

153 FERC ¶ 61,119  
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.

Buckeye Pipe Line Company, L.P.

Docket No. IS16-3-000

ORDER ACCEPTING AND SUSPENDING TARIFF, SUBJECT TO REFUND, AND  
ESTABLISHING HEARING PROCEDURES

(Issued October 30, 2015)

1. On October 1, 2015, Buckeye Pipe Line Company, L.P. (Buckeye) filed FERC Tariff No. 436.5.0, Rules and Regulations (Tariff), cancelling FERC Tariff No. 436.4.0, to be effective November 1, 2015. Buckeye proposes to modify its Product Loss Assessment Policy contained in Item No. 45 of the Tariff and increase the product loss allocation assessment charge (PLAA) from 5.5 to 8.7 cents per barrel. For the reasons discussed below, the Commission will set the matter for hearing in order to adjudicate the issues raised by the protests.

**Background**

2. Buckeye operates common-carrier interstate pipeline systems located in Connecticut, Illinois, Indiana, Massachusetts, Michigan, New Jersey, New York, Ohio, and Pennsylvania. Buckeye's pipelines transport refined petroleum products including gasoline, diesel, jet fuel, heating oil and kerosene from major supply sources to terminals and airports located within end-use markets.

3. Buckeye filed the Tariff to update the reference to the Product Loss Assessment Policy contained in Item No. 45 (Gauging, Metering, Testing and Deductions) of its rules and regulations tariff. The Product Loss Assessment Policy is set forth in full in Section 5 of the Shipper Information Notebook, which is available online.<sup>1</sup>

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<sup>1</sup> <http://www.buckeye.com/Portals/0/ShipperBook/Section%205%20-%20Accounting%20Procedures%209-1-15.pdf>.

4. Buckeye issued a new version of the Product Loss Assessment Policy in order to (1) increase the PLAA from 5.5 cents per barrel to 8.7 cents per barrel, and (2) change the price basis on which it settles with shippers for losses and/or downgrades of premium gasoline that occur in the normal course of operations, by paying shippers for losses of premium gasoline at the prevailing price for regular gasoline. Buckeye states that the PLAA is applied to all long-haul volumes shipped on Buckeye's pipeline systems, and is used to offset the costs that Buckeye incurs associated with (i) product downgrades, (ii) the disposition of transmix, and (iii) system-wide volumetric losses. Collectively, Buckeye refers to the costs incurred as a result of these three factors as "settlement costs." Buckeye incurs settlement costs in order to keep its shippers financially whole for any product lost while in Buckeye's custody.

### **Protest**

5. On October 16, 2015, Delta Air Lines, Inc. (Delta); JetBlue Airways Corporation (JetBlue); United Air Lines, Inc. (United); and UPS Fuel Services, Inc. (UFS) and UPSCO (collectively, Airlines or Joint Protesters) filed a protest. Airlines state that Buckeye has failed to provide sufficient cost, revenue, and throughput data to justify the increase in its PLAA charge. Buckeye provides only summary cost information to support its filing, claiming incremental increases in Settlement Costs of \$9,985,126 while providing no support for these numbers.

6. Airlines argue Buckeye claims that the pricing terms in its new transmix contracts are "much less favorable" than those in its expiring contracts. Airlines state Buckeye does not quantify the price difference between its old and new contracts or provide any details about the services covered by those contracts. Also, Airlines claim Buckeye has not provided any of the contracts, identified the parties with which it is contracting, or indicated whether those parties are affiliated with Buckeye. Airlines state Buckeye has not provided a high-level summary of the cost increase caused by these new contracts—it only reports "net" incremental costs. With this limited information, it is impossible to evaluate Buckeye's claimed cost increases, making it impossible to determine whether the PLAA increase is just and reasonable.

7. Similarly, Buckeye does not quantify reduced Settlement Costs it claims will result from eliminating the costs associated with losses and/or downgrades of premium gasoline from the PLAA calculation. Buckeye states that the spread between regular and premium gasoline has increased significantly over the past 5 months, from an average of \$8 to over \$20 per barrel, but does not provide any further detail. Buckeye does not indicate the volume of losses for which it paid, does not provide the specific prices it paid for losses during the past twelve months, and does not provide an aggregate total of what it paid for premium downgrades over the July 1, 2014 through June 30, 2015 period.

8. Airlines states that a PLAA of 8.7 cents per barrel, as Buckeye proposes, is significant when compared to tariff rates for certain movements on Buckeye. For

instance, the incentive rate to Newark contained in Tariff No. 440.6.0, filed the same date as the proposed PLAA increase, is only 12.62 cents per barrel. Airlines state that for movements under this tariff, the PLAA would represent nearly half the total cost of transportation. Therefore, Airlines state that allowing Buckeye to increase the PLAA will only exacerbate its reported over-recovery, and would not be just and reasonable.

