

147 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Buckeye Linden Pipe Line Company LLC

Docket No. IS14-399-000

ORDER ACCEPTING TARIFF

(Issued June 26, 2014)

1. On May 27, 2014, Buckeye Linden Pipe Line Company LLC (Buckeye Linden) filed FERC Tariff No. 4.0.0 to establish an initial rate for new aviation jet fuel pipeline transportation service to be effective June 13, 2014. As discussed below, the Commission accepts the proposed tariff and grants the requested waiver of the 30-day notice requirement in section 6(3) of the Interstate Commerce Act (ICA) so that the proposed tariff may be effective on June 13, 2014.

Details of Filing

2. Buckeye Linden states that the proposed tariff establishes an initial rate of 23.2 cents per barrel from Perth Amboy, New Jersey; Port Reading, New Jersey; and Sewaren, New Jersey; to Linden, New Jersey. The tariff filing also establishes a 23.2 cents per barrel initial rate for a new aviation jet fuel pipeline service from Linden, New Jersey, to Perth Amboy, New Jersey.

3. In accordance with section 342.2 of the Commission's regulations,¹ Buckeye Linden submitted an affidavit stating that at least one non-affiliated shipper intending to use the filed services has agreed in writing to the rates. Pursuant to section 341.14 of the Commission's regulations,² Buckeye also seeks a waiver of section 6(3) of the ICA so that rates may become effective upon 16 days' notice.

¹ 18 C.F.R. § 342.2(b) (2013).

² 18 C.F.R. § 341.14 (2013).

Protest

4. On June 11, 2014, Motiva Enterprises LLC filed a protest. Motiva states that pursuant to section 343.3(a) of the Commission's regulations,³ it has a substantial economic interest and thus satisfies the standing requirements for filing a protest before the Commission. Motiva states that it owns and operates a storage terminal facility at the Sewaren, New Jersey, origin point. Motiva states that in 2013, 3.5 million barrels of aviation jet fuel which had been stored at Motiva's facility were transported by its storage customers on Buckeye Linden for subsequent transportation to Linden, New Jersey, and on to Newark International Airport, John F. Kennedy International Airport, and La Guardia Airport (collectively, New Jersey-New York airports). Motiva claims that its terminal is "captive" to the Buckeye Linden pipeline and that its economic viability is affected by Buckeye Linden's rates.

5. Motiva states that Buckeye Linden's affiliate, Buckeye Pipe Line Company, L.P. (Buckeye), had long provided through service from Motiva's facilities at Sewaren, New Jersey to the New Jersey-New York airports. Motiva states that Buckeye recently cancelled this service from Sewaren, leaving Linden, New Jersey, as the sole origin point for aviation jet fuel service to the New Jersey-New York airports.⁴ Motiva asserts that following the instant filing, shippers using Motiva's facilities will be required to pay 23.20 cents per barrel to ship from Sewaren to Linden on Buckeye Linden. Then, at the same per barrel charge which once applied to the entire movement from Motiva's facilities, these shippers will ship from Linden to the New Jersey-New York airports on Buckeye. As a result, Motiva states that its customers face an effective 23.20 cents per barrel increase for the cost of transportation to the New Jersey-New York airports. Motiva estimates that Buckeye Linden's new rate could affect Motiva's business by \$500,000 to \$4,000,000 annually.

6. Motiva states that the Commission should require Buckeye Linden to submit cost, revenue and throughput data supporting its proposed rates. Motiva states that the Commission should also accept the filing subject to refund and establish an evidentiary hearing to determine whether Buckeye Linden's proposed rates are just and reasonable.

Buckeye Linden's Response

7. On June 16, 2014, Buckeye Linden filed a response to Motiva's protest. Buckeye Linden argues that Motiva lacks standing because it does not have a substantial economic interest regarding the proposed tariff rates. Buckeye Linden emphasizes that Motiva's

³ 18 C.F.R. § 343.3(a) (2013).

⁴ Docket No. IS14-323-000.

claim of substantial economic interest is grounded solely in the ownership of the Motiva Terminal, which is connected to Buckeye Linden. Buckeye Linden states that it is Motiva's customers, not Motiva, which will be shippers on the line and subject to the proposed tariff rates. Buckeye Linden asserts that Motiva will not directly or indirectly pay the new rates. Buckeye Linden emphasizes that Motiva is not a current or future shipper of aviation jet fuel on the pipeline. Buckeye Linden states that Motiva is not a producer or royalty owner whose netbacks could be affected by the new rates, nor a supplier of existing or future shippers on Buckeye Linden.

8. As a consequence, Buckeye Linden states that Motiva's claim relies upon speculative and unsupported claims regarding the possible effects of the proposed tariff rates. Buckeye Linden states that no actual or potential jet fuel shipper has protested Buckeye Linden's filing, strongly suggesting that the rate will not alter the conduct of Motiva's current customers, as Motiva appears to fear.

9. Buckeye Linden also disputes Motiva's claim that it is "captive" to Buckeye Linden, claiming that Motiva has other transportation alternatives. Buckeye Linden also states that the proposed tariff rate is supported by costs resulting from additional investments into its pipeline, including reversing flow on one of its existing lines, Line 604, and constructing a new pipeline, Line 605.

Discussion

10. The Commission accepts the filed tariff and grants the requested waiver of section 6(3) of the ICA so that the tariff may be effective on June 13, 2014. Buckeye Linden's filing complies with section 342.2 of the Commission's regulations,⁵ which permits a pipeline to establish an initial rate by submitting an affidavit stating that at least one non-affiliated shipper has agreed to the rates and plans to use the proposed services. Only if the initial rate filing is subject to a valid protest is a pipeline required to support its filing with cost, revenue, and throughput data.

11. No valid protest has been submitted opposing this filing. Motiva lacks standing to file a protest because Motiva has not demonstrated a "substantial economic interest" as required by Commission regulations.⁶ Motiva is neither a current shipper nor a future shipper on Buckeye Linden's system. The sole economic interest claimed by Motiva is that its customers will pay a higher rate to move aviation jet fuel from Motiva's terminal to the New Jersey-New York airports. The effects of the proposed rates upon Motiva itself are speculative and unsupported. Motiva provides no support for the \$500,000 to

⁵ 18 C.F.R. § 342.2(b) (2013).

⁶ 18 C.F.R. § 343.3(a) (2013).

\$4,000,000 cost which it projects to incur as a result of the proposed rates. Accordingly, Motiva has not demonstrated a substantial economic interest, and, thus, lacks standing to challenge the proposed tariff.

The Commission orders:

(A) The proposed tariff is accepted as discussed herein.

(B) The Commission grants waiver of section 6(3) of the ICA so that the proposed tariff may be effective on June 13, 2014, as requested.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.