

148 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Zydeco Pipeline Company LLC	Docket Nos. IS14-607-000 IS14-608-000 IS14-609-000 IS14-610-000
Shell Pipeline Company	Docket Nos. IS14-104-000 IS14-105-000 IS14-106-000

ORDER ACCEPTING AND SUSPENDING TARIFFS SUBJECT TO REFUND AND
CONDITIONS, ESTABLISHING HEARING AND TERMINATING PROCEEDINGS

(Issued August 14, 2014)

1. On July 16, 2014, as a result of the acquisition of certain facilities and assets of Shell Pipeline Company LP (Shell), Zydeco Pipeline Company LLC (Zydeco) filed three tariffs to adopt the rates of Shell and also filed a tariff to establish new non-contract rates for transportation service from Nederland, Texas to St. James, Clovelly, and Lake Charles, Louisiana. Zydeco requests that the tariffs be accepted effective July 16, 2014 on less than one day's notice. For the reasons discussed below, the Commission accepts and suspends the tariffs to be effective July 16, 2014, subject to refund and conditions and establishes a hearing to determine whether Zydeco's rates are just and reasonable, with determinations of standing consistent with those in the predecessor Shell proceedings. In addition, the ongoing hearing in the Shell proceedings, which was commenced prior to the acquisition of the certain Shell facilities and assets by Zydeco, is terminated.

Background

2. On December 10, 2013, Shell filed three related tariffs in Docket Nos. IS14-104-000, IS14-105-000 and IS14-106-000 to establish initial rates for transportation of petroleum from markets in Houston, Texas to markets in Louisiana as a result of the reversal of its Houma, Louisiana to Houston, Texas pipeline system (Ho-Ho System).

The filing was protested by four crude oil producers constituting the Liquids Shippers Group.¹

3. On January 9, 2014, the Commission issued an order accepting Shell's tariff subject to refund and established a hearing to determine whether Shell's initial rates were just and reasonable.² The Commission found that the Liquids Shippers Group had standing to protest the rates in Docket Nos. IS14-104-000 and IS14-105-000. The Commission also stated that based upon the pleadings submitted it was unclear whether the Liquids Shippers Group had standing to protest the rates for transportation from Erath, Louisiana in Docket No. IS14-106-000. Because a hearing was established to examine Shell's rates, the Commission directed the Administrative Law Judge (ALJ) to determine whether the Liquids Shippers Group had standing to protest the Erath rates.

4. On April 10, 2014, the ALJ issued a Partial Initial Decision finding that the Liquids Shippers Group had standing to protest the Erath rates in Docket No. IS14-106-000.³ The Partial Initial Decision is currently pending before the Commission on exceptions.

5. On May 28, 2014, in Docket No. IS14-425-000, Shell filed tariffs to increase the relevant rates in compliance with the Commission's annual indexing regulations in 18 C.F.R. § 342.3 (2014).

6. On July 15, 2014, in Docket No. IS14-601-000, Shell cancelled various tariffs as a result of Zydeco's acquiring certain facilities and assets of Shell, including the Ho-Ho System.

7. On July 16, 2014, Zydeco made four tariff filings related to its acquisition of the Ho-Ho-System. Zydeco requests an effective date of July 16, 2014, for the adoption tariffs so that the tariffs can be effective concurrent with Shell's cancellation filing. Zydeco states that in the three filings adopting Shell's tariffs it changed references from Shell to Zydeco and changed the name and contact information of the issuer. In Docket No. IS14-607-000, Zydeco filed FERC No. 6.0.0 adopting Shell's FERC No. S-158.1.0. FERC No. 6.0.0 reflects transportation rates from Houston, Texas to various points in

¹ The Liquids Shippers Group includes Anadarko Petroleum Corporation, ConocoPhillips Company, Marathon Oil Company and Pioneer Natural Resources USA Inc.

² *Shell Pipeline Co. LP*, 146 FERC ¶ 61,009 (2014).

