

148 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Calnev Pipe Line LLC

Docket No. IS14-75-001

ORDER DENYING REHEARING

(July 10, 2014)

1. This order addresses a joint request for clarification, or, in the alternative, rehearing of the Commission's December 30, 2013 letter order¹ filed by Phillips 66 Company, Southwest Airlines Co., Tesoro Refining and Marketing Company, and Valero Marketing and Supply Company (collectively, the Shippers). The issue presented on rehearing is whether the Commission should have specified the manner in which Calnev Pipe Line LLC (Calnev) and its affiliated pipeline, SFPP, L.P. (SFPP), would reflect the division of joint tariff revenue for purposes of determining refunds in an ongoing rate proceeding.

Background

2. On November 27, 2013, Calnev filed a tariff, to be effective January 1, 2014, to establish new joint rates and routing in conjunction with SFPP. The joint rates apply to movements from Watson or East Hynes, California, to McCarran International Airport or North Las Vegas, Nevada. SFPP's portion of the movement is from Watson or East Hynes, California, to Colton, California. Calnev's portion of the movement is from Colton, California, to McCarran International Airport or North Las Vegas, Nevada.

3. A group of shippers, including those seeking rehearing here, filed comments on Calnev's proposed tariff. The shippers stated that the SFPP portion of the joint rate had been challenged in the West Line rate proceedings in Docket Nos. IS08-390, IS11-444 and IS12-501 and were subject to refund. The shippers urged the Commission to make it clear that the revenues collected with respect to the SFPP portion of Calnev's proposed joint rate would remain subject to refund.

¹*Calnev Pipe Line LLC*, 145 FERC ¶ 61,295 (2013).

4. While the shippers did not protest the Calnev portion of the joint tariff, they requested that the Commission instruct Calnev as to the procedure it should follow in dividing revenues obtained through the joint tariff. The shippers contended that the appropriate division of these revenues is important in determining whether SFPP has over-collected its cost-of-service, and in calculating the appropriate refunds at the conclusion of the West Line rate proceedings.

5. On December 31, 2103, the Commission issued a letter order accepting Calnev's tariff to be effective January 1, 2014, subject to the understanding that whatever revenues the affiliates wish to allocate between themselves under the joint rate, this shall not impair an independent analysis in the SFPP West Line proceedings of what revenues should be imputed to SFPP for determining refunds there. While the Commission did not provide instructions concerning the division of revenues arising under the joint rate, the Commission stated that such division cannot be used to unreasonably diminish revenues to SFPP for purposes of computing refunds in the West Line case.

6. The Commission further stated that while the division of revenues between pipelines offering a joint rate is in their discretion, the fact that the companies are affiliated and the SFPP local rate is subject to refund, is a special factor that may require a separate imputation of a division of revenues for the purposes of the SFPP West Line proceedings. The Commission directed Calnev and SFPP to maintain records of all revenues under the joint rate to ensure a just and reasonable outcome of the SFPP West Line proceedings.

7. On January 29, 2013, the Shippers filed a request for clarification or, in the alternative, rehearing. On February 14, 2014 Calnev and SFPP filed a joint answer to the pleading of the Shippers.

The Shippers' Request for Clarification or, in the Alternative, Rehearing

8. The Shippers assert that the Commission's order fails to specify the manner in which Calnev and SFPP should reflect the division of the joint tariff revenue in their respective Form 6, Page 700. The Shippers request clarification that Calnev and SFPP should report in their respective Page 700s the actual revenue generated in connection with their respective facilities without giving effect to or application of the division of the joint tariff revenue. The Shippers contend that Calnev and SFPP should report in their respective Page 700 the revenue attributable to each entity as if the local rate for each entity was being charged. Absent such clarification, Shippers seek rehearing as failure to require such transparent revenue reporting by affiliates would permit the carriers to artificially manipulate reported data and engage in unreasonable cross-subsidization resulting in misleading reports contrary to Commission policy and the underlying purpose of Page 700.

9. The Shippers submit that the Commission order properly established internal protective measures for how these joint tariff revenues will be recorded to ensure a fair and reasonable accounting for refund purposes. However, the primary concern for the Shippers is that the Commission order fails to also clarify and make plain that, in addition to internal corporate recording requirements, the public reporting of these joint tariff revenues must be transparent and included in each carriers' respective Form 6, Page 700 without alteration or giving effect to the division of the joint tariff revenues constructed by the affiliated pipelines. The Shippers argue that Calnev's and SFPP's joint tariff revenue division must not be allowed to unreasonably diminish revenues reported on Page 700 for purposes of evaluating the reasonableness of rates and the actual rate of return on equity.

Answer of Calnev and SFPP

10. Calnev and SFPP assert that, not satisfied with the protection provided by the Commission order, the Shippers now ask the Commission to direct Calnev and SFPP to report their interstate revenues as if there were no joint rate in effect and no division of revenue under that joint rate. Calnev and SFPP contend that since such a direction is unnecessary for purposes of any refunds under the West Line rate case, the Shippers now assert a different concern, that is, unless Calnev and SFPP are so instructed, Page 700 in their respective FERC Form 6 reports will fail to be transparent, permitting "naked cross-subsidies," "artificial manipulation," and other implied mischief.

