

148 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Chaparral Pipeline Company, LLC

Docket No. IS14-591-000

ORDER ACCEPTING TARIFF FILING

(Issued July 31, 2014)

1. On July 1, 2014, Chaparral Pipeline Company, LLC (Chaparral) filed FERC Tariff No. 12.10.0, to be effective August 1, 2014. The proposed tariff amends language concerning receipt specifications and adds a penalty charge for out-of-specification liquid hydrocarbon products. The tariff also makes minor administrative changes on the tariff title page. For the reason discussed below, Chaparral's tariff is accepted, effective August 1, 2014.

Background

2. Chaparral proposes to amend the language under Item No. 5, Receipt Specifications, in order to clarify how Chaparral handles product that does not meet its specifications. The revised tariff provision provides that any off-specification product attributable to the shipper may be treated by Chaparral at the shipper's sole expense. Chaparral also proposes the right to collect its actual treating and handling charges plus an additional 104 cents per barrel (cpb) penalty charge.

3. FERC No. 12.10.0 also includes a minor change that is administrative or clean-up in nature. Chaparral states that on the title page of the proposed tariff, redundant language relative to the basis for the previous tariff filing is being eliminated, a tariff cross-reference is being updated, and the name of the tariff contact person is being revised to reflect a change in personnel.

Protest

4. ConocoPhillips Company (ConocoPhillips) filed a protest requesting that the Commission reject Chaparral's penalty fee filing. ConocoPhillips asserts that it has a substantial economic interest in the filing sufficient to afford it standing to protest because it pays Chaparral's tariff rates and charges through a commercial arrangement with a shipper on Chaparral. ConocoPhillips states that under the arrangement it would have to pay any penalty fee assessed pursuant to Item No. 5 of the tariff.

5. ConocoPhillips submits that Chaparral proposes to significantly and unreasonably revise Item No. 5 without providing any explanation or justification for its proposed changes. ConocoPhillips asserts that under Chaparral's proposal it would be able to recover both the treating and handling costs for off-specification products and a new 104 cpb penalty fee. ConocoPhillips asserts this represents a significant change to Chaparral's tariff, which does not include a penalty fee for off-specification volumes. ConocoPhillips argues that Chaparral did not establish that the proposed 104 cpb penalty fee for off-specification barrels is necessary and appropriate to address quality degradation issues on its system. ConocoPhillips contends that Chaparral does not state that it has experienced any problems with the quality of the product delivered to its system. Even assuming that Chaparral is experiencing quality degradation on its system, ConocoPhillips asserts that Chaparral has not shown that its currently available operational remedies are insufficient to address the issue.

6. ConocoPhillips contends that Chaparral did not justify or explain the highly-specific level of its 104 cpb penalty fee, which is between 61 and 96 percent of applicable transportation rates. ConocoPhillips asserts that the Commission has held that penalty fees are not intended to be a source of revenue for pipelines.¹ ConocoPhillips argues that the proposed tariff change provides a monetary incentive for Chaparral to transport barrels that do not meet its quality specifications because it has the discretion to accept barrels that do not meet specifications. ConocoPhillips contends that Chaparral's tariff does not establish that Chaparral will or shall reject shipments that do not meet its quality specifications; it only provides that shippers have an obligation to deliver to Chaparral product that meets its quality specifications.

7. ConocoPhillips contends that in an analogous case, Enbridge Pipelines (North Dakota) LLC (Enbridge) filed to revise its tariff to include new penalties for off-specification product transported on its system. However, Enbridge did not demonstrate that the proposed penalties were necessary or appropriate to address any quality degradation problems on its system. Accordingly, ConocoPhillips states that the Commission rejected Enbridge's proposed penalties.² ConocoPhillips submits the same rationale and holding apply to Chaparral's penalty fee filing.

Chaparral's Answer

8. Chaparral states that Conoco Phillips does not appear to challenge Chaparral's right to treat or dispose of off-spec product or to recover its actual treating and handling

¹ Citing, *e.g.*, *Tennessee Gas Pipeline Company*, 83 FERC ¶ 61,063, at 61,336 (1998).

