

130 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Calnev Pipe Line L.L.C.

Docket No. IS09-377-001

ORDER DISMISSING REHEARING REQUEST
AND DENYING REHEARING

(Issued January 29, 2010)

1. This order addresses the rehearing requests by Tesoro Refining and Marketing Company (Tesoro), BP West Coast Products LLC (BP West), and Chevron Products Company (Chevron) of the Federal Energy Regulatory Commission's (Commission) June 26, 2009 order¹ accepting Calnev Pipe Line L.L.C.'s (Calnev) tariff filing in Docket No. IS09-377-000. In this order the Commission finds Tesoro's request for rehearing to be deficient, and therefore, dismisses its rehearing request. The Commission denies BP West's and Chevron's rehearing requests for the reasons discussed below.

I. Background

2. On May 28, 2009, Calnev filed FERC Tariff Nos. 26 and 27 seeking to increase its rates effective July 1, 2009 pursuant to the Commission's indexing regulations, section 342.3, by the maximum amount permitted.² Several parties, including Tesoro, BP West and Chevron, filed protests. The Commission's June 26 Order concluded that Calnev's proposed increase would not exceed its actual cost increases.³ Accordingly, the Commission accepted Calnev's index-based rate increase.⁴

¹ *Calnev Pipe Line L.L.C.*, 127 FERC ¶ 61,304 (2009) (June 26 Order).

² See 18 C.F.R. § 342.3 (2009).

³ June 26 Order, 127 FERC ¶ 61,304 at P 5.

⁴ *Id.*

3. Tesoro, BP West, and Chevron each filed requests for rehearing of the June 26 Order. Subsequently, Calnev filed an answer to Tesoro's rehearing request.

4. On rehearing, Tesoro raises two issues. First, Tesoro argues that Calnev's interstate operating revenues exceed its cost of service resulting in 2008 in an over-recovery of its cost of service of more than 18 percent.⁵ Tesoro's second issue is that Calnev's FERC Form 6 data is overstated and inaccurate.⁶ Tesoro states on rehearing that because Calnev's FERC Form No. 6 data is "in doubt," the Commission should not rely on the Form 6 data to "summarily quash protests against index rate increases that permit [Calnev] to substantially over-recover its costs every year."⁷

5. On rehearing, BP West and Chevron raise the same, single issue. BP West and Chevron argue the Commission erred in concluding that their protests had no merit without setting forth a detailed analysis of the issue raised in their protests: that Calnev's 2009 index increase substantially exacerbates Calnev's existing over recovery of its cost of service.⁸

II. Commission Determination

A. Procedural Matters

6. Rule 713(d) of the Commission's Rules of Procedure, 18 C.F.R. § 713(d) (2009), prohibits answers to requests for rehearing. Accordingly, we reject Calnev's answer filed in this proceeding.

B. Rehearing Requests

7. We find that Tesoro's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission's Rules of Practice and Procedure.⁹ Rule 713(c)(2) requires rehearing

⁵ See Tesoro Refining and Marketing Company, July 27, 2009, Request for Rehearing at 2 (Tesoro Rehearing).

⁶ See Tesoro Rehearing at 3.

⁷ *Id.*

⁸ See BP West Coast Products LLC, July 27, 2009, Request for Rehearing at 2 (BP Rehearing); Chevron Products Company, July 27, 2009, Request for Rehearing at 2 (Chevron Rehearing).

⁹ 18 C.F.R. § 385.713(c)(2) (2009). See *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (continued...)

requests to include a separate section entitled “Statement of Issues” listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.¹⁰ Under Rule 713, any issue not so listed will be deemed waived. Accordingly, we dismiss Tesoro’s rehearing request.¹¹

8. BP West and Chevron state in their requests for rehearing that the Commission failed to articulate a reasoned explanation for rejecting the argument in their protests that Calnev’s 2009 index increase would substantially exacerbate Calnev’s alleged existing overrecovery of its cost-of-service.¹² BP West’s and Chevron’s rehearing essentially reasserts their argument that pursuant to the “substantially exacerbate” standard articulated in *BP West Coast Products LLC v. SFPP, L.P.*,¹³ Calnev’s proposed index-based rate increase for the 2009 index year should have been rejected. The Commission denies rehearing on this issue, as it properly dismissed BP West’s and Chevron’s “substantially exacerbate” challenges to Calnev’s index-based rate increases.

9. Protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission’s regulations, which provides in part:

(2005), *order on reh'g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006) (amending Order No. 663 to limit its applicability to rehearing requests).

