does not have to justify any rate change on the basis of costs experienced for the particular service involved. Continental is concerned that "Plains can use the costs incurred in its gathering system from Harding County, South Dakota to Rhame Station, North Dakota, to justify rate increases more than 30 miles away at its Baker-to-Baker pumpover service."[5] According to Continental, any shipper who wished to protest a rate increase for the "pumpover" is therefore placed at a severe disadvantage. Continental is incorrect. Similar to our clarification above of the nature of any increases in the components of the unbundled rates for indexing purposes, Plains cannot shift costs among the unbundled components in order to support a proposed rate increase of an unbundled rate above its applicable ceiling level. This clarification should ameliorate Continental's concerns in this regard. Rehearing is therefore denied as to this issue.

<u>The Commission orders</u>:

Continental's request for rehearing is denied, and our February 25 Order is clarified to the extent reflected in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[5] Rehearing, at p. 11.