UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Dome Pipeline Corporation — Docket No. IS07-57-000

ORDER ACCEPTING TARIFFS

(Issued December 29, 2006)

1. On December 1, 2006, Dome Pipeline Corporation (Dome) filed tariff sheets[1] to cancel certain Incentive Volume Rates and change the contact information under the "Issued and Compiled By" section of the tariffs. Cancellation of these Incentive Volume Rates will require shippers to pay the Regular Volume Rates on file with the Commission. Dome seeks an effective date of January 1, 2007, for the tariff sheets. Two parties protested the Dome filing, arguing, *inter alia*, that cancellation of the Incentive Volume Rates will have a dramatic and adverse financial impact on shippers and that it is unduly preferential and discriminatory. As detailed below, the Commission accepts the tariffs to become effective January 1, 2007.

<u>Description of the Filing</u>

2. Dome proposes to cancel certain of the Volume Incentive Rates contained in its three tariffs. The following table illustrates the cancelled Incentive Volume Rate origins and destinations. Movements of propane, ethane, and butane between these origin and destination points will now be charged at Dome's effective Regular Volume Rates which range from 4.49 percent to 64.45 percent higher than the canceled volume rates on a dollar-per-barrel basis.

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[1] FERC Tariff Nos. 222, 223, and 224. The tariffs provide for the movement of propane, ethane, and butane respectively.

FERC Tariff No. 222 (Propane)

From	To
International Boundary near Maxbass, North Dakota	Cochin-Clinton in the County of Clinton, Iowa (+30.41 percent) Milford Terminal, Indiana (+43.09 percent) International Boundary near Detroit, Michigan (+64.45 percent)
Mapco (Mid America) West Junction, Minnesota	Milford Terminal, Indiana (+4.49 percent) International Boundary near Detroit, Michigan (+24.24 percent)

FERC Tariff No. 223 (Ethane)

From	To
Point on the International Boundary near Maxbass, North Dakota	International Boundary near Detroit, Michigan (+13.82 percent)
	Cochin-Clinton (Mid-America Meter Station) in the County of Clinton, Iowa (+30.71 percent)

FERC Tariff No. 224 (Butane)

From	To
Point on the International Boundary near Maxbass, North Dakota	International Boundary near Detroit, Michigan (+64.45 percent)

<u>Background</u>

3. Dome’s effective tariff contains the specific rules and regulations applicable to its Incentive Volume program. The language contained in these sections states in part, as follows:

> *The total volume shipped during the months of April, May, June, July and August (the incentive volume) shall be eligible for the rate in effect as set forth in Column (B) in the Table of Rates where offered. In addition, delivery of the incentive volume shall earn the Shipper the right to deliver an equal volume to the same destination during the ensuing months of September through March (the incentive credit volume) at the rate set forth in Column (B) of the Table of Rates. Any volumes delivered to a given destination during the months of September through March in excess of the*

> *incentive credit volume shall be billed at the Regular Volume Rate contained in Column (A) in the Table of Rates. Notwithstanding the forgoing, any specific incentive volume or incentive credit volume delivered will be subject to the Incentive Volume Rate in effect in Column (B) on the date of said Shipper's Tender (Notice of Shipment), provided said Tender (Notice of Shipment) is made prior to the month of delivery. Where the Incentive Volume Rate is not offered to a particular delivery point then all volumes delivered to this delivery point shall be charged the Regular Volume Rate in all instances.* [2]

Protests and Response

4. On December 15, 2006, National Propane Gas Association (NPGA) filed an intervention and protest. NPGA is the national trade association of the LP-gas (principally propane) industry, with a membership of more than 3,600 companies. NPGA asserts that its members have a substantial economic interest in the proceeding. NPGA states that Dome has eliminated Incentive Volume Rates to several destination points while maintaining them for other destination points. NPGA argues that canceling Incentive Volume Rates only for certain locations is unduly discriminatory; therefore, the Commission should suspend the proposed tariffs and investigate whether Dome has acted in an unlawful discriminatory manner. In addition, Dome states that since certain Incentive Volume Rates were eliminated, shippers will have to pay the maximum transportation rates for those movements. NPGA contends that Dome has never provided cost justification for its maximum rates; therefore, the maximum rates that Dome now will charge have not been determined to be just and reasonable.

