

139 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Enterprise TE Products Pipeline Company LLC

Docket No. IS12-203-000

ORDER ACCEPTING AND SUSPENDING TARIFF FILING, SUBJECT TO
REFUND, AND ESTABLISHING HEARING PROCEDURES

(Issued April 13, 2012)

1. Enterprise TE Products Pipeline Company LLC (Enterprise) owns and operates a pipeline system spanning 4,700 miles from southeast Texas, through the central and Midwestern United States, to the northeastern United States. The company transports both refined petroleum products and liquefied petroleum gas and natural gas liquids (LPGs/NGLs), primarily propane and butane.

2. On March 16, 2012, Enterprise filed in Docket No. IS12-203-000, FERC Tariff Nos. 54.15.0 and 55.11.0, and requested the Commission permit the tariffs to become effective April 16, 2012.¹ The filing proposes (1) rate increases to origin-destination combinations encompassing all NGL movements, such as propane and butane; (2) rate increases for certain refined product (motor gasoline and distillates) movements involving non-market based rates; (3) the cancellation of various propane and butane movements on the basis of non-use; (4) relief under the Interstate Commerce Act (ICA) section 4² for rates associated with the market area that encompasses Cape Girardeau,

¹ The Commission takes this opportunity to remind Enterprise that when submitting a filing with spreadsheets as a key component, “submission of spreadsheets in native format will be required.” *Filing via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259, at P 25 (2007).

² 49 App. U.S.C. § 4 (1988). Section 4 makes it unlawful for a carrier to charge more for a shorter than for a longer distance over the same route, provided that upon application and after Commission investigation such a charge may be authorized so long as the charge to or from the more distant point is found to be reasonably compensatory for the service provided.

Missouri, and renewal of section 4 relief for other defined rates; (5) a new movement; (6) joint rates in connection with Wood River Pipe Lines LLC; and (7) a new rate design that assigns the total carrier cost of service to separate operating segments, and institutes zone rates for natural gas liquids movements.

3. In this order, we accept and suspend Enterprise's tariffs for seven months, to become effective November 16, 2012, subject to refund. We also establish a hearing to address all issues raised by the filing.

The Pleadings

4. Enterprise has previously filed similar tariffs, in Docket Nos. IS12-165-000 and IS12-160-000, which the Commission rejected on procedural grounds. Enterprise's prior filings "patently fail(ed) to comply with applicable statutory requirements and with all applicable Commission rules, regulations, and orders" by failing to properly identify its proposed route cancellations and the division of its pipeline system into newly defined "Northern" and "Southern" segments. Further, the Commission found Enterprise's request for and renewal of the ICA section 4 relief deficient because the pipeline's assertion of competition did not fulfill the regulatory requirement that the pipeline provide "an accurate and complete statement giving the basis and reasoning why Section 4 relief is necessary."

5. Enterprise refiled its request for rate increases and ICA section 4 relief in the instant docket. Enterprise asserts that the tariff revisions better reflect the evolving operational realities of its system. Enterprise states that, due to the growth of the Marcellus Shale, a greater number of natural gas liquid volumes originate on the northern portion of Enterprise's system rather than at the Gulf Coast, causing a reduction in long-haul NGL volumes, adversely affecting Enterprise's ability to recover its cost of service. Enterprise proposes a new rate design that assigns the total carrier cost-of-service to two operating segments, a Southern Segment and a Northern Segment, and instituting zone rates for NGL movements. Enterprise explains that by separating the system into two different segments, it can better align cost causation with cost responsibility of the shippers that use each segment. Further, Enterprise states, the zone rates help ensure that shippers to destinations in the same geographical area pay the same rate.

6. The Propane Group, ConocoPhillips Company, Thrifty Propane, Inc, Magellan Terminals Holdings, LP, BP Products North America, Inc., MarkWest Hydrocarbon, Inc., Intergy Propane, LLC, Murphy Oil USA, Inc., and Dominion Transportation, Inc. filed motions to intervene and protest.

7. The Propane Group asserts that Enterprise is attempting to increase its revenue from collected rates by approximately \$98 million with total projected Test Period revenues under the proposed increased rates of approximately \$349 million. The Propane Group asserts the revenue increase is to be borne primarily by the movements of NGLs

and the three refined products destinations that lack market-based rates, and will negatively impact the propane industry and its customers. The Propane Group points out that the proposed increase comes without sufficient notice to customers and other affected third parties.

