

156 FERC ¶ 61,232
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Seaway Crude Pipeline Company LLC

Docket No. IS16-661-000

ORDER ACCEPTING TARIFF, SUBJECT TO CONDITIONS

(Issued September 28, 2016)

1. On August 29, 2016, Seaway Crude Pipeline Company LLC (Seaway) filed FERC Tariff No. 2.13.0, to be effective September 1, 2016. Seaway proposes to reduce its uncommitted rates contained in Item No. 30 of the Tariff. For the reasons discussed below, the Commission will accept the tariff subject to conditions, effective September 1, 2016, and directs Seaway to make revised tariff filings and refunds as discussed below.

Background

2. Seaway operates a common carrier pipeline that provides interstate transportation of crude oil from its origin at Cushing, Oklahoma, to delivery points on the U.S. Gulf Coast. Prior to 2012, Seaway transported crude oil in a northbound direction from the Gulf Coast to Cushing. In 2012, Seaway reversed the pipeline to provide its current southbound service from Cushing to the U.S. Gulf Coast.

3. On April 13, 2012, Seaway filed FERC Tariff No. 2.0.0 in Docket No. IS12-226-000, in order to establish initial rates for the new southbound service. On May 11, 2012, the Commission accepted and suspended Seaway's tariff, subject to refund and hearing.¹ After an Initial Decision in the case, followed by a Commission remand and a subsequent Initial Decision, the Commission issued its order concerning Seaway's uncommitted rates on February 1, 2016.²

¹ *Seaway Crude Pipeline Company LLC*, 139 FERC ¶ 61,109 (2012).

² *Seaway Crude Pipeline Company LLC*, Opinion No. 546, 154 FERC ¶ 61,070 (2016).

4. Seaway submitted its compliance filing on March 17, 2016, calculating uncommitted rates consistent with the rulings in Opinion No. 546. Specifically, Seaway calculated 2013 ceiling rates for the post-expansion period (effective January 2013) of \$1.52/barrel for light crude and \$1.7882/barrel for heavy crude. Seaway then applied the FERC's index for the July 2014 through June 2015 period of 1.038858 to its 2013 ceiling rates, to develop the 2014 ceiling rates. This calculation resulted in 2014 ceiling rates of \$1.5791/barrel for light shipments and \$1.8577/barrel for heavy shipments for the July 2014 through June 2015 period. Next, Seaway applied the FERC's index for the July 2015 through June 2016 period of 1.045829 to the 2014 ceiling rates, to develop the 2015 ceiling rates. This calculation resulted in 2015 ceiling rates of \$1.6515/barrel for light crude shipments and \$1.9428/barrel for heavy crude shipments. No comments or protests were received regarding the compliance filing. On August 17, 2016, the Commission accepted Seaway's compliance filing, noting that it "implemented the Commission's Order [in Opinion No. 546]."³

Protest

5. On September 13, 2016, the Liquids Shippers Group⁴ (LSG) and the Canadian Association of Petroleum Producers (CAPP) each filed a protest. In the protests, both LSG and CAPP acknowledge that Seaway first calculated ceiling rates for the pre-expansion period in 2012 and for the post-expansion period beginning in 2013 in its compliance filing. Seaway then made two upward adjustments to the post-expansion 2013 ceiling rates, to reflect the FERC's positive index in 2014 and 2015. However, argue the protestors, Seaway failed to implement FERC's published index for 2016.

6. On May 19, 2016, two months after Seaway made its compliance filing, the FERC published the currently effective index to be used for calculating the 2016 ceiling rates (the ceiling rates for the period July 2016 through June 2017). The FERC's current index is 0.979865. Under the current index, oil pipelines' 2016 ceiling rates are 2.0135 percent lower than their 2015 ceiling rates. The Protestors argue that Seaway failed to implement FERC's 2016 negative index and therefore the proposed uncommitted rates exceed the 2016 ceiling level and are unjust and unreasonable.

³ Seaway Crude Pipeline Company LLC, Acceptance of March 17, 2016 Compliance Filing, Docket No. IS12-226-000, *et al.* (August 17, 2016) (August 17 Order).

⁴ For the purpose of this filing, the Liquids Shippers Group includes Anadarko Petroleum Corporation, Apache Corporation, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Encana Marketing (USA) Inc., and Fieldwood Energy LLC.

Seaway's Answer

7. On September 19, 2016, Seaway filed an answer to the LSG and CAPP protests. Seaway states the LSG and CAPP protests ignore that Seaway is simply implementing the rates that were submitted to the Commission in the March 17 compliance filing and that were approved by the Commission in the August 17 Order. Seaway's March 17 compliance filing calculated an uncommitted rate of \$1.6515 per barrel for light crude and an uncommitted rate of \$1.9428 per barrel for heavy crude pursuant to the Commission's ruling in Opinion No. 546. The Commission accepted those rates in the August 17 Order. Therefore, argues Seaway, the protests submitted by LSG and the CAPP represent a collateral attack on the August 17 Order.

Discussion

8. The Commission has reviewed Seaway's proposed tariff rates in light of the LSG and CAPP protests and Seaway's answer to the LSG and CAPP protests and finds that the Seaway has not reduced its 2015 ceiling rates by 2.0135 percent to reflect the FERC's 2016 index in the proposed tariff. The Commission's acceptance of Seaway's compliance filing in the August 17 Order does not relieve Seaway of its obligation to file rates that are lawful under the FERC's indexing regulations. FERC's indexing regulations are backwards-looking for both litigated rates and initial rates, such as those on Seaway. Section 342.3(d)(5) of the FERC's regulations makes clear that when a pipeline files a rate that is later found to be excessive, "the ceiling level based on [the excessive] rate must be recomputed" to reflect the lower just and reasonable rate that resulted from the litigation.⁵ The Commission finds that Seaway failed to properly derive its ceiling level for 2016 by the FERC index filing deadline of July 1, 2016.⁶ Therefore the Commission will accept FERC Tariff No 2.13.0, subject to Seaway properly implementing the 2016 index as of July 1, 2016 and providing refunds of any over-recovery from that date.

The Commission orders:

(A) FERC Tariff No. 2.13.0 is accepted effective September 1, 2016, subject to the condition that it be refiled within 30 days of this order, to reflect the 2016 index adjustment.

⁵ 18 C.F.R. § 342.3(d)(5) (2016).

⁶ 18 C.F.R. § 342.3(c) (2016).

(B) Seaway is also directed to refile its uncommitted rates within 30 days of this order to reflect the FERC annual index adjustment as of the index year beginning July 1, 2016.

(C) Seaway is directed to refund, consistent with the Commission's regulations, any over-recovery arising from the difference between the charged rate and the appropriate rate reflecting the 2016 index as of July 1, 2016, in addition to any refunds reflecting Opinion No. 546 and Seaway's subsequent compliance filing, and to provide a report of said refunds to the Commission within 60 days of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.