106 FERC ¶ 61, 338
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Chevron Pipe Line Company Docket No. IS04-219-000

ORDER ACCEPTING AND SUSPENDING TARIFF AND REFERRING PROCEEDING TO DISPUTE RESOLUTION SERVICE

(Issued March 31, 2004)

1. On March 1, 2004, Chevron Pipe Line Company (Chevron) filed FERC Tariff No. 828 canceling FERC Tariff No. 819 and Supplement No. 1 to FERC Tariff No. 819.[1] Chevron states that it filed the tariff to be effective April 1, 2004, covering the movement of crude petroleum into its Empire Terminal in Plaquemines Parish, Louisiana, to make explicit the requirement that crude petroleum tendered under this tariff must be sweet crude, i.e., crude petroleum with a sulfur content of less than or equal to 0.5 percent by weight.

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[1] This order addresses only FERC Tariff No. 828, filed March 1, 2004, in Docket No. IS04-219-000. The other tariffs filed contemporaneously by Chevron, which are not challenged by the protesters, are as follows: FERC No. 831, filed March 1, 2004, in Docket No. IS04-220-000, canceling FERC Tariff No. 782; FERC Tariff No. 830, filed March 1, 2004, in Docket No. IS04-221-000, canceling FERC Tariff No. 804; FERC Tariff No. 829, filed March 1, 2004, in Docket No. IS04-222-000, canceling FERC Tariff No. 821 and Supplement No. 1 to FERC Tariff No. 821; FERC Tariff No. 835, filed March 2, 2004, in Docket No. IS04-223-000, canceling FERC Tariff No. 791; FERC Tariff No. 836, filed March 2, 2004, in Docket No. IS04-224-000, canceling FERC Tariff No. 822 and Supplement No. 1 to FERC Tariff No. 822; FERC Tariff No. 832, filed March 2, 2004, in Docket No. IS04-225-000, canceling FERC Tariff No. 810; FERC Tariff No. 834, filed March 2, 2004, in Docket No. IS04-226-000, canceling FERC Tariff No. 783; FERC Tariff No. 833, filed March 2, 2004, in Docket No. IS04-227-000, canceling FERC Tariff No. 824 and Supplement No. 1 to FERC Tariff No. 824.

2. Marathon Oil Company (Marathon Oil), Marathon Pipe Line, LLC (Marathon PL), Devon Louisiana Corporation (Devon), and Spinnaker Exploration Company, LLC (Spinnaker) filed timely motions to intervene and protests. They urge the Commission to reject the filing or, in the alternative, to accept and suspend the filing for the full seven-month period authorized by section 15(7) of the Interstate Commerce Act (ICA).[2] Chevron filed an answer to the protests, and ChevronTexaco Global Trading (ChevronTexaco Trading) filed a motion to intervene and an answer in support of Chevron's tariff filing. Although ChevronTexaco Trading's motion to intervene was filed out-of-time, the Commission will grant its motion to intervene at this early stage of the proceeding because it will not disrupt or delay the proceedings or result in any prejudice or additional burden to the other parties.

3. As discussed below, the Commission accepts the tariff for filing, suspends it to be effective July 1, 2004, and refers the proceeding to the Commission's Dispute Resolution Service (DRS). This order is in the public interest because it initiates a non-adjudicatory process that may lead to resolution of the issues raised.

BACKGROUND

4. Chevron asserts that it has maintained the common stream on its pipeline as a sweet crude stream, consistent with its past and current tariffs. For example, Chevron asserts that its current tariff allows it to refuse to accept crude oil that will "materially affect or damage the quality of other shipments or cause disadvantage to other shippers and/or the Carrier…." Chevron is concerned that, if it begins to accept sour crude on this pipeline and at the Empire Terminal, the system could become a sour crude pipeline system. Thus, explains Chevron, it has filed the amended tariffs to establish that "crude petroleum" tendered for transportation must have a sulfur content equal to or less than 0.5 percent by weight as measured by ASTM method D4294 without centrifuge. Chevron's answer to the protests contains a detailed description of its negotiations with the protesters over approximately a year and a half in an effort to resolve the issues now before the Commission.