8. The Propane Group asserts that there is evidence that Enterprise overstated its cost of service and likely understated its revenue such that the proposed increases are not reasonable and the alleged substantial divergence between test period costs and revenues may be vastly misrepresented. Further, the Propane Group states that Enterprise failed to properly support its substantial divergence claims or justify its proposed rate design, and it appears that certain rates are cross-subsidizing other rates (short/long haul, non-market based rates/market based rates).

9. The Propane Group states that certain cost components in the Test Period cost of service were abnormally high relative to historical levels, and concerns exist with respect to Enterprise's recognition of certain revenue categories. Specifically, the Propane Group questions Enterprise's transfer of storage and terminalling assets totaling \$634.7 million to its partially owned affiliate at net book value, while at the same time leasing back those assets from the unregulated affiliate. The Propane Group claims Enterprise's Account 350 rental expenses increased over \$80 million, which raises material questions as to the proper rate base treatment of storage and terminal assets.

10. ConocoPhillips Company (ConocoPhillips) asserts Enterprise has not shown the required substantial divergence between costs and revenues under its current ceiling rates nor demonstrated the proposed rates are just and reasonable. In addition, ConocoPhillips asserts Enterprise failed to provide an adequate justification for its requested relief from the requirements of section 4 of the ICA.

11. ConocoPhillips states that, based on the information provided in Enterprise's cost of service calculations, it is not possible to determine how Enterprise derived the components of the proposed Base and Test Period costs of service. ConocoPhillips points out that it appears the increase in total cost of service from 2009 is caused by significant increases in several specific expenses, namely Account 320 Outside Services, Account 340 Oil Losses, and Account 350 Rentals. ConocoPhillips points out that Enterprise's Work Paper 11 shows an 8 percent decline in volume and a 6 percent decline in barrel-miles, but only shows a 3 percent decline in revenues without any explanation for the disparity between the volumetric and revenue declines. ConocoPhillips also points out disparities between Enterprise's filed Form No. 6s and the proposed Base Period and Test Period, as Enterprise estimates a lower level of revenue for the Base Period than was reported on their 2010 Form 6, and failed to provide an adequate explanation of the basis for volume adjustments made to the Test Period.

12. ConocoPhillips calls into question a significant increase in FERC Account 350, Rental operating expense, since Enterprise previously transferred storage assets to a non-

jurisdictional affiliate. ConocoPhillips states that the change from asset-related costs to operating expense costs may be an effort to avoid original cost ratemaking whereby asset costs are no longer recovered based on the original cost of the assets, and that, given the transfer of the storage assets to an affiliate of Enterprise, a rental or lease fee for those assets would not result from an arm's length negotiation. ConocoPhillips also states Enterprise failed to provide adequate supporting data on how it developed the individual rates in its filing. ConocoPhillips points out that while Enterprise does provide a "Segmented Cost of Service Summary" in Work Paper 10, it separated the Total Company Test Period cost of service into a Southern and Northern Test Period cost of service without any explanation of how it determined those statements or how it used those segments' cost of service to derive individual rates or to justify individual rates. Further, it appears Enterprise did not report the revenues associated with segmented costs of service.

13. ConocoPhillips states it appears Enterprise has not designed its proposed rates based on a fully allocated cost of service and that short-haul rates are cross-subsidizing long-haul rates and cost-based rate movements are cross-subsidizing market-based rate movements. Further, ConocoPhillips states Enterprise's Application for section 4 relief fails to provide any data demonstrating current levels of competition or good alternative to Enterprise. ConocoPhillips also notes that Enterprise plans to remove a 16 inch pipeline from its existing service of transporting refined products and convert it to transporting ethane, likely decreasing available capacity to transport refined petroleum products from Texas to all destinations north.

14. Thrifty Propane, Inc. notes that the terms of Items 135 and 140, which create the Southern and Northern sections of the pipeline rate design, arbitrarily double the rates on shippers receiving refined products at Todhunter, Ohio, Coshocton, Ohio, and Eagle, Pennsylvania, without justification.

15. Magellan Terminals Holdings LP (MTH) asserts that Enterprise does not appear to have shown the required substantial divergence between costs and revenues under its current ceiling rates or that the proposed rates are just and reasonable. Further, MTH states Enterprise fails to provide an adequate jurisdiction for its Application for relief from the requirements of section 4 of the ICA. MTH states that Enterprise's short-haul rates appear to be cross-subsidizing long haul rates and cost-based rate movements may similarly cross-subsidize market-based rate movements.