³ *Shell Pipeline Co. LP*, 147 FERC ¶ 63,002 (2014).

Louisiana. In Docket No. IS14-608-000, Zydeco filed FERC No. 7.0.0 adopting Shell's FERC No. S-159.1.0. FERC No. 7.0.0 reflects transportation rates from Houston, Texas to various points in Texas and Louisiana. In Docket No. IS14-609-000, Zydeco filed FERC No. 8.0.0 adopting Shell's FERC No. 160.1.0. FERC No. 8.0.0 reflects transportation rates from Erath, Louisiana to various points in Louisiana. In Docket No. IS14-610-000, Zydeco filed FERC No. 9.0.0. FERC No. 9.0.0 establishes new non-contract rates for transportation from Nederland, Texas to St. James, Clovelly and Lake Charles, Louisiana. Zydeco requests an effective date of July 16, 2014, to notify its shippers of the availability of the recently-completed facilities to provide the proposed new service.

Interventions and Protests

8. Timely motions to intervene were filed by Anadarko Petroleum Corporation, ConocoPhillips Company, Marathon Oil Company and Pioneer Natural Resources USA Inc. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. The intervenors also filed a joint protest as the Liquids Shippers Group. The members of the Liquids Shippers Group each assert that they have a substantial economic interest in the tariffs to grant standing to protest because they have crude in locations positioned to utilize Zydeco's system either as a shipper on the system or as a supplier of crude to other shippers on the system.

9. The Liquids Shippers Group asserts that because the rates in three of the filings merely restate the rates previously filed by Shell that were set for hearing by the Commission, it incorporates its previous protest by reference. The Liquids Shippers Group previously protested Shell's rates on the grounds that the proposed rates on the Ho-Ho System were substantially higher than the rates it charged for service on the same pipeline facilities in the opposite direction. Similarly, the Liquids Shippers Group protests the proposed initial rates from Nederland on the Ho-Ho System because the rates are substantially higher than the rates charged for service in the opposite direction. The Liquids Shippers Group also asserts that the rates Zydeco proposed for the Nederland origin point are unjust and unreasonable even when compared to the other rates Zydeco proposed. The Liquids Shippers Group asserts there is a nearly 40 cents per barrel disparity in rates for the same service paths. Accordingly, the Liquids Shippers Group contends the Commission should accept and suspend the Nederland rates subject to refund and conditions. In addition, it asserts the Commission should require Zydeco to provide cost and revenue data supporting the proposed rates in accordance with section 342.2(b) of the Commission's regulations.

10. The Liquids Shippers Group also asserts that the filings here should be consolidated with the ongoing hearing on Shell's now cancelled tariffs in Docket

No. IS14-104-000, IS14-105-000 and IS14-106-000. The Liquids Shippers Group contends the Zydeco filings involve the same rates (with the exception of the new Nederland rates) and the same Ho-Ho-System facilities (which include the Nederland point) that are the subject of the Shell hearing. The Liquids Shippers Group argues that as there are common area of facts and law, greater administrative efficiency will result from consolidation of these proceedings.

Answers of Shell and Zydeco

11. Shell filed a motion for dismissal of current investigation and an answer to the motion to consolidate of the Liquids Shippers Group. Shell urges the Commission to dismiss the current investigation on rates in Docket Nos. IS14-104-000, IS14-105-000, and IS14-106-000 because none of Liquids Shippers Group were shippers in any months of the locked-in period from December 2013 through June 2014. Therefore, as the only protesting parties to the tariffs, they would not be entitled to refunds, which is the only remaining issue in the ongoing hearing proceeding. Shell adds that to the extent the Commission does not dismiss the ongoing investigation the proceedings should not be consolidated because they lack common issues of law and fact. Shell asserts Shell and Zydeco are separately organized companies with different ownership structures. Shell asserts that Zydeco did not acquire all of Shell's facilities therefore the allocation of costs may not be the same.