5. Devon and Spinnaker attach to their protest a series of communications from Chevron to its shippers relating to Chevron's effort to impose the 0.5 percent limit on crude oil tendered for shipment on the pipeline. Devon and Spinnaker also attach their responses to Chevron's communications.[3] Devon and Spinnaker state that they contacted the Commission's Enforcement Hotline on February 27, 2004, after which Chevron filed

[2] 49 U.S.C. app. § 15(7) (1988).

[3] Motion to Intervene and Protest of Devon Louisiana Corporation and Spinnaker Exploration Company, LLC, at Exs. B-I (March 16, 2004).

the tariff seeking to restrict the sulfur content of the crude petroleum it accepts into its system.

PROTESTS

6. Marathon Oil explains that it is an Outer Continental Shelf (OCS) shipper whose production is shipped as part of the common stream on Marathon PL's undivided ownership interest capacity in the South Pass West Delta Pipeline (SPWD), an offshore Louisiana crude oil pipeline. According to Marathon Oil, the SPWD common stream currently is delivered into Chevron's West Bay System at the interconnection with the West Delta Receiving Station for further delivery to Chevron's Empire Terminal under Chevron's FERC Tariff No. 819. Marathon Oil contends that the proposed amended definition of crude petroleum is unjust and unreasonable, will adversely affect the delivery of Marathon Oil's production to downstream markets, and will unjustly discriminate against the delivery of the SPWD common stream to the Empire Terminal in favor of common streams from other pipeline systems that feed into that terminal.

7. Marathon Oil also argues that Chevron has not explained why it seeks to impose this limitation on some but not all pipeline systems contributing to the common stream at the Empire Terminal, and Marathon Oil further points out that Chevron has not identified where it will collect samples of the stream for measuring the sulfur content. According to Marathon Oil, this would afford Chevron unfettered discretion to discriminate among systems feeding into the Empire Terminal by selecting different points of measurement for the various systems.

8. Marathon Oil submits that Chevron's current FERC Tariff No. 819 and Supplement No. 1 to FERC No. 819 does not include a limitation on the sulfur content of crude oil shipped on Chevron's West Bay System. Marathon Oil explains that the tariff states as follows:

> Crude Petroleum accepted for transportation by the Carrier must be good and merchantable oil of such viscosity, pour point and temperature as will permit its being freely handled and transported under conditions existing in the pipeline, and which is properly warranted. The Carrier reserves the right to reject any Crude Petroleum containing more than one percent (1%) of basic sediment, water and other impurities, or having a Reid vapor pressure in excess of 12 pounds per square inch at 100 degrees Fahrenheit, or having pour point, viscosity, or other characteristics such that it will not be readily susceptible for transportation through Carrier's existing facilities, or which will materially affect or damage the quality of other shipments or cause disadvantage to other shippers and/or the Carrier; or having an API gravity of less than 20 degrees.

Further, continues Marathon Oil, Crude Petroleum is defined in the tariff as:

> The direct liquid products of oil wells, condensate or a mixture thereof from oil or gas wells located in the Southern Louisiana oil province (consisting of the Outer Continental Shelf, State and Federal waters, and onshore Gulf Coast production) with a distillation range, quality and general characteristics typical of South Louisiana crude.

9. Marathon Oil argues that the language in Chevron's tariff allegedly authorizing Chevron to reject any crude petroleum having "other characteristics such that it … will materially affect or damage the quality of other shipments or cause disadvantage to other shippers and/or the Carrier" is not adequate to permit Chevron to reject crude petroleum with a sulfur content in excess of 0.5 percent by weight. Marathon Oil contends that any limitation on the sulfur content of the crude petroleum must be explicitly stated in the tariff.

10. Additionally, Marathon Oil argues that Chevron has not shown that acceptance of sour crude will jeopardize the Empire Terminal's common stream. On the contrary, asserts Marathon Oil, sour crude may already comprise part of the Empire Terminal's common stream. Specifically, Marathon Oil cites Chevron's tariff relating to its Breton Sound System, which does not prevent Chevron from accepting sour crude petroleum for delivery to the Empire Terminal. Marathon Oil also points out that Chevron's joint tariff with Hess Pipeline Company (Hess) for use of the Hess capacity in the SPWD pipeline does not contain this limitation. In fact, emphasizes Marathon Oil, the production of one of Chevron's affiliates is transported under that tariff through the Hess capacity in SPWD and ultimately to the Empire Terminal.