16. BP Products North America (BP) states that the figures provided in Enterprise's filing appear to depart substantially from the data previously reported to the Commission in FERC Form No. 6, with no explanation for the discrepancies. BP also points out several cost allocation issues that are not addressed by Enterprise in any significant detail.

17. MarkWest Hydrocarbon Inc. (MarkWest) asserts that the proposed rates impose a massive rate increase with very little justification. MarkWest further notes that

Enterprise changed some historical data first presented in Docket No. IS12-160-000;— for example, in Work Paper 1, Enterprise represented one set of annual values for its Carrier Property in Service, but changed those values in the instant Application. MarkWest questions why those numbers, which should remain fixed in historical data, would change from one filing to the next and asserts that these basic inconsistencies call into question the accuracy of Enterprise’s entire cost of service model.

18. Intergy Propane, Inc (Intergy) states that, according to the proposed tariffs, the proposed rate increase to the destination serving Intergy’s storage facility at Finger Lakes, NY, would increase by 117 percent. Intergy states that it incorporates the Propane Group protest by reference.

19. Murphy Oil USA Inc (Murphy Oil) states that the filing fails to demonstrate any “substantial divergence” supporting its proposed cost-of-service rate increase. Murphy also asserts it is unclear from the filing whether any cross-subsidization exists, and it is impossible to determine whether the allocation of costs between the points with existing market-based rates and the proposed cost-of-service rates is lawful. Further, Murphy summarizes the effects of the proposed increase in rates, and notes that destinations with Enterprise-affiliated companies or locations where Enterprise has tankage all have no proposed increase, but the rates for the four destinations containing terminals of non-affiliated entities rise significantly.

20. Murphy asserts that, since Enterprise is a common carrier pipeline, it has access to competitively sensitive information about its shippers which it could use to provide an unjustified advantage to its affiliates that directly compete with Murphy Oil in the wholesale market; Murphy Oil is concerned this sharing of information is a driving or motivating factor behind the instant rate increase. Murphy asserts that in their revised section 4 relief request, Enterprise lists as its only immediate competition one barge terminal within 50 miles of its Cape Girardeau delivery point. Further, Murphy states Enterprise failed to mention that it owns a barging affiliate that “competes” in the market, giving rise to potential market-power issues, and giving rise to the question of whether the rates at issue are actually “constrained by competition.”

21. Dominion Transmission Inc. (DTI) states that because of the proposed elimination of key movements at the Floreffe Junction, PA, transportation rates will increase. DTI expresses concern about the potential impact on rates from the creation of rate zones.

22. Enterprise filed an answer to the protests on April 9, 2012. Enterprise claims it fully satisfied the Commission’s regulations for a cost of service filing, including the requirement of demonstrating substantial divergence. Enterprise also denies the allegations of affiliate preferences raised by certain protesting parties. Enterprise also asserts its request for section 4 relief fully complies with Commission requirements.

23. Enterprise objects to suspending the proposed tariffs for the full seven-month period authorized by the ICA. Enterprise argues that oil tariff filings are generally suspended for one day absent “severe anticompetitive effects or undue hardship,” and that a shift in this general policy will have a “significant chilling effect on pipeline infrastructure investment.”

24. Finally, Enterprise argues that, while it does not oppose any motion for intervention filed in the case, certain parties lack standing to protest one or more of the tariffs at issue.

Discussion

25. The Commission finds that, as a threshold matter, Enterprise has made a facially adequate cost of service filing under 18 C.F.R. § 342.4 of the Commission’s regulations. Section 342.4(a) states that a carrier may change a rate if it shows that there is a substantial divergence between the actual costs experienced by the carrier and the rate resulting from application of the index such that the rate at the ceiling level would preclude the carrier from being able to charge a just and reasonable rate within the meaning of the ICA.³ This substantial divergence test is “the means that the Commission has decided [is] necessary for a pipeline to make a prima facie demonstration that it should be allowed to pursue the cost of service alternative as a means of establishing just and reasonable rates.”⁴

26. Enterprise alleges a system-wide cost of service of \$349 million and test period revenues of \$267 million, resulting in an alleged under-recovery of approximately \$82 million. Based on these cost figures as provided in its filing, Enterprise demonstrated a substantial divergence between its actual costs and the revenues generated by its current rates.