² Citing, *Enbridge Pipelines (North Dakota) LLC*, 138 FERC ¶ 61,087, at PP 20-21 (2012).

costs, but instead focuses on the penalty charge, claiming that the penalty has not been shown to have any “lawful purpose.”³ Chaparral states its penalty provision is fully consistent with Commission precedent, where the Commission has made clear that pipelines are permitted to charge penalties “to deter conduct that could be detrimental to [the pipeline] and other shippers.”⁴

9. In response to ConocoPhillips’ claim that the proposed penalty is not justified because Chaparral has not shown that it “has experienced any problems with the quality of the product delivered to its system,” Chaparral states that, as noted above, penalties are intended to *deter* conduct, not remedy problems already being experienced. Chaparral states that, in any event, as explained in the affidavit of Mr. F. C. D’Anna attached to its answer, approximately 32 percent of the volumes delivered for transportation on Chaparral’s system in 2013 contained off-spec product (or approximately 12.7 million out of a total of approximately 40 million barrels). Chaparral states the volumes delivered at half of Chaparral’s 30 origin points (which includes 9 interstate origin points) contained levels of off-spec product above 38 percent. Chaparral continues that, at four origin points, the product injections contained between 70 and 98 percent off-spec product; and that at five origin points, 100 percent of the product injections failed to conform to Chaparral’s specifications. Chaparral states that these high levels of off-spec product deliveries demonstrate that shippers are not complying with its quality specifications.⁵ Mr. D’Anna further points out that Chaparral is providing flexibility to shippers who have produced off-spec product but have limited options to treat that product, and that if Chaparral did not provide such off-spec service to its shippers, their alternative to handling off-spec product could potentially be costly.⁶

10. Chaparral states the substantial amounts of off-spec volumes jeopardize the overall quality of the shippers whose product is commingled with the off-spec volumes, and also pose additional dangers besides quality degradation. For example, in April of 2013, Chaparral states testing revealed high levels of hydrogen sulfide on its pipeline.⁷

³ ConocoPhillips protest, p 2.

⁴ Chaparral cites *Colonial Pipeline Co.*, 98 FERC ¶ 61,082, at 61,249 (2002); *see also, Platte Pipe Line Co.*, 82 FERC ¶ 61,087 (1998) (approving penalty provision to deter shippers from nominating but not actually shipping barrels on the system).

⁵ Affidavit attached to Chaparral’s Answer at ¶ 5.

⁶ *Id.* at ¶ 3.

⁷ *Id.* at ¶ 6.

Chaparral states the Commission has recognized “the health and safety dangers that may result from crude with high amounts of hydrogen sulfide.”⁸

11. In addition to being poisonous to humans, Chaparral states hydrogen sulfide is highly corrosive and damaging to the integrity of pipelines and pump stations.⁹ Chaparral states that compliance with its product specifications is imperative: (1) to maintain product quality; (2) to protect the health and safety of its employees; and (3) to maintain the integrity and preservation of its pipeline infrastructure. Therefore, Chaparral states it is necessary for Chaparral to impose a penalty to address these documented ongoing off-spec delivery issues and to encourage shipper compliance with its product specification rules.

12. Chaparral states that although ConocoPhillips takes issue with the level of Chaparral’s proposed penalty of 104 cpb, many oil pipelines charge penalties for off-spec product at the same general level as that proposed by Chaparral here.¹⁰ In fact, as explained by Mr. D’Anna,¹¹ in establishing its penalty proposal, Chaparral states it undertook a comparative review and determined that its proposal was comparable to those of three other nearby pipelines, each of which imposes a \$1.00 penalty for delivery of off-spec product in addition to the actual cost of treating and handling the product.¹² Chaparral added four cents to the penalty in order to reflect the effects of inflation, consistent with the Commission’s 2014 indexing adjustment.

⁸ *Enbridge Pipelines (North Dakota), LLC*, 143 FERC ¶ 61,221, at P 20 (2013) (accepting tariff to add hydrogen sulfide specification “to ensure safe operation of its system and the health and safety of its employees.”).