5. On December 18, 2006, NOVA Chemicals Corporation (NOVA Chemicals) filed a motion to intervene and protest, requesting that the Commission reject or, in the alternative suspend Dome's tariff filing for seven-months and set it for evidentiary hearing. NOVA Chemicals acknowledges that the Commission has indicated that normally oil and product pipeline tariff filings are not suspended for the full seven month suspension period, but a longer than nominal suspension may be ordered in certain circumstances, if the unadjudicated rate increase may have significant anticompetitive effects or impose undue hardship on a shipper or group of shippers, or may have a sufficient mitigative effect to render a suspension worthy of consideration. NOVA Chemicals states that shipments made during April through August are eligible for incentive rates and earn a shipper the right to deliver an equal volume to the same destination in the ensuing months of September through March at the incentive rate. NOVA Chemicals argues that cancellation of the Incentive Volume Rates effective

[2] Item 24 of FERC No. 222, Item 20 of FERC No. 223, Item 23 of FERC No. 224.

January 1, 2007, will deny shippers of up to half of the bargain they were offered under Dome's incentive rate structure by preventing them from shipping Incentive Credit Volumes through March 2007. NOVA Chemicals also asserts that Dome intends to require five-year ship-or-pay contracts for shipments on the Eastern Leg of the Cochin Pipeline System. NOVA Chemicals contends such a proposal is unjust and unreasonable and hence unlawful under the Interstate Commerce Act (ICA).

6. On December 20, 2006, Dome filed a response to NPGA's protest urging the Commission to dismiss NPGA's protest. Dome states that it needs to conduct hydrostatic testing on its system as part of Dome's on-going pipeline integrity management program. Volumes and revenues on the Western Leg of Dome's system may be sufficient, at least in the near term, to provide the requisite financial support for the Western Leg testing. Volumes on the Eastern Leg, however, are substantially less than those on the Western Leg, and with the incentive volume discounts in place, such volumes would be inadequate to finance the hydrostatic testing program on the Eastern Leg. Dome claims it is necessary to cancel the volume discounts on the Eastern Leg in order to begin to generate revenues to support the Eastern Leg hydrostatic testing program.

7. Dome contends that NPGA failed to substantiate its protest with the sworn statement required under section 343.3 of the Commission's regulations pertaining to protests.[3] Dome states NPGA's protest challenges not new or changed rates, but instead challenges Dome's existing indexed rates. Therefore, Dome argues that NPGA's pleading is not properly considered a protest, but must be considered as a complaint under the ICA.

8. Contrary to NPGA's assertion, Dome contends that oil pipelines are free to cancel rate discounts without regulatory oversight if the carrier complies with the Commission's indexing regulations. In addition, continues Dome, the Commission has clearly stated that an oil pipeline has no obligation to maintain discounts and may cancel them at any time.

9. Further, Dome disagrees with NPGA that it should provide cost justification for its effective rates. Dome argues that the rates that NPGA's members will pay in the absence of the volume discount rates are simply Dome's filed tariff rates which comply with the Commission's indexing regulations. Dome claims the Commission's requirement that carriers justify rates on a cost-of-service basis are, by definition, rates that exceed the index ceiling. *See* 18 C.F.R. § 342.4(a). Dome contends that the rates that will apply once the cancellations at issue here become effective will not exceed the index ceiling and, accordingly, the cost-of-service requirement of 18 C.F.R. § 342.4(a) simply does not apply.

[3] 18 C.F.R. § 343.3 (2006).

10. In addition, Dome argues that NPGA has failed to support its allegations that Dome's tariffs are unduly preferential and unreasonably discriminatory.

Discussion

11. The Commission will accept the filing to become effective January 1, 2007, as requested. First, NPGA fails to demonstrate that elimination of the Incentive Volume Rates applicable to certain of the movements on Dome's pipeline is discriminatory. Pursuant to section 342.3 of the Commission's regulations, "[a] rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level…" under the indexing methodology. In this proceeding, Dome proposes to charge up to its ceiling level for certain movements, while maintaining an incentive rate that is lower than its ceiling level for other movements. In *Shell Pipeline Company LP*,[4] the Commission found that a pipeline can end a discounted rate at any time. In that order, the Commission stated that "Shell had chosen to offer the discount for one reason or another, perhaps, *e.g.*, to encourage increased throughput, but Shell was under no obligation to continue offering that discount. It can, thus, choose to end the discount at any time, and that is what it has done here."[5] Accordingly, the Commission finds that there is no basis, to investigate whether Dome has acted in an unlawfully discriminatory manner.