11. Marathon PL explains that it is a wholly-owned subsidiary of Marathon Oil and that it owns an undivided interest in and is the designated operator of the SPWD. Marathon PL contends that the proposed tariff change will adversely affect its ability to accomplish deliveries of the SPWD common stream to the Empire Terminal versus the common streams of other pipelines feeding into that terminal. Marathon PL states that Chevron's actions have caused it to adopt restrictive measures on the SPWD pipeline that seriously reduce throughput. Marathon PL's protest otherwise generally reiterates the issues raised by Marathon Oil.

12. Devon and Spinnaker state that they also produce crude oil from leases on the OCS offshore from Louisiana. They state that they ship their oil from offshore platforms on the SPWD pipeline to the West Delta Receiving Station near Venice, Louisiana, for

receipt into Chevron's West Bay System pipeline,[4] with eventual delivery to the Empire Terminal and then into other pipelines for transportation in interstate commerce. Devon and Spinnaker assert that Chevron has not provided operational justification for excluding their sour crude oil from its West Bay System. Devon and Spinnaker emphasize that their production is connected solely to the SPWD pipeline and that the SPWD pipeline is connected solely to Chevron's West Bay System.[5] They contend that Chevron's proposed tariff provision violates ICA section 1(6), which prohibits unjust and unreasonable classifications, regulations, and practices relating to the receiving, transporting and delivery of property. Devon and Spinnaker also argue that the tariff filing violates ICA section 3(1), which prohibits subjecting "any company … region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever …," and further constitutes a refusal of transportation upon reasonable request, in violation of ICA section 1(4).

13. Devon and Spinnaker point out that their crude oil moved on Chevron's West Bay System beginning in June 2003 with no restriction on the sulfur content. Moreover, continue Devon and Spinnaker, Chevron has ignored reasonable alternatives to the restriction it now proposes. For example, state Devon and Spinnaker, pipelines provide for use of sulfur banks under their tariffs, which permit shippers of high sulfur crude oil to compensate shippers of low sulfur crude oil for the effect of the commingling of their oil in the pipeline. Further, contend Devon and Spinnaker, another alternative allows pipelines to segregate sweet and sour crude oil, moving sour crude in separate batches and delivering it into separate tanks at the delivery point.

14. Devon and Spinnaker state that they investigated two other potential interim steps that might mitigate the cost and consequences of a shut-in by Chevron. First, state Devon and Spinnaker, if the SWPD stream could be diverted to a third-party terminal near the West Delta Receiving Station, the stream could be blended with sweeter crude to meet Chevron's new sulfur standard. However, Devon and Spinnaker point out that such an arrangement would depend on the agreement of all of the SPWD shippers (including a Chevron affiliate) and would be operationally challenging and costly. In the alternative, Devon and Spinnaker state that they could curtail at the wellhead some or all of their high

[4] Devon and Spinnaker state that Devon is a shipper of record on that system, but that Spinnaker is not a Chevron shipper, instead selling its crude oil to third parties who ship it through the SPWD pipeline to the West Bay System.

[5] Devon and Spinnaker acknowledge that the SPWD pipeline also can access a terminal near the West Delta Receiving Station that is owned by Plains Marketing, L.P. (Plains). However, Devon and Spinnaker assert that the terminal is connected back to Chevron's West Bay System and to a barge facility, which is not an economically feasible alternative.

sulfur crude production. However, because the relative volumes and qualities of crude oil in the stream are constantly changing, Devon and Spinnaker state that it is not clear how much production they would have to shut-in to meet Chevron's new standard. They project that it could amount to thousands of barrels per day, not only causing hardship to them, but also creating a burden on the royalty-in-kind oil they produce on behalf of the U.S. Minerals Management Service.