12. Zydeco filed a response to the protest and motion to consolidate of the Liquids Shippers Group. Zydeco echoes Shell's comments that the Shell and Zydeco proceedings should not be consolidated because of a lack of common issues of law and fact. Zydeco also asserts that the Commission should dismiss the protest of the Liquids Shippers Group. Zydeco contends that the four entities comprising the Liquids Shippers Group that filed the protest are not shippers using the challenged tariffs, nor have they taken any steps to become shippers or even alleged a direct interest in the challenged tariff as required by the Commission's regulations. Zydeco contends their affidavits only allege that they are positioned to become shippers in the future or become suppliers of others that may use Shell's jurisdictional pipeline system - allegations that Zydeco asserts fall short of having a substantial economic interest, which is the requisite standard to have standing to protest the specific tariffs at issue. Zydeco submits that no actual shippers protested, and as the Liquids Shippers Group members are not actual shippers with a substantial economic interest, the Commission should dismiss their protest. Zydeco submits that the members of the Liquids Shippers Group do not meet the threshold for standing as required by the Commission's recent decision in *Buckeye Linden Pipe Line Company LLC*.⁴ Zydeco asserts that as the Liquids Shippers Group never became shippers under Shell's tariffs, the Commission should find that these would-be protesters must meet a higher standard than being potential suppliers to shippers on Zydeco's

⁴ 147 FERC ¶ 61,249 (2014) (*Buckeye Linden*).

system. Zydeco asserts the Liquids Shippers Group has not definitively stated that they will become shippers (even if delayed), or that they will supply shippers and bear the transportation costs being litigated.

Discussion

13. In related filings, Zydeco adopted the tariffs of its predecessor, Shell, reflecting transportation rates on the Ho-Ho System between Texas and Louisiana. Zydeco has also filed a tariff establishing initial rates for transportation between Nederland, Texas and various points in Louisiana. The Liquids Shippers Group protests Zydeco's rates on the same grounds that the Group protested Shell's prior rates. The Liquids Shippers Group also protests the new initial rate for crude barrels originating at Nederland, Texas as unjust and unreasonable. Shell requests the Commission to terminate the investigation into its rates because there is no refund obligation that could arise during the locked-in period the Shell rates were in effect. Shell and Zydeco also oppose consolidation of the Shell hearing with any hearing into the proposed Zydeco rates. In sum, Zydeco asserts its rates should be accepted because the Liquids Shippers Group does not have standing to protest the rates.

14. The primary issue to be addressed is whether the Liquids Shipper Group has standing to protest Zydeco's rates. With respect to Zydeco's rates from the Erath, Louisiana origin point in Docket No. IS14-609-000, standing will be based on the outcome of the Partial Initial Decision in Docket No. IS14-106-000 currently pending on exceptions before the Commission. Zydeco is adopting the prior Shell rates from the Erath origin point, therefore, whether the Liquids Shippers Group has standing to protest those rates would equally apply to Zydeco's Erath rates. The Commission does find, however, that the Liquids Shippers Group has standing to protest the new Zydeco initial rates from Nederland, Texas to points in Louisiana in Docket No. IS14-610-000 because consistent with the Commission's findings in the earlier Shell proceedings, the members have a substantial economic interest in the tariff. The Liquids Shipper Group affirms that its members are potential shippers or suppliers to shippers on the Zydeco system and that two of its members have production behind the Nederland origin point. It is unnecessary for these entities to agree to ship at this juncture; so long as they are situated to become shippers or suppliers on the system, their substantial economic interest in the Zydeco rates is sufficient to confer standing under the Commission's precedent.

15. Pursuant to section 342.2(b) of the Commission's regulations, Zydeco justified its initial rates for the Nederland origin point by filing an affidavit stating that at least one non-affiliated person intends to use the service in question at the rates proposed. However, because the Liquids Shippers Group filed a valid protest to the initial rate Part 346 of the Commission's regulations requires Zydeco to file cost, revenue and throughput data supporting the rate. Accordingly, we direct Zydeco to file its supporting information within 30 days of the date of this order.

