

137 FERC ¶ 61,222
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

In Reply Refer To:
Magellan Pipeline Company, L.P.
Docket No. OR10-6-000

December 14, 2011

Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Attention: Lorrie M. Marcil, Counsel for Magellan Pipeline Company, L.P.

Reference: Offer of Settlement Filed July 1, 2011

Dear Ms. Marcil:

1. On July 1, 2011, Magellan Pipeline company, L.P. (Magellan) and Frontier Oil and Refining Company (Frontier)(Settling Parties) filed an offer of settlement to resolve all issues in the above-captioned proceeding. The Settling Parties seek Commission approval of the settlement agreement between them, including the FERC tariffs provided for therein, the conditional notice of withdrawal of Frontier's protest, and approval of Magellan's application for market-based rates on its Mountain System that is at issue in this docket. On July 21, 2011, the Commission Trial Staff filed initial comments opposing the certification of the settlement to the Commission. On September 1, 2011, the Presiding Administrative Law Judge (ALJ) certified the settlement to the Commission. As discussed below, the Commission finds that settlement appears to be fair and reasonable and in the public interest, and, accordingly, approves the settlement.

2. Magellan owns a common carrier petroleum pipeline system that transports petroleum products within the Mid-Continent and Gulf Coast regions of the United States, as well as into the Rocky Mountain area. On January 15, 2010, Magellan filed an application for market-based rates on a portion of its pipeline system, the Mountain System, which transports refined petroleum products from McPherson and El Dorado, Kansas to Denver, Colorado. Protests were filed by Frontier and Sinclair Oil Company (Sinclair).

3. On July 7, 2010, the Commission issued an order on Magellan's application, finding that Magellan lacks market power in its Denver destination market but setting for hearing the issue of whether Magellan could exercise market-power in its McPherson-El Dorado origin market.¹ A procedural schedule was established and testimony was filed. On March 21, 2011, at the request of the parties, the Chief Judge suspended the procedural schedule to focus on settlement discussions. On May 3, 2011, Sinclair withdrew its protest to Magellan's application. On July 1, 2011, the Settling Parties filed the offer of settlement. On July 21, 2011, the Commission Trial Staff filed initial comments opposing certification of the settlement. Commission Trial Staff asserted that there were genuine issues of material fact concerning Magellan's ability to exercise market power on its Mountain System and requested a review market power issues on the record at a hearing. On August 1, 2011, Magellan and HollyFrontier Refining and Marketing LLC (formerly Frontier) filed reply comments urging certification of the settlement by the ALJ and approval of the settlement by the Commission as fair and reasonable and in the public interest.

4. On September 1, 2011, the Presiding ALJ certified the settlement to the Commission, concluding that the settlement appeared to be fair and reasonable and in the public interest. In response to the opposition of the Commission Trial Staff the ALJ stated that the Commission has made clear that "the settlement rules clearly contemplate that the Commission may approve a settlement, despite the fact that Trial Staff has raised material issues of fact which the record is insufficient to resolve."²

5. The terms of the settlement are as follows. Section III.A provides that the parties will file an offer of settlement with the Commission, seeking approval of the terms of their settlement agreement, including the tariffs therein, the conditional notice of withdrawal of Frontier's protest, and granting of Magellan's application for market-based rates on the Mountain System. Section III.B sets forth the terms for the satisfaction of Frontier's protest.

6. Section III.C describes the steps, contingent on several factors, which Frontier and Magellan will undertake as consideration for Frontier's withdrawal of its protest. Magellan will agree to offer transportation service for refinery blendstock from the Frontier El Dorado Refinery to Magellan's Denver, Colorado terminal for a term of thirty-six (36) months pursuant to a Volume Incentive Tariff. The Parties will enter a Capacity Lease Agreement pursuant to which Frontier will lease capacity on the Magellan Mountain System between the Frontier El Dorado Refinery and Magellan's El Dorado origin. The Parties will enter into a Joint Tariff Agreement.

¹ *Magellan Pipeline Company*, 132 FERC ¶ 61,016 (2010).

² *Citing, High Island Offshore System, LLC*, 110 FERC ¶ 61,043, at P 29 (2005).

7. Section III.D states that the Conditional Notice of Withdrawal of Protest will become effective upon (a) the effective date of the settlement agreement, (b) the granting of Magellan's application pursuant to the settlement agreement, and (c) once the Volume Incentive Tariff, the Joint Tariff and the Frontier Tariff become effective. Section IV describes the concluding reservations and stipulations for the settlement agreement. Finally, the explanatory statement to the settlement states that the just and reasonable standard is the standard of review for the proceeding.

8. The Commission will approve Magellan's settlement proposal without modification. The settlement represents a reasonable compromise of the interests in this case. As the ALJ recognized, the settlement does not resolve all issues of material fact concerning Magellan's market analysis raised by the Commission Trial Staff, or the ultimate issue of whether Magellan can exercise market power in its El Dorado-McPherson origin market. The rates approved here will be on file with the Commission and available to all shippers. Subsequent changes to the rates pursuant to the settlement will be filed with the Commission.³ Affected shippers retain their right to file a complaint with the Commission if they believe Magellan is in fact exercising market power in its El Dorado-McPherson origin markets, and the Commission would address any such complaint under the just and reasonable standard of the Interstate Commerce Act. Since the settlement resolves all outstanding issues in the proceeding, and has not been contested by any party to the proceeding,⁴ the Commission approves the settlement because it appears to be fair and reasonable and in the public interest.

9. The Commission's approval of the settlement does not constitute a precedent or settled practice regarding any principle or issue in this proceeding.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ Sections 6(1), 6(3) and 15(7) of the ICA.

⁴ Trial Staff was not a party to the proceeding though it was a participant in the case.

cc: All Parties

Christopher M. Lyons
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Richard E. Powers, Jr.
Venable LLP
575 7th Street, NW
Washington, DC 20004