⁹ Affidavit attached to Chaparral’s Answer at ¶ 6.

¹⁰ See *EnLink NGL Pipeline, LP*, Tariff No. 1.1.0 at Section 3(H), Docket No. IS14-299-000 (April 28, 2014) (100 cents per barrel off-spec penalty); *Ohio River Valley Pipeline, LLC*, Tariff No. 1.1.0 at Item 20, Docket No. IS14-286-000 (May 18, 2014) (same); *ONEOK Bakken Pipeline, L.L.C.*, Tariff No. 1.2.0 at Item 10, IS14-522-000 (May 30, 2014) (same); *Black Lakes Pipeline Company*, Tariff No. 79.3.0 at Rule 5, Docket No. IS14-117-000 (December 17, 2013) (same).

¹¹ Affidavit attached to Chaparral’s Answer at ¶ 7.

¹² See *DCP Sand Hills Interstate Pipeline, LLC* Tariff No. 1.1.0 at Item 10, Docket No. IS13-493-000 (July 2, 2013); *Lone Star NGL Pipeline LP*, Tariff No. 1.0.0 at Item 20, Docket No. IS13-596-000 (Sept. 30, 2013); *West Texas Pipeline Limited Partnership*, Tariff No. 58.0.0, Docket No. IS10-503-000 at Item 20 (July 22, 2010).

13. Chaparral argues that ConocoPhillips's speculation that the penalty provides an "incentive for Chaparral to transport barrels that do not meet its quality specifications," is completely speculative and unsupported. On the contrary, as explained in Mr. D'Anna's affidavit, Chaparral states the purpose of the provision is to deter shippers from delivering off-spec product. Chaparral states that while it conducts regular testing of the product transported on its system, it is not always possible to identify off-spec product before it has entered the common stream, and therefore the penalty is necessary as a deterrent to address the widespread noncompliance with Chaparral's quality specifications.

14. Further, Chaparral states it would never actively attract off-spec product as delivery of off-spec product by shippers can contaminate and devalue other shippers' product, which can harm the pipeline's reputation and ultimately its bottom line to the extent shippers choose not to use the pipeline. Chaparral states delivery of off-spec product can also cause serious operational issues for the pipeline, which can lead to extended downtimes and costly repairs, as well as jeopardize the safety of its pipeline employees and others. As explained in Mr. D'Anna's affidavit, Chaparral states that once off-spec product enters the pipeline, it is very difficult to contain, spreads in the system, and then converts the product of other shippers that does meet Chaparral's specifications into off-spec product. In addition, Chaparral states downstream end-use customers may be unable to receive the contaminated product, which causes transportation on its pipeline to slow or stall, thus requiring Chaparral to apply additional horsepower and processing in order to blend the off-spec product to balance the system and prevent further degradation. This in turn increases the pipeline's operating costs and expenses. Chaparral states off-spec product causes additional harmful long-term impacts, such as accelerated corrosion that leads to increased maintenance and repair costs, and reduces the pipeline's useful life.

Discussion

15. Although not apparent from its initial tariff filing, Chaparral has explained in detail in its answer to ConocoPhillips' protest that its proposed penalty charge is justified, as approximately 32 percent of Chaparral's total system volumes delivered in 2013 (12.7 million of 40 million barrels) contained off-spec product. In fact, as Chaparral states, at five points all product injected was out-of-specification. As stated by Chaparral in its answer, the off-spec products have contained, among other things, hydrogen sulfide which poses immediate health risks to pipeline employees, and has harmful long-term impacts on the pipeline infrastructure. In its answer, Chaparral also provides the rationale for the level of its proposed penalty charge, including citing several pipelines with comparable penalty charges.

16. The Commission concludes that there is sufficient justification to allow Chaparral to implement its proposed penalty charge to ensure safe operation of its system and the

health and safety of its employees, and that the level of the proposed penalty charge is acceptable.

The Commission orders:

Chaparral's FERC Tariff No. 12.10.0 is accepted, effective August 1, 2014.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.