16. The Commission also finds that the Liquids Shippers Group has standing to protest the rates in Docket Nos. IS14-607-000 and IS14-608-000. The Commission already determined the Liquids Shippers Group has standing with respect to the predecessor Shell rates for the like movements in the parallel Shell dockets, and adopts that analysis here; there is no reason that decision should be changed. Zydeco is attempting to re-litigate the standing issue by arguing that the Liquids Shippers Group did not ship on the Shell system during the brief period the Shell rates were effective, and therefore cannot have a substantial economic interest in the rates. In addition, Zydeco argues that the Commission's *Buckeye Linden* decision, which issued after the rates in Shell were set for hearing, refined the standards for determining standing and that the Liquids Shippers Group does not meet the refined standard as understood by Zydeco. The Commission finds, however, that Zydeco does not correctly apply the substantial economic interest test for determining standing to protest. The *Buckeye Linden* case is not on point here, because in *Buckeye Linden* the potential protester, Motiva, owned a storage terminal, could not be a shipper on the pipeline, and "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."⁵ The determination of standing to protest in this proceeding is more analogous to the situation presented in *Enbridge Pipelines (Southern Lights) LLC* where arguments were made that the potential protesters did not have standing because they did not ship on the pipeline for the six months of its operation.⁶ The Commission determined, among other things, that there is no requirement that a future shipper's plan to ship must be imminent so long as there is an intention and ability to be a future shipper at reasonable rates. The Commission finds that the Liquids Shippers Group meets this standard here and should not be held to a higher standard. Zydeco is an entity that is essentially succeeding to Shell's position in the prior litigation, where the standing issue was already determined, and where the Commission's order on the partial initial decision there, will clarify the last element of standing at issue for Zydeco as well.

17. The Commission grants Shell's request to terminate the hearing on its rates in Docket Nos. IS14-104-000, IS14-105-000, and IS14-106-000. Shell's rates for service on its Ho-Ho System were for a locked-in period from December 2013 through June 2014. The members of the Liquids Shippers Group were not shippers on the system during those months and are therefore not eligible for any refunds. Since no other protests to Shell's rates were filed, and the only remaining issue in the hearing would be the level of refunds, there is no reason to continue the proceeding. The justness and reasonableness of Zydeco's rates, however, will be addressed in the hearing established by this order, to which the Liquids Shippers Group has standing as determined under this

⁵147 FERC ¶ 61,249, at P 11 (2014).

⁶ *Enbridge Pipelines (Southern Lights) LLC*, 134 FERC ¶ 61,067 (2011).

order. As a result of the termination on the proceeding on Shell's rates, the motion to consolidate of the Liquids Shippers Group is therefore rendered moot, but they shall have the same level of standing to contest the Zydeco rates in the captioned Zydeco dockets as they had in the Shell dockets.

18. Based upon a review of the filings, the Commission finds that Zydeco's rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act (ICA), the Commission accepts and suspends FERC Tariff Nos. 6.0.0, 7.0.0, 8.0.0 and 9.0.0, to be effective July 16, 2014, on one day's notice, 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 ICA, particularly section 15(7), Zydeco's FERC Tariff Nos. 6.0.0, 7.0.0, 8.0.0 and 9.0.0, are accepted and suspended, to be effective July 16, 2014, subject to refund, and the outcome of a hearing.

(B) Pursuant to the authority contained in the ICA, particularly sections 15(1) and 15(7), and the Commission's regulations, a hearing is established to determine whether Zydeco's rates in the captioned dockets are just and reasonable.

(C) Within 30 days of the date of this order, Zydeco is directed to file cost, revenue, and throughput data required by Part 346 of the Commission's regulations to support the rates in Docket No. IS14-610-000.

(D) The hearing in Docket Nos. IS14-104-000, IS14-105-000 and IS14-106-000 is terminated.

(E) The Liquid Shippers Group's standing to protest the rates in Docket No. IS14-609-000 will be based on the outcome of the Partial Initial Decision in Docket No. IS14-106-000.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.