

152 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Chaparral Pipeline Company, LLC	Docket Nos. IS15-528-000
Front Range Pipeline LLC	IS15-529-000
Texas Express Pipeline LLC	IS15-530-000
Seminole Pipeline Company LLC	IS15-531-000
Mid-America Pipeline Company, LLC	IS15-532-000
Enterprise TE Products Pipeline Company LLC	IS15-533-000
Dixie Pipeline Company LLC	IS15-534-000
Dixie Pipeline Company LLC	IS15-535-000
Dixie Pipeline Company LLC	IS15-536-000

ORDER ACCEPTING TARIFFS, DENYING SPECIAL PERMISSION
AND DIRECTING REFUNDS

(Issued July 24, 2015)

1. On June 24, 2015, the above-captioned pipelines filed tariffs to be effective July 1, 2015, on short notice, in which they proposed to increase their rates to the ceiling level authorized by Commission's oil pipeline index. For the reasons discussed below, the Commission accepts the tariffs to be effective July 25, 2015, denies the request to allow the tariffs to go into effect on short notice, and orders refunds.

Background

2. The above-captioned pipelines filed tariffs to index their existing ceiling levels pursuant to the authorization set forth in 18 CFR § 342.3. The pipelines multiplied their July 1, 2014, through June 30, 2015, base ceiling levels by positive 1.045829 to compute the new ceiling levels for the July 1, 2015, through June 30, 2016 index year, in

accordance with 18 CFR § 342.3(d).¹ The pipelines state that these tariffs are being filed in lieu of tariffs that were filed on May 28 or 29, 2015, to (1) increase the existing ceiling rates and underlying transportation rates in their tariffs and (2) increase the penalty fee applicable to off-spec products delivered into their systems. The pipelines state that their prior tariffs were either withdrawn in light of protests or were rejected by a delegated letter order.²

3. Pursuant to 18 CFR § 341.14 of the Commission's regulation, the pipelines request special permission for a waiver of the notice requirement under section 6(3) of the Interstate Commerce Act (ICA), to file their tariffs on six (6) days' notice, to be effective July 1, 2015. The pipelines submit that good cause exists for granting such waiver because the index rate adjustments proposed in the instant tariffs are identical to the index rate adjustments proposed in the prior tariffs and those proposed adjustments were not protested by any party. The pipelines assert that the indexation changes contained in their tariffs were originally filed on a timely basis and adequately supported. The pipelines state the original filings were made on May 28 or 29, 2015, giving the Commission, shippers and other interested persons more than 30 days' notice. Therefore, the pipelines submit that no shipper should be harmed by the filing of the instant tariffs on short notice. The pipelines acknowledge that their tariff publications will be conditionally accepted subject to refund pending a thirty (30) day review period.

Discussion

4. Section 341.14(a) of the Commission's regulations states, in pertinent part:

Applications for waiver of the notice and tariff requirements of section 6(3) of the Interstate Commerce Act must be filed by the carrier concurrently with the tariff publication being proposed. The letter of transmittal must identify the filing as requesting a waiver under section 6(3) of the Interstate Commerce Act. The application must state in detail any unusual circumstance or emergency situation that supports the requested waiver.

Section 341.14(c) further states that "[t]he special permission requested will be deemed automatically granted at the end of the full 30-day notice period absent an order denying such request."

¹ *Citing*, Notice of Annual Change in the Producer Price Index for Finished Goods, 151 FERC ¶ 61,136 (2015).

² *See Enterprise TE Products Pipeline Company, et al.*, Docket No. IS15-346-000, *et al.*, (June 23, 2015) (delegated letter order), rejecting the tariff filings as patently deficient for failing to provide adequate explanatory support in their transmittal letters.

5. The Commission denies the request of the pipelines for special permission to allow their tariffs to take effect July 1, 2015, on short notice. The pipelines have asserted that good cause exists to allow the short notice based on their prior filings and the lack of protests. The pipelines stated that they filed the instant tariffs because the prior tariffs were rejected by delegated letter as unsupported or withdrawn voluntarily in light of the rejection. The Commission finds this situation does not constitute an unusual circumstance or an emergency situation that warrants allowing the instant tariffs to go into effect on short-notice.

6. Furthermore, we find it important to explain why these previous filings that were rejected or withdrawn do not form the basis for unusual circumstance or an emergency situation. First, the pipelines included a penalty fee change in their annual index filings. Simply put, penalty changes are *not* part of the annual index adjustment, which applies only to transportation rates, not penalty charges. Any future changes to a pipeline's penalties should be made in a separate filing and not as part of an annual index adjustment filing.³

7. Second, for both the rejected filings and the withdrawn filings, there was little explanation for the proposed penalty increases other than to "account for the impact of inflation over the past year" and to "ensure that the penalty charge continues to serve as an effective deterrent against shippers delivering off-spec product." For the filings that were protested and withdrawn, the pipelines only attempted to explain fully the reasons for the penalty increases in their answers to the protests, and they thus suffered the same patent deficiency as the filings that were rejected. The burden of proof to support a rate or tariff change is on the pipeline and the Commission expects pipelines to provide sufficient explanatory information to meet that burden of proof in their transmittal letters rather than in their answers. The Commission has admonished pipelines for not providing sufficient explanation and support for tariff changes recently⁴ and reiterates here that failure to comply with these directives may result in the Commission rejecting such filings as patently deficient.

8. In the absence of any unusual circumstance or emergency situation, special permission to allow the tariffs to go into effect on short notice is denied. The tariffs will be permitted to go into effect July 25, 2015. The pipelines shall provide refunds to their shippers in accordance with sections 340.1 and 341.14(b) of the Commission's regulations.

³ For future index filings, the inclusion of tariff changes other than computation of the new ceiling levels for the upcoming year is strongly discouraged.

⁴ See, e.g., *Mars Oil Pipeline Company*, 150 FERC ¶ 61,148, at P 7 & n.7 (2015) and *Magellan Pipeline Company, L.P.*, 149 FERC ¶ 61,222, at P 27 & n.6 (2014).

The Commission orders:

(A) Chaparral's FERC Tariff No. 12.12.0 is accepted, to be effective July 25, 2015, subject to refund.

(B) Front Range's FERC Tariff No. 1.6.0 is accepted, to be effective July 25, 2015, subject to refund.

(C) Texas Express' FERC Tariff No. 1.6.0 is accepted, to be effective, July 25, 2015, subject to refund.

(D) Seminole's FERC Tariff No. 2.9.0 is accepted, to be effective, July 25, 2015, subject to refund.

(E) Mid-America's FERC Tariff No. 82.12.0 is accepted to be effective, July 25, 2015, subject to refund.

(F) Enterprise TE Products' FERC Tariff No. 59.9.0 is accepted, to be effective, July 25, 2015, subject to refund.

(G) Dixie's FERC Tariff Nos. 6.11.0, 5.13.0, and 4.8.0 are accepted, to be effective, July 25, 2015, subject to refund.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.