15. Devon and Spinnaker maintain that these drastic alternatives are unnecessary because Chevron has demonstrated the reasonableness of the sulfur bank and batching alternatives by employing those alternatives on its Breton Sound Pipeline, which also delivers crude oil to the Empire Terminal. Devon and Spinnaker claim that, when Chevron filed the tariff covering that pipeline, it provided for the potential that connection of the Mountaineer Pipeline could lead to sour crude deliveries to the Empire Terminal.[6] Specifically, state Devon and Spinnaker, Chevron provided itself the ability to protect the integrity of the Empire Terminal common stream by segregating the Breton Sound stream and implementing a sulfur bank should the Breton Sound stream become a sour crude oil stream.[7] Moreover, continue Devon and Spinnaker, with the Breton Sound pipeline, Chevron applies its sulfur provisions at the point where the Breton Sound stream reaches the inlet to the Empire Terminal, whereas, in the case of the West Bay System, Chevron measures at the receipt points into that system. Devon and Spinnaker point out that Chevron will permit Breton Sound shippers to deliver sour crude to the Empire Terminal until the Breton Sound stream "consistently" exceeds 0.5 percent sulfur content.[8]

16. Devon and Spinnaker characterize as speculative Chevron's fear that the West Bay System and the Empire Terminal will turn into sour crude streams. Devon and Spinnaker also maintain that the impact of a higher sulfur content is minimized by the fact that, to the best of their knowledge, the SPWD stream delivered at the West Delta Receiving Station is only a small fraction of the total volume of oil moving on the West Bay System.

17. Devon and Spinnaker state that Chevron filed contemporaneously to revise several other of its tariffs, including replacing FERC Tariff No. 804 with FERC Tariff No. 830 to incorporate a specific sulfur limitation. They state that the rules and regulations tariff

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[6] See Chevron Transmittal Letter, FERC Tariff No. 820, Docket No. IS04-68 (filed November 25, 2003).

[7] Id. at 2.

[8] Devon and Spinnaker cite FERC Tariff No. 820, Items 10 and 11.

applicable to those and other Chevron's tariffs is FERC Tariff No. 809, which states at Item 4:

> In addition to the general requirements … in Item No. 1 above, Carrier will from time to time determine … the quality and general characteristics of Crude Petroleum it will regularly transport as a common stream … on its trunk pipelines. Carrier will inform all interested persons of such Crude Petroleum quality and general characteristics upon request by them. Changes in petroleum quality standards will be made by new tariff filings. Crude Petroleum quality and general characteristics include, but are not limited to, whole crude properties such as A.P.I. gravity, sulfur, S.&W.…[9]

Thus, state Devon and Spinnaker, Chevron itself recognizes that a sulfur limitation is among those "Crude Petroleum quality and general characteristics" that require specificity in tariffs and should be established only through notice to shippers and new tariff filings. Devon and Spinnaker assert that Chevron's conduct in accepting sour crude only when it was advantageous is similar to the concern the Commission addressed recently in Indicated Shippers v. Columbia Gulf Transmission Co.[10] regarding the dangers of abuse where a pipeline has expansive discretion in setting its quality standards. Devon and Spinnaker state that they intend to file a separate complaint pursuing their position.

18. Devon and Spinnaker contend that a seven-month suspension would preserve the status quo and provide time for an investigation and resolution of this matter, while still allowing Chevron to receive its full tariff rate. In contrast, argue Devon and Spinnaker, absent a full suspension, Devon and Spinnaker would be forced to shut in production, thereby facing an immediate loss of revenue and a potential decline in the market value of their oil.[11]

19. Devon and Spinnaker further assert that the Commission should reject Chevron's filing because it does not comply with the requirements of 18 C.F.R. section 341.3(b)(10(i) (2003), which states in part:

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[9] Devon and Spinnaker cite FERC Tariff No. 809 at Item No. 4.

[10] 106 FERC ¶ 61,040, at PP 32-41 (2004); see also KK Appliance Co. v. Mid-America Pipeline Co., 47 FERC ¶ 61,076 (1989).

[11] Devon and Spinnaker cite Koch Pipeline L.P., 79 FERC ¶ 61,405, at 62,740 (1997); ARCO Pipe Line Co., 64 FERC ¶ 61,281 (1993); Cheyenne Pipeline Co., 19 FERC ¶ 61,077, at 61,122 (1982); Texaco Petrochemical Pipeline LLL, 106 FERC ¶ 61,186, at P 4 (2004).

