

127 FERC ¶ 61,304
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Calnev Pipe Line L.L.C.

Docket No. IS09-377-000

ORDER ON TARIFF FILING

(Issued June 26, 2009)

1. This order addresses Calnev Pipe Line L.L.C.'s (Calnev) May 28, 2009, tariff filing to raise its rates under the Commission's oil pipeline indexing methodology.¹ Calnev requests a July 1, 2009 effective date. The filing is protested, but on review, the Commission concludes the protests have no merit. Therefore the Commission accepts the tariffs effective July 1, 2009.

The Filings

2. Calnev's proposed tariffs would increase its rates effective July 1, 2009 to the maximum amount permitted this year under the Commission's oil pipeline indexing methodology, or by 7.605 percent.² The following filed protests or comments on this filing: Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., and US Airways, Inc. (collectively Airline Shippers), Chevron Products Company (Chevron), Tesoro Marketing and Refining Company, and BP West Coast Products, LLC (BP West Coast) (collectively Protesting Parties). Calnev filed a response on June 17, 2009.

The Protests

3. The Protesting Parties generally assert that Calnev's rates are now under investigation in a complaint proceeding and therefore the instant filing must be accepted subject to refund. The Airline Shippers assert that the filing would increase Calnev's rates by approximately 13.1 percent, raising them to the new index ceiling effective

¹ FERC Oil Tariff Nos. 26 and 27.

² See 18 C.F.R. § 342.3 (2008).

July 1, 2009, because Calnev's rates are below its current index ceiling. Chevron further asserts that Calnev is substantially over-recovering its cost of service and therefore the resulting rates will be unjust and unreasonable. It further asserts the rate increase will exceed Calnev's actual cost increases if a significant increase in the return component of its rates is excluded from the calculation of the cost increases. It also asserts that based on testimony in a related proceeding, the resulting rate will be at least - 62 percent above the just and reasonable rate. BP West Coast similarly asserts that permitting the increase will result in a further substantial over-recovery of Calnev's costs and the increase here will substantially exacerbate that over-recovery. It further argues that Calnev has improperly calculated its return and its tax allowance, the method Calnev uses results in a double recovery of its return on equity, and Calnev improperly structured its balance sheet. BP West Coast further asserts that Calnev is estopped from taking the increase because the 2008 inflation factor applied under the Commission's indexing methodology is much greater than the inflation rate its sister firm, SFPP, L.P. used to develop its equity rate of return in its Docket No. IS08-390-000 proceeding. BP West Coast also argues that the Commission's indexing protocols provide inadequate information and remedies to oil pipeline shippers and that they fail to effectively address cumulative increases in the pipeline's over-recovery of its current cost of service.

Calnev's Answer

4. Calnev replies that its filing conforms to the Commission's regulations and that its balance sheet and cost calculations are correct. It asserts that Chevron's suggestion that the Commission exclude changes in return from the cost of service calculation is "absurd" given that this is an essential component of a cost of service and the cost of capital varies over time. It further contends the changes in its income tax allowance stem in part from changes in its rate base and related changes in the equity cost of capital. In any event, Calnev asserts, Chevron's and BP West Coast's arguments regarding cost of service and accounting matters are not appropriate in the context of a protested index-based filing. Calnev also maintains that its costs increased more rapidly than the cost recovery generated by an index factor of 7.605 percent. In fact, it claims the actual cost of service increase was \$7,590,552, or about 19.2 percent on a base of \$39,010,324. Calnev thus opines there is no basis to conclude that the proposed indexed-based rate increases will substantially exacerbate any alleged over-recovery. It further states that BP West Coast's argument regarding the inflation rate Calnev should use is completely inapposite because the inflation index looks backwards to 2008 and the inflation component in a cost of capital methodology looks forward. Finally, Calnev argues that its tariff filing is not subject to refund because the Commission previously stated that the refund obligation will not attach to an index-based increase when an ongoing investigation stems from a complaint.³

³ Citing *SFPP, L.P.*, 121 FERC ¶ 61,163, at P 5-6 (2007).

Discussion

5. The Commission concludes that Calnev's analysis is correct in all regards. First, it is clear that the proposed increase will not exceed its actual cost increases. Thus, under the circumstances it is impossible for the increase to substantially exceed its costs.⁴ Second, the Commission has made quite clear that it will not review allegations regarding the appropriateness of a pipeline's cost of service or the accuracy of its accounting in an index proceeding. Such allegations must be included in a complaint once the index-based filing becomes effective.⁵ Calnev is also correct that the ongoing investigations of Calnev's existing rates involve complaints and therefore no refund obligation attaches here. Finally, BP West Coast's extensive criticisms of the Commission's indexing method have no relevance here because they are a collateral attack on the Commission's index-based ratemaking methodology. As those criticisms do not address the specific merits of the instant filing, we will not respond to them in any detail. This is also true for the other inapposite protests given the Commission's clarification in recent orders on the protocols and standards for challenging an indexed-based filing.⁶

The Commission Orders:

Calnev's FERC Oil Tariff Nos. 26 and 27 are accepted as filed effective July 1, 2009.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ See *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 10 (2007); *Tesoro Refining and Marketing Company v. Calnev*, 121 FERC ¶ 61,142, at P 6 (2007).

⁵ *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243 (2007); *SFPP, L.P.*, 123 FERC ¶ 61,317 (2008).

⁶ *Id.*