¹⁰ The purpose of Rule 713(c)(2) is to ensure that issues are properly identified in order to prevent wasteful litigation. *See* Order No. 663, FERC Stats. & Regs. ¶ 31,193 at P 3-4. The Commission previously has accepted requests for rehearing that failed to include a separate section entitled “Statement of Issues” because they did include a separate section entitled either “Specification of Grounds” or “Specification of Errors” in which each rehearing issue was listed in separately enumerated paragraphs. *See, e.g., Broadwater Energy LLC et al.*, 124 FERC ¶ 61,225, at P 17 (2008). Thus, the Commission found those rehearing requests sufficiently complied with Rule 713. However, in this case Tesoro’s rehearing request fails to identify or enumerate the issue or errors in any fashion.

¹¹ *See, e.g., Entergy Services, Inc.*, 122 FERC ¶ 61,059 (2008); *Duke Power Co., LLC*, 116 FERC ¶ 61,171 (2006); *South Carolina Electric & Gas Co.*, 116 FERC ¶ 61,218 (2006).

¹² BP Rehearing at 3; Chevron Rehearing at 3.

¹³ 119 FERC ¶ 61,241, *order denying reh'g*, 121 FERC ¶ 61,243 (2007) (*BP West v. SFPP*).

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter must allege reasonable grounds for asserting that . . . the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable¹⁴

10. To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the data reported in the carrier's FERC Form No. 6, page 700 data in a "percentage comparison test." The percentage comparison test is a very narrow test that "compare[s] the Page 700 cost data contained in the company's annual FERC Form No. 6 to the data that is reflected in the index filing for a given year with the data for [the] prior year. . . ." ¹⁵ This test is the "preliminary screening tool for pipeline [index-based] rate filings," ¹⁶ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard. ¹⁷

11. The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase. ¹⁸ For example, in a complaint proceeding the Commission will consider

¹⁴ 18 C.F.R. § 343.2(c)(1) (2009).

¹⁵ *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test compares proposed changes in rates against the change in the level of a pipeline's cost of service.

¹⁶ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 FR 59137 (November 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh'g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

¹⁷ *BP West v. SFPP*, 121 FERC ¶ 61,141 at P 6 ("[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure. It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry's average annual cost increases.").

¹⁸ *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 8-9 (2007).

the “substantially exacerbate” standard that was articulated in *BP West Coast Products LLC v. SFPP, L.P.* in which SFPP’s 2005 index-based rate increase was challenged.¹⁹ With respect to SFPP’s 2005 index proceedings, the Commission rejected shippers’ protests based solely on application of the percentage comparison test. However, when evaluating BP West’s subsequent complaint against SFPP’s 2005 index increase, the Commission found grounds for an investigation into the index rate increase where the usual percentage comparison test would not. The Commission found that BP West’s complaint against SFPP’s 2005 index increase warranted investigation based on BP West’s showing in that proceeding under the substantially exacerbate standard: (1) that SFPP was substantially over-recovering its cost of service and (2) that SFPP’s index-based increase so exceeded the actual increase in SFPP’s costs that the resulting rate increase would substantially exacerbate that over-recovery.²⁰

12. In this case, BP West’s and Chevron’s protests and requests for rehearing challenge Calnev’s index-based rate increases under the substantially exacerbate standard, not the percentage comparison test. The Commission does not consider the substantially exacerbate standard in a protest. BP West’s and Chevron’s protest went beyond the percentage comparison test the Commission strictly applies to determine whether to investigate a protested annual index filing. Because BP West and Chevron failed to meet the requirements for a protest under 343.2(c)(1), their protests were dismissed pursuant to section 343.2(c)(4) of the Commission’s regulations. In any event, as previously noted, the percentage increase in Calnev’s costs in calendar year 2008 exceeded the index-based percentage increase that Calnev could apply to its rates on July 1, 2009. Accordingly, the Commission denies their requests for rehearing.

The Commission orders:

(A) Tesoro’s request for rehearing in Docket No. IS09-377-001 is dismissed for the reasons stated in the body of this order.

¹⁹ 119 FERC ¶ 61,241, *order denying reh’g*, 121 FERC ¶ 61,141, at P 7 (2007) (“given the fact that section 343.2(c)(1) applies to either complaints or protests and that the procedural framework for each is different, it is not arbitrary for the Commission to apply different interpretations of the regulation in these different contexts and to place greater emphasis on a review of accounting accuracy and rate reasonableness in assessing a complaint. Applying the same standards to both suspension and complaint proceedings would effectively deprive shippers of any opportunity to question the rate levels and the returns resulting from the pipeline’s annual index-based rate filings based on changes in the dollar yield from the rate index”).

²⁰ See *BP West v. SFPP*, 121 FERC ¶ 61,141 at P 10.

(B) BP West's and Chevron's requests for rehearing in Docket No. IS09-377-001 are denied for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.