> All tariff publications must identify where changes have been made in existing … rules, regulations or practices, or classifications. One of the following letter designations or uniform symbols must be used to designate the change:
>
> … Change in wording only …….[W]
>
> … New ………………………….[N]

20. Devon and Spinnaker argue that Chevron's proposed change is more than simply a change in wording because it dramatically affects the rights of shippers and producers who utilize Chevron's pipeline to transport their sour crude to market. In fact, argue Devon and Spinnaker, the effect of Chevron's change will be to drive certain current shippers from its pipeline. Devon and Spinnaker state that Chevron knows or should know that its "[W]" designation is incorrect because Chevron's affiliate, ChevronTexaco Natural Gas, recently filed successful complaints against various interstate natural gas pipelines for failure to reflect changes in quality specifications in their tariffs.[12]

ANSWERS

21. In its answer, Chevron reiterates that the West Bay System common stream historically has been restricted to shipments of sweet crude and that the common stream then is commingled with other sweet common streams at the Empire Terminal. Chevron contends that, prior to October 2003, the SPWD common stream was not sour at the point at where it enters the West Bay System. Chevron also contends that receipts from the SPWD pipeline average 31 percent of the West Bay System total volume. While it acknowledges that this volume has not been sufficient to turn the commingled West Bay stream sour, Chevron maintains that additional volumes of sour crude could do so.

22. Chevron states that the entire production, transportation, and refinery infrastructure in Southeast Louisiana has been developed for acceptance of sweet crude and that requiring these facilities to accept sour crude would have enormous economic implications. Chevron argues that the protesters merely seek a financial advantage by blending their sour crude with sweet crude before it reaches the terminal. According to Chevron, the West Bay System, as presently configured, cannot provide batching, segregated transportation, or segregated storage and further, that a sulfur bank will not remedy all the ramifications of requiring the pipeline to accept the sour crude.

[12] Devon and Spinnaker cite Indicated Shippers v. Trunkline Gas Co., 105 FERC ¶ 61,394 (2003); Indicated Shippers v. Columbia Gulf Transmission Co., 106 FERC ¶ 61,040 (2004).

23. Chevron asserts that Marathon PL has a modeling program that can it can utilize to ensure that Chevron can accept the production of Devon and Spinnaker without compromising the quality of the sweet crude stream. Moreover, Chevron points out that it is willing to install the facilities necessary to segregate the sour crude, provided it is compensated by Devon and Spinnaker for the substantial expense involved.

24. Chevron states that the Commission has held that the imposition of a sweet crude standard for receipts into an oil pipeline's common stream is not a "practice" that must be implemented on 30 days' notice by means of a tariff filing.[13] Additionally, continues Chevron, the sulfur standard it proposes is widely accepted in the industry.

25. Chevron describes in detail its negotiations with Marathon PL, Devon, and Spinnaker over nearly a year and a half, including the agreement for a four-month trial period allowing shipment of Devon and Spinnaker's sour crude. Chevron maintains that the parties' agreement made it clear that, if the parties terminated the agreement, the West Bay System would remain a sweet crude system, and Chevron would have no obligation to accept sour crude at the West Delta Receiving Station. Chevron states that, following termination of the agreement by Devon and Spinnaker, Chevron sought to implement a monitoring process to determine if the SPWD common stream entering the West Bay System became sour. According to Chevron, test results were inconsistent, but it agreed to use the testing method requested by Marathon PL.

26. Chevron asserts that the Commission never has ruled that a sweet crude pipeline must accept sour crude on its system. Chevron distinguishes its situation from that addressed in Bonito Pipe Line Co.,[14] where the Commission required Bonito to accept sour crude shipments because the system already was a sour crude system. Chevron emphasizes, though, that the Commission's decision requiring Bonito to accept the new volumes was not based on the lack of a specific sulfur limitation in Bonito's tariff.

27. Chevron states that it will provide transportation upon reasonable request, as required by the ICA. However, Chevron also contends that Devon and Spinnaker know that the West Bay System cannot provide batching and further, that a sulfur bank would not reimburse Chevron for the substantial cost of segregating the West Bay common stream at the Empire Terminal. However, Chevron suggests other alternatives, such as (1) obtaining consent from all SPWD shippers to a blending process where the stream goes from the West Delta Receiving Station to another terminal owned by Plains, (2) the possible installation of batching facilities that would allow batching and a connection to the Plains terminal, or (3) the installation of segregated facilities from the West Delta

[13] Chevron cites Coastal States Marketing, Inc. v. Texas-New Mexico Pipeline Co., 25 FERC ¶ 61,164, at 61,452-53 (1983).