12. The Commission rejects NPGA's claim that Dome's Regular Volume Rates (at ceiling levels) have not been cost justified and have not been determined to be just and reasonable. All of Dome's rates reflected on FERC Tariffs Nos. 222 and 223 are "grandfathered", *i.e.*, they were deemed just and reasonable pursuant to section 1803 of the Energy Policy Act of 1992.[6] Subsequently, these rates have been changed through the indexing methodology, but those indexed filings by Dome were never challenged.

13. The only "non-grandfathered" rate contained in Dome's proposed filing is contained on FERC Tariff No. 224 applicable to the movement of butane. This rate was originally stated on FERC Tariff No. 130 filed July 12, 2001, in Docket No. IS01-418-000. The rate became effective on July 14, 2001. Dome submitted the filing pursuant to section 342.2(b) of the regulations, which provides as follows: [7]

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[4] 100 FERC ¶ 61,139 (2002).

[5] *Id.* at P 6.

[6] 42 U.S.C. § 7172 (1994).

[7] 18 C.F.R. § 342.2(b) (2006).

> *A carrier must justify an initial rate for new service by: … (b) Filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, provided that if a protest to the initial rate is filed, the carrier must comply with paragraph (a) of this section.*

14. The Commission finds that Dome properly filed its initial rate consistent with the requirements of section 342.2(b). Further, shippers could have protested Dome's rate filing, which then would have required Dome to make a cost-of-service filing pursuant to section 342.2(a) of the Commission's regulations.[8] However, shippers failed to protest the filing. For the reasons discussed above, the Commission finds that NPGA's protest of Dome's existing rates on the basis that they have not been cost-justified, and therefore are not just and reasonable lacks merit.

15. The Commission agrees with NOVA Chemicals that shipping during April, May, June, July and August earns a shipper the right to deliver an equal volume to the same destination in the ensuing months of September through March. However, the Commission disagrees with NOVA Chemical's assertion that Dome's tariff guarantees the shipper transportation service for that incentive volume at the discounted Incentive Volume Rates.

16. The section of Dome's tariff cited above provides in part that "The total volume shipped during the months of April, May, June, July and August (the incentive volume) shall be eligible for the rate <u>in effect</u> as set forth in Column (B) in the Table of Rates where offered." (Emphasis supplied.) Later in that section the tariff provides that "Where the Incentive Volume Rate is not offered to a particular delivery point then all volumes delivered to this delivery point shall be charged the Regular Volume Rate in all instances." The Commission interprets the language in this section to mean that the volumes shipped during the September-March period are eligible for the Incentive Volume Rate only if that rate is in effect. Neither the tariff nor the Commission's policies or regulations require Dome to maintain the Incentive Volume Rate for any particular period of time; in other words, nothing prohibits Dome from canceling the Incentive Volume Rate. If Dome cancels the Incentive Volume Rate, as it proposes here, a shipper is still entitled to ship a volume during the winter months, equal to the volume it shipped under the Incentive Volume program during the spring and summer months. Further, the rate to be charged after the Incentive Volume Rate is cancelled will be a legal

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[8] 18 C.F.R. § 342.2(a) (2006) provides as follows: "A carrier must justify an initial rate for a new service by: (a) Filing cost, revenue, and throughput data supporting such rate . . . ."

rate that is on file with the Commission, and the filed rate will not exceed the applicable ceiling level.

17. Thus there is no need for further process such as a hearing, and the Commission has no basis for suspending the filing in order to set it for hearing. The shippers were shipping under a contractual and tariff incentive arrangement that by its terms was terminable at any time. Knowing this, the shippers reasonably would be expected to structure their other contractual arrangements with this possibility in mind. To suspend the filing, not for the purpose of a hearing or further process, but merely to relieve certain shippers of the result of not having made such contractual arrangements must be balanced against the pipeline's tariff right to rescind any incentive rate, so long as it continues to ship within the maximum posted ceiling rate that remains. Accordingly, the Commission is accepting the filing as proposed, for to suspend would be for no purpose other than to delay exercise of an established tariff right.

18. The Commission will not address NOVA Chemicals' assertion that Dome intends to require five-year ship-or-pay contracts. Dome has not filed any proposal of this nature with the Commission, and it may not impose such a requirement on its shippers absent Commission authorization.

The Commission orders:

Dome's FERC Tariff Nos. 222, 223, and 224 are accepted to be effective January 1, 2007, as discussed in the body of this order.