11. Calnev and SFPP assert that the Shippers' claims no longer have anything to do with the pending West Line rate case or refunds. SFPP has affirmed its duty to keep account of its revenues under the West Line rates that are under a refund obligation. Calnev and SFPP assert that neither the existence of the joint rate nor the division of revenue under that rate will affect SFPP's obligation or ability to pay refunds as to the West Line local rate to Colton. Calnev and SFPP state that where a joint rate is based upon a local rate that is subject to investigation and a refund obligation, the carriers participating in the joint rate are each required to keep account of the revenue attributable to the local rate so as to be able to pay any refunds that ultimately may be owed.² In line with the Commission's order, Calnev and SFPP will, as part of their "keep account" obligation under Section 340.1, maintain records to separately impute revenues to the West Line local rate to Colton and, if needed, determine and pay any refunds in the West Line proceeding. In fact, Calnev and SFPP state under the division of revenues, SFPP will receive a portion of the interstate joint revenue that exceeds the proportion that SFPP's local rate bears to the joint rate.

² (Citing, e.g., *Shell Pipe Line Corp., et al.*, 14 FERC ¶ 62,100 (1981); *Mid-Valley Pipe Line Co., et al.*, 16 FERC ¶ 62,175 (1981); *Enron Liquids Pipeline Co., et al.*, 52 FERC ¶ 62,118 (1990)).

12. Calnev and SFPP argue that should the Shippers at some date wish to challenge the justness and reasonableness of the joint rate, then the fact that the carriers have chosen to divide the interstate revenue generated by this joint rate in one manner or another will be of no significance at all to such challenge. Calnev and SFPP state it is established Commission policy that the entirety of the circumstances relevant to judging the interstate joint rate for the joint movement would be relevant in such a challenge, including the entirety of the interstate costs of the joint movement and the entirety of the interstate revenue, that is, all of the interstate revenue received by Calnev as the carrier that filed the joint rate and allocated to itself and SFPP, no matter how the carriers chose to divide that joint total revenue.³ Finally, Calnev and SFPP submit that if the Shippers chose to challenge the joint rate at issue here, then in such a proceeding the specific costs, volumes and revenues applicable to the joint rate and movement could be provided as a preliminary step permitting the shippers to refine their complaints.⁴

Discussion

13. In their comments to Calnev's joint tariff rate filing, the Shippers made two requests. The first request asked the Commission to hold that any revenues collected under the SFPP portion of the joint tariff is subject to refund in the ongoing West Line rate cases. The second request asked the Commission to instruct Calnev as to the procedure it should follow in dividing revenues obtained through the joint tariff between Calnev and SFPP. The Shippers stated that the appropriate division of revenues is important in determining whether SFPP has over-recovered its cost of service and is therefore charging unjust and unreasonable rates, and ultimately in calculating the appropriate refunds at the conclusion of the West Line rate proceedings.

14. While the Commission recognized that the division of revenues between pipelines offering a joint through rate is in their discretion, it nevertheless set forth procedures to ensure that SFPP would fulfill its refund obligation in the West Line rate proceedings, consistent with the request of the Shippers. The Commission directed both Calnev and SFPP to maintain records of all revenues under the joint rate to ensure a just and reasonable outcome of the SFPP West Line proceedings. The Commission stated that the allocation of revenues under the joint rate shall not impair an independent analysis in the SFPP West Line proceedings of what revenues should be imputed to SFPP for the purpose of determining refunds there. Finally, the Commission also held that the division of revenues arising under the joint rate cannot be used to unreasonably diminish revenues to SFPP for purposes of computing refunds as appropriate in its West Line rate case.

³ (Citing, *Big West Oil Co., v. Frontier Pipeline Co., et al.*, 119 FERC ¶ 61,249, at PP 19-22 (2007) (*Big West Oil*)).

⁴ (Citing, *ConocoPhillips Co., et al., v. SFPP, L.P.*, 137 FERC ¶ 61,005, at PP 31-33 (2011)).

15. On clarification and rehearing, the Shippers have set forth a new concern that was not discussed in their prior comments, that is, the manner in which Calnev and SFPP will report the joint tariff revenues on Form 6, Page 700. The Shippers' request unreasonably expands the scope of this proceeding beyond their original issue, that is, the ability of SFPP to meet its refund obligation in the ongoing West Line rate proceedings.

16. In their answer, Calnev and SFPP have stated that they are keeping account of their revenues for refund purposes as is their obligation under the order and Commission regulations. The Shippers have not explained how the protections provided in the Commission order do not adequately protect them with respect to SFPP's refund obligation in the West Line rate proceedings. The Shippers' request for further clarification does not appear to be related to refunds in the West Line rate proceedings and are based on unsubstantiated allegations of potential misdeeds on the part of Calnev and SFPP.

17. The Commission finds that the Shippers' argument that their ability to use Page 700 of Form 6 for monitoring the revenues and rate of return of Calnev and SFPP is irrelevant in this proceeding. The SFPP portion of the joint rate is already subject to refund in an ongoing proceeding. Moreover, the Shippers did not even protest the Calnev portion of the joint rate in this proceeding. Finally, should some future complaint against either the rates of Calnev or SFPP materialize, there are adequate protections under Commission policy to ensure the justness and reasonableness of the joint rate based on the aggregate circumstances of the joint rate and not on the individual circumstances of the local rate or the divisions of revenues between the carriers.⁵ Accordingly, the Shippers' request for clarification or, in the alternative, rehearing is denied.

The Commission orders:

The Shippers' request for clarification or, in the alternative, rehearing is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵*Big West Oil*, 119 FERC ¶ 61,249 at PP 19-22 (the Commission must judge the reasonableness of a joint rate as an aggregate rather than looking at the reasonableness of only some of the joint rate's parts).