[14] 61 FERC ¶ 61,050, at 61,222 (1992).

Receiving Station to Empire and also at Empire if the sour crude shippers bear the cost. In lieu of these options, Chevron suggests that the easiest alternative would be require Devon, Spinnaker, and Marathon PL to manage shipments on the SPWD using Marathon PL's modeling program to ensure that the sulfur level of the common stream remains below the 0.5 percent level.

28. Chevron disputes the claim that it is discriminating against sour crude shippers. Chevron explains that it developed its Breton Sound tariff to allow a connection with a new pipeline transporting crude that initially is predicted to be sweet, but expected to become sour. Chevron maintains that the Breton Sound system was underutilized and not contributing substantial volumes to the Empire common stream and that the new volumes will pay for necessary segregating facilities at Empire. In contrast, Chevron states that the West Bay System is operating at 60 percent of capacity and the Devon/Spinnaker volumes are not sufficient to pay for segregation facilities. Chevron cites ARCO Pipe Line Co.,[15] maintaining that the Commission determined there that it was not discriminatory for a pipeline to cancel service in one direction while maintaining the service in the other direction because those shipping in different directions were not similarly situated. Thus, reasons Chevron, this should mean that shippers on separate pipeline systems with different economics are not similarly situated.

29. Chevron challenges the motion to reject the tariff filing, arguing that the protesters have clear notice of what the filing is intended to change. Further, states Chevron, Devon and Spinnaker fail to support their claims that (1) thousands of barrels of production will be shut-in, (2) the SPWD volumes are a small fraction of the volume on the West Bay System, (3) that Chevron only allowed sour crude to enter the system as long as it was advantageous, (4) that Chevron controlled their access to market, (5) that Chevron did not designate the point of measurement for the sulfur content, and (6) that crude with a sulfur content in excess of 0.5 percent currently is accepted into the system. Chevron also explains that its failure to include a sulfur limit in the joint tariff with Hess was an oversight, which it is attempting to correct. In urging the Commission not to suspend the filing for seven months, Chevron emphasizes that it will continue to accept receipts from the SPWD pipeline as long as the sulfur limit is met and that Devon and Spinnaker have an alternative through the Plains terminal.

30. ChevronTexaco Trading supports Chevron's tariff filing, stating that it is a shipper on the West Bay System and that it will be adversely affected if the Commission accepts the protesters' position. ChevronTexaco Trading echoes many of the positions expressed by Chevron concerning the historical usage of the pipeline system and the operations of producers and refiners in the area. ChevronTexaco Trading further contends that the

[15] 66 FERC ¶ 61,159, at 61,313-14 (1994).

protesters will not be harmed if the protests are denied because they have conceded that they could make other arrangements to produce and ship their crude oil.[16]

31. ChevronTexaco Trading agrees that Chevron's current and past tariffs have not permitted the shipment of sour crude because the tariff allows Chevron to reject any volumes that will materially affect or damage the quality of other shipments or cause disadvantage to other shippers. ChevronTexaco Trading cites the price differential between sweet and sour crude in support of its claim that other shippers would be disadvantaged by acceptance of the sour volumes.

32. ChevronTexaco Trading further contends that protesters have not met the burden of demonstrating that a seven-month suspension is warranted. According to ChevronTexaco Trading, Devon and Spinnaker seek a change in the status quo, have failed to make a substantial showing that they ultimately will succeed on the merits of their protest, and cannot show that the disadvantage they will experience will outweigh the disadvantage that other producers and shippers will sustain if the filing is suspended for seven months. ChevronTexaco Trading asserts that Devon and Spinnaker propose the construction of new facilities to accommodate their sour crude, but do not indicate who will pay for such facilities. Finally, states ChevronTexaco Trading, Marathon PL itself published tariffs implementing the same sulfur limitation that Chevron proposes.[17]