27. In its protest, the Propane Group states Enterprise failed to comply with Commission rule 342.4(a), specifically as it pertains to the substantial divergence test.⁵ The Propane Group argues that the substantial divergence test is “rate and cost specific”

³ 18 C.F.R. § 342.4(a) (2011).

⁴ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,164-65 (1994), quoted in *SFPP, L.P.*, Opinion No. 511-A, 137 FERC ¶ 61,220, at P 394 (2011).

⁵ Propane Group Protest at 20-23.

such that Enterprise's use of total system costs is inappropriate for use in meeting the substantial divergence test.⁶

28. Contrary to the Propane Group's reading of section 342.4(a), what a pipeline must demonstrate, as a threshold matter, is that its rates at the index ceiling substantially diverge from its actual costs to such an extent that the indexed ceiling rates would not be just and reasonable.⁷ The analysis is on a case-by-case basis. A pipeline seeking to increase an individual rate will often seek to demonstrate substantial divergence using cost and revenue data concerning that specific rate. As the Propane Group's own protest acknowledges, however, Enterprise seeks to increase numerous rates across its entire system. It is therefore acceptable for Enterprise in this instance to use system-wide data in attempting to meet the substantial divergence test. The Commission finds that the data presented by Enterprise in its filing meets the requirements for demonstrating a substantial divergence between its costs and revenue generated by its current ceiling rates.

29. The Commission concludes, however, that there is insufficient data in Enterprise's filing to resolve the issues of cost of service and rate design. In particular, the Commission is concerned that Enterprise has not adequately explained and supported its proposal to employ a rate design which separates its cost of service into two separate operating segments. The Commission is also concerned that Enterprise's proposed cost of service may not be representative of the costs Enterprise can reasonably be expected to incur during the time the proposed tariffs would be in effect.

30. In particular, the protests have raised significant concerns regarding cross-subsidization between short-haul and long haul rates, as well as between cost-based and market-based rates. Also, concerns have been raised regarding the inclusion and treatment of storage assets and the resulting impact on Enterprise's cost of service and ceiling rates. These issues are best investigated by means of a hearing.

31. In addition to the concerns involving cost and revenue data, protestors have alleged that Enterprise's proposed rates may provide an undue advantage to Enterprise's affiliates, in violation of section 3(1) of the Interstate Commerce Act. The hearing set forth in this order is the appropriate mechanism for investigating such allegations as they relate to Enterprise's proposed rates.

⁶ *Id.* at 20.

⁷ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,165 (1994).

32. Enterprise also seeks relief from the provisions of section 4 of the Interstate Commerce Act to establish certain rates which fall below rates to certain immediately upstream delivery locations on the same route. The Commission finds that a hearing is necessary to evaluate Enterprise's request for section 4 relief. Accordingly, all issues raised by Enterprise's filing, including but not limited to those raised in protest, are to be addressed in the hearing established by this order. The Presiding Administrative Law Judge may also resolve any challenges to particular intervenor's standing to protest the filing.

Suspension

33. Based upon a review of the filing, the Commission concludes that immediate implementation of the substantial rate increases proposed by Enterprise could have an immediate and overwhelming impact on NGL shippers on the Enterprise system. While the Commission normally holds that the refund obligation is an adequate safeguard to protect the interest of shippers, in this particular case the Commission concludes that many NGL shippers may encounter difficulty in adjusting their operations or commercial obligations in the short term given the size of the increases proposed here, imposing an undue hardship on NGL shippers.

34. Therefore, in this case the Commission will not follow its normal practice of using a short suspension period in oil pipeline proceedings, but will require the full seven month suspension period authorized by section 15(7) of the Interstate Commerce Act. Accordingly, pursuant to section 15(7), the Commission will accept FERC Tariff Nos. 54.15.0 and 55.11.0 and suspend them, to be effective November 16, 2012, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Enterprise's FERC Tariff Nos. 54.15.0 and 55.11.0 are accepted for filing and suspended, to become effective November 16, 2012, subject to refund, hearing procedures, and to further order of the Commission.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by Enterprise's filing.

(C) A Presiding Administrative Law Judge (ALJ) to be designated by the Chief Administrative Law Judge, for the purpose pursuant to 18 C.F.R. § 375.302 (2011), shall convene a prehearing conference in this proceeding to be held within twenty (20) days of the issuance of this order in a hearing or conference room of the Federal Energy

Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held to clarify positions of the participants, and for the ALJ to establish any procedural dates for the hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.