By the Commission. Comissioner Spitzer dissenting with a separate statement attached.
Commissioner Wellinghoff concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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FEDERAL ENERGY REGULATORY COMMISSION

Dome Pipeline Corporation Docket No. IS07-57-000

(Issued December 29, 2006)

SPITZER, Commissioner, *dissenting*:

In 1906, Congress extended the definition of common carrier under the Interstate Commerce Act ("ICA") to oil pipelines and required that their rates be just and reasonable. *See* 49 U.S.C App. § 1(5). In 1977, in conjunction with the formation of the Department of Energy, regulatory authority over oil pipelines under the ICA was transferred from the Interstate Commerce Commission ("ICC") to the newly-created FERC. *See* Section 402(b) of the Department of Energy Organization Act, 42 U.S.C. § 7172(b). The traditional standards governing rate regulation under the ICA were not modified.

In 1992, Congress enacted the Energy Policy Act of 1992 ("EPAct 1992"), provisions of which required FERC to simplify its oil pipeline ratemaking methodology and streamline its ratemaking procedural rules "in order to avoid unnecessary costs and delays." Pub. L. No. 102-486, §§ 1801-1804, 106 Stat. 2776, 3010-12 (1992), *reprinted in* 42 U.S.C. § 7172 note Order No. 561 at 30,944. Congress made it explicit, however, that this simplification objective must be accomplished in a manner that ensures that rates are just and reasonable, for section 1801 of the Act of 1992 provides that the simplified and generally applicable ratemaking methodology must be "in accordance with section 1(5) of the Interstate Commerce Act." That section requires oil pipeline rates to be just and reasonable. Accordingly, the Commission issued Order No. 561 in 1993, which established a methodology for oil pipelines to adjust their rates through use of an index system that establishes ceiling levels for such rates. *See Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30,985 at 30,940-41 (1993), *on reh'g*, Order No. 561-A, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,000 (1994), *aff'd*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *see also* 18 C.F.R. § 342.3 (2006) (methodologies and procedures for indexed rate changes).

Today, the majority votes to approve Dome Pipeline Corporation's ("Dome's") cancellation of certain Incentive Volume Rates. NOVA Chemicals Corporation ("NOVA Chemicals") and others protested Dome's cancellation of the Incentive Volume Rates. NOVA Chemicals maintains that "[o]ne of the benefits Dome previously offered to shippers that made shipments on the Cochin Pipeline System during the April-August 2006 period was the opportunity under its tariffs' rules and regulations to ship Incentive Credit Volumes during the ensuing September-March period at favorable rates." Protest at 13. However, with the cancellation of the Incentive Volume Rates effective January 1, 2007, NOVA Chemicals alleges that Dome is denying "shippers at least a portion of the benefits of incentive rate credits for which they bargained and which Dome promised to deliver under the tariffs it now proposes to cancel." *Id.*

The majority "agrees with NOVA Chemicals that shipping during April, May, June, July and August earns a shipper the right to deliver an equal volume to the same destination in the ensuing months of September through March," but it disagrees that NOVA Chemicals has the right to ship this volume at the bargained for Incentive Volume Rate. With the cancellation of the Incentive Volume Rate in January, 2007, propane suppliers who pride themselves on their ability to meet their customers' needs face unexpected rate increases of up to 139% in the middle of the winter heating season. Further, the record reflects that the propane suppliers had secured their sources of supply earlier in the year to ensure that their customers would have propane this winter. By raising the delivery rates, these shippers face either taking losses on their pre-buy contracts or being forced to pass along price increases to their customers, many of whom are elderly or low income, in the midst of the winter heating season.

I recognize that Congress through EPAct 1992 intended that the Commission exercise light handed regulation of oil pipelines. I also recognize that neither the ICA nor our regulations allow me to reach a different result based on the instant record. Nonetheless, I am concerned that Dome's removal of the Incentive Volume Rates after shippers have acted in reliance on them significantly changes the bargain.

For these reasons, I respectfully dissent.

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Marc Spitzer

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Dome Pipeline Corporation   Docket No. IS07-57-000

(Issued December 29, 2006)

WELLINGHOFF, Commissioner, concurring:

In his separate statement in this case, Commissioner Spitzer states that neither the Interstate Commerce Act nor the Commission's regulations allow a different result than that reached in this order, based on the instant record. Commissioner Spitzer further states that despite that fact, he is concerned that Dome's removal of the Incentive Volume Rates after shippers have acted in reliance on them significantly changes the bargain, and may force shippers to either take losses on their pre-buy contracts or pass along price increases to their customers in the midst of the winter heating season.

I agree with the reasoning set forth in the Commission's order in this case. I also share the concerns expressed by Commissioner Spitzer. For these reasons, I respectfully concur with the Commission's order.

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Jon Wellinghoff
Commissioner