COMMISSION ANALYSIS

33. Section 1(4) of the ICA states in part that "[i]t shall be the duty of every common carrier … to provide and furnish transportation upon reasonable request therefor…."[18] In the instant case, Devon and Spinnaker seek to have their offshore production transported from the SWDP pipeline through Chevron's West Bay System to the Empire Terminal; however, the crude oil produced by Devon and Spinnaker is sour crude, which exceeds the 0.5 sulfur limitation proposed by Chevron in its tariff filing, and which Chevron contends is the historic limit employed on the West Bay System. Chevron has explained that its West Bay facilities, as well as essentially all of the existing production, transportation, and refining facilities in southeastern Louisiana, are designed and

[16] On March 23, 2004, ChevronTexaco Trading filed a letter from Genesis Crude Oil, L.P. (Genesis). Genesis advises that, as a sweet crude shipper, it would be adversely impacted if other shippers were permitted to ship crude oil with a sulfur content greater than 0.5 percent.

[17] On March 12, 2004, Marathon PL filed in Docket No. IS04-247-000 its Supplement No. 1 to FERC Tariff No. 54, Supplement No. 1 to FERC Tariff No. 55, and Supplement No. 1 to FERC Tariff No. 56.

[18] 49 U.S.C. app. § 1(4) (1988).

equipped to handle only sweet crude. Chevron asserts that accepting the sour crude into its facilities will change the character of the facilities and cause financial detriment to it and to the other shippers on the West Bay System who currently ship sweet crude.

34. Under these circumstances, it appears that the request of Devon and Spinnaker that Chevron accept their sour crude into the West Bay System may not be a reasonable request as contemplated by section 1(4) of the ICA. Shippers of sweet crude and shippers of sour crude are not similarly situated under the circumstances existing on the West Bay System. However, the financial impact on shippers of sweet crude from shipping sour crude on the West Bay System has not been established at this point.

35. The Commission wishes to encourage production and marketing of the Devon and Spinnaker volumes. It is apparent from the pleadings that the parties have considered and discussed at length a variety of options for getting this production to market, although a disagreement concerning payment for additional facilities that may be necessary has prevented the parties from resolving the situation. While the Commission can require a pipeline to provide transportation upon reasonable request, the Commission will not require a pipeline to accept for transportation new volumes of crude oil that would change the historic operating conditions on the pipeline and cause financial detriment to other shippers. Further, the Commission will not require a pipeline to bear the entire costs of facilities necessary to provide service that changes the historic operating conditions on the pipeline. Thus, if Devon and Spinnaker wish to continue to transport their production on the West Bay System, they must pay for any additional facilities or other accommodations that may be necessary to accomplish this transportation without degrading the existing sweet common stream by causing it to exceed the 0.5 sulfur limit.

36. The Commission finds that the parties can best resolve the issues by a settlement acceptable to all the parties. To that end, the Commission will direct the Director of its Dispute Resolution Service (DRS)[19] to convene a meeting of the parties to arrange a process that may foster negotiations and agreement regarding the sulfur limitation that Chevron proposes to formalize in its tariff. The parties must report the status of the negotiations to the Commission within 30 days of the date of issuance of this order. The Commission expects the parties to achieve a resolution of these issues in such time as to allow any settlement to be put into effect within the three-month suspension period ordered below.

37. Accordingly, the Commission will accept and suspend Chevron's FERC Tariff No. 828 to be effective on the earlier of the effective date of a settlement reached by the parties or July 1, 2004. The Commission finds that suspending this tariff for three months is a reasonable accommodation of the parties' interests. It will allow the parties

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[19] The Director of the DRS is Richard L. Miles, who may be reached at (202)502-8702 or 1-877-FERC-ADR (1-877-337-2237).

time to negotiate a resolution of the issues and will allow Devon and Spinnaker to continue shipping their crude oil on the West Bay System by utilizing Marathon PL's modeling program to ensure that there is no degradation of the historic operational characteristics of the system.

The Commission orders:

(A) Chevron's FERC Tariff No. 828 is accepted for filing and suspended to be effective on the earlier of the effective date of a settlement among the parties or July 1, 2004.

(B) The Commission's DRS is hereby directed to convene a meeting of the parties within 10 days of the date of issuance of this order.

(C) The parties must report the status of their negotiations within 30 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.