

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

In Reply Refer To:
Sunoco Pipeline L.P.
Docket No. OR05-7-000

March 30, 2007

Sunoco Pipeline L.P.
1330 Connecticut Avenue NW
Washington, DC 20036-1795

Attention: Steven H. Brose
Steptoe & Johnson LLP
Counsel for Sunoco Pipeline L.P.

Reference: Joint Motion for Waiver of Initial Decision and
Renewed Application for Authority to Charge Market-Based Rates

Dear Mr. Brose:

1. On November 27, 2006, pursuant to Rule 710 of the Commission's Rules of Practice and Procedure,¹ Sunoco Pipeline L.P. (Sunoco) and the Commission's Trial Staff (Staff) filed a Joint Motion for Waiver of Initial Decision (Joint Motion). At the same time, Sunoco filed a Renewed Application for Authority to Charge Market-Based Rates (Renewed Application). These filings represent the agreement of Sunoco and Staff resolving outstanding issues relating to Sunoco's original application filed in this docket on April 12, 2005, seeking authority to charge market-based rates for the transportation of refined petroleum products in eight destination markets and five origin markets (Original Application). As discussed below, the Commission grants Sunoco's Renewed Application for Authority to Charge Market-Based Rates.

2. On January 19, 2006, the Commission issued an order granting Sunoco authority to implement market-based rates in the unchallenged origin markets of Detroit, Pittsburgh, Rochester, and Toledo, as well as the destination markets of Detroit, Philadelphia, and New York (January 19, 2006) order.² In that order, the Commission set

¹ 18 C.F.R. § 385.710 (2006).

² *Sunoco Pipeline L.P.*, 114 FERC ¶ 61,036 (2006).

for hearing the issue of whether Sunoco had the ability to exercise market power in the challenged Philadelphia origin market and the challenged Cleveland, Harrisburg, Pittsburgh, Scranton, and Toledo destination markets.

3. ConocoPhillips Company (ConocoPhillips) and Valero Marketing and Supply Company (Valero) intervened with comments in response to the Original Application. The parties engaged in settlement discussions, after which ConocoPhillips and Valero, on June 20 and 19, 2006, respectively, withdrew their interventions and comments. Sunoco and the Staff then engaged in further settlement discussions with respect to the remaining markets at issue. Sunoco provided the Staff with data necessary to conduct an analysis of these markets, and, in its answer to the Renewed Application also filed November 26, 2006, the Staff reports the results of its analysis and its support for the Renewed Application.

4. In the Joint Motion, Sunoco and Staff represent that: (1) all material factual disputes raised by the Original Application have been resolved; (2) they are the only remaining participants in this proceeding; (3) they do not desire to file additional briefs beyond the Joint Motion and concurrently-filed pleadings; (4) they do not desire oral argument; and, (5) they ask the Commission to waive the initial decision in this proceeding and issue a final decision approving the Renewed Application. Given these facts, Sunoco and Staff contend that it is in the public interest, as well as in the interest of the participants in this proceeding, to conserve Commission resources and expedite resolution of this matter by proceeding directly to a final decision on the Renewed Application.

5. In the Renewed Application, Sunoco states that its settlement discussions with Staff led to its modification of the Original Application with respect to the Harrisburg destination market. Sunoco further states that, on the basis of this modification, Staff agreed to support the Renewed Application. Sunoco explains that it and the Staff performed independent analyses employing different methodologies, but Sunoco emphasizes that neither it nor the Staff seeks Commission approval of its methodology. On the basis of its agreement with the Staff, Sunoco submits that Commission approval of market-based rate authority in the markets not previously approved by the Commission is warranted. Those markets are as follows:

A. Destination Markets

1. Cleveland-Akron, OH-PA, BEA No. 35 (Cleveland BEA)³

³ A BEA is an “Economic Area” defined by the Bureau of Economic Analysis of the U.S. Department of Commerce. The Bureau redefined these areas in 2004 to reflect

2. Harrisburg-Lebanon-Carlisle, PA, BEA No. 70 (Harrisburg BEA)
 3. Pittsburgh, PA-WV, BEA No. 129 (Pittsburgh BEA)
 4. Scranton, PA, BEA No. 151 (Scranton BEA)
 5. Toledo, OH, BEA No. 166 (Toledo BEA)
- B. Origin Market -- Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD, BEA No. 127 (Philadelphia BEA)

6. With respect to the Harrisburg BEA, Sunoco states that Staff continued to express concern about this market, even after the withdrawal of the intervenors. Sunoco further states that, to resolve the matter, it agreed to modify its application to withdraw its request for market-based ratemaking authority from all destinations located within this BEA except for the Mechanicsburg terminal. Sunoco continues to request market-based ratemaking authority for the Mechanicsburg terminal within the Harrisburg BEA, and Sunoco states that the Staff supports its request with respect to this destination market.

7. Sunoco maintains that there is ample support for the grant of market-based ratemaking authority for a defined portion of a BEA. Sunoco cites *Wolverine Pipe Line Co.*,⁴ asserting that the Commission there approved a settlement, part of which authorized market-based ratemaking authority “in the Detroit BEA destination market as defined above.”⁵ According to Sunoco, the definition excluded certain destinations within the Detroit BEA based on a negotiated resolution supported by the Commission’s Trial Staff. While Sunoco modified its application to exclude all other destinations within the Harrisburg BEA, it emphasizes that it does not concede that it has or can exercise market power anywhere in the Harrisburg BEA or that it failed to meet the Commission’s tests for market-based rate authority for that market. Further, Sunoco states that it does not waive its right to seek market-based rates for the excluded facilities in the Harrisburg BEA in the future or to file any rate in that market under any of the mechanisms available under the Commission regulations.

8. In the affidavit attached to its answer, Staff states that it supports Sunoco’s Renewed Application and that it includes its own analysis of the markets set for hearing

more current commuting and trading patterns, which resulted in an increase in the number of BEAs from 172 to 179.

⁴ 96 FERC ¶ 61,046 (2001).

⁵ *Id.* at 61,114.

in this proceeding, as modified by the Renewed Application. Staff states that it found no market power concerns for the Philadelphia BEA origin market or for any of the destination markets set for hearing, except for the Harrisburg BEA. However, states Staff, limiting market-based rate authority to the Mechanicsburg terminal in the Harrisburg BEA removes the market power concerns.

9. The Commission finds that Sunoco's Renewed Application for authority to implement market-based rates is uncontested. On this basis, and on the basis of the Staff's market power analysis of the markets set for hearing, the Commission grants Sunoco authority to implement market-based rates in the Philadelphia BEA origin market and the Cleveland, Pittsburgh, Scranton, and Toledo BEA destination markets. Further, Sunoco is authorized to implement market-based rates to the Mechanicsburg terminal within the Harrisburg BEA.

10. The Commission's acceptance of the Renewed Application does not constitute precedent or settled practice regarding any principle or issue in this proceeding.

By direction of the Commission.

Philis J. Posey,
Acting Secretary.