9. Airlines state that Buckeye has not justified its imposition of increases in the PLAA charge on a system-wide basis, rather than only on the movements driving the claimed cost increases. Airlines claim it is important to note that it is not clear from Buckeye's filing to which volumes the PLAA will apply. The Airlines acknowledge that the charge is currently applied to all volumes shipped on Buckeye's system, and that the PLAA will likely continue to be imposed on this basis. However, Airlines assert that Buckeye does not provide any information on the application of the PLAA, instead referring to the policy in Buckeye's Shipper Information Notebook.

10. On October 16, 2015, PBF Holding Company LLC (PBF) filed a protest. PBF states that Buckeye provides only broad, aggregate cost figures with no associated breakdown, sources, or other details. PBF states the cost figures provided in the transmittal letter are not reported in its Form No. 6 or reported elsewhere. PBF also states that Buckeye provides no information regarding its new transmix disposition contracts and does not explain how the pricing terms are less favorable than those in previous contracts or any breakdown or detail to support the total baseline "Settlement Costs" of \$17,008,068. PBF states Buckeye represents that those costs fall into three categories: (1) product downgrades, (2) disposition of transmix, and (3) volumetric losses. However, PBF states Buckeye provides no calculation supporting the total amount of Settlement Costs and contains no allocation of those costs among the three cost categories identified above.

11. PBF believes that the lack of justification for the proposed increase in Buckeye's PLAA charge is aggravated by the fact that Buckeye has recently increased the PLAA charge from 2.8 cents to 5.5 cents per barrel, effective September 5, 2015. Thus, Buckeye is proposing to increase its PLAA charge in one year by a total of more than 200 percent. An increase of this magnitude should not be allowed without a detailed, verifiable cost justification.

12. Airlines and PBF request that the Commission reject Buckeye's proposed Tariff filing. If the Tariff filing is not rejected, the proposed increase in the PLAA charge should be made subject to refund and an investigation and hearing should be ordered to determine whether the proposed PLAA charge is just and reasonable.

### **Buckeye's Answer**

13. On August 24, 2015, Buckeye filed an answer to the Airlines and PBF protests. Buckeye states that its proposed PLAA increase of 3.2 cents per barrel is supported by

ample cost evidence. Buckeye states that a significant portion of its settlement costs are comprised of the costs associated with the disposal of transmix that is generated in the course of transportation on its systems or received from connecting carriers. Buckeye states its contracts with transmix processors for the disposition of transmix are expiring, and the new transmix disposition contracts have pricing terms that are much less favorable than those of the previous contracts, significantly increasing the transmix disposal component of Buckeye's settlement costs.

14. Buckeye states that Protests may not properly challenge Buckeye's calculation of the PLAA, or any adjustments thereto, on a total company basis. Buckeye states it has applied a PLAA to all long-haul barrels transported on its pipeline systems since 2009 and since its inception, the PLAA has been calculated on a total-company basis, not on a line-specific, system-specific, or product-specific basis. Thus, Buckeye states its practice of calculating its PLAA charge on a total-company basis is not a "new" practice proposed by the Tariff.

### **Discussion**

15. The Commission has reviewed Buckeye's proposed tariff revisions in light of the Airlines and PBF protests and Buckeye's answer to the Airlines and PBF protests. Buckeye has not proposed to change its existing total-company basis for calculating PLAA; therefore challenges to this policy should be raised in the form of a complaint proceeding and not a protest to the Tariff. Buckeye's proposal to increase the existing PLAA charge has not, however, been demonstrated to be just and reasonable. For example, the proposal to reimburse premium gasoline shippers the value of regular gasoline, as well as the verification of increased costs, and how to reasonably allocate them, should be examined at hearing, as well as all other relevant issues raised by the filing, except as specifically excluded above as more properly made in a complaint. The Commission will therefore accept and suspend the Tariff, subject to refund, effective November 1, 2015, and set the matter for an evidentiary hearing to determine the justness and reasonableness of the proposed changes.

16. While we are setting the matters in Docket No. IS16-3-000 for an evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) FERC Tariff No. 436.5.0 is accepted and suspended, subject to refund, effective November 1, 2015.

(B) An evidentiary hearing will commence to adjudicate the issues raised by the protests of the Airlines and PBF, as discussed in the body of the order.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a limited evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and an evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.