

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Calnev Pipe Line, L.L.C.

Docket No. IS07-234-000

ORDER ACCEPTING AND SUSPENDING FILING SUBJECT TO REFUND

(Issued June 28, 2007)

1. On May 25, 2007, Calnev Pipe Line, L.L.C. (Calnev) filed F.E.R.C. Tariff Nos. 24 and 25 to implement an indexed-based increase of its rates under section 342.3<sup>1</sup> of the Commission's regulations, to be effective July 1, 2007. The Commission accepts and suspends these tariffs, subject to refund, effective July 1, 2007.

**The Pleadings**

2. Calnev's May 25, 2007 tariff filing is an annual filing to increase its rates under the Commission's indexing procedures. BP West Coast Products LLC and ExxonMobil Oil Corporation (collectively Indicated Shippers) filed a protest on June 11, 2007 and Tesoro Refining and Marketing Company filed a motion for intervention on June 8, 2007. Indicated Shippers assert that in 2006 Calnev over recovered its cost of service by approximately \$11,191,837. This assertion is derived by comparing a cost of service of \$40,494,137 to revenues of \$51,685,974 in 2006 using numbers purportedly derived from Page 700 of Calnev's 2006 FERC Form No. 6.

3. Indicated Shippers further argue that on June 6, 2007, the Commission held in *BP West Coast, LLC v. SFPP*<sup>2</sup> that if there were reasonable grounds to conclude that an oil pipeline substantially over recovered its cost in the base year (which in this case is 2006), a shipper would have reasonable grounds to allege that permitting a carrier to further increase its rates under the indexing procedure would result in rates that are unjust and unreasonable. Indicated Shippers assert that given Calnev is substantially over recovering its cost of service, the application of the index will only further exacerbate Calnev's existing "excess profits." As a result, Indicated Shippers assert that they have alleged reasonable grounds to conclude that the proposed July 1, 2007 increase results in

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<sup>1</sup> 18 C.F.R. § 342.3 (2006).

<sup>2</sup> *BP West Coast, LLC v. SFPP*, 119 FERC ¶ 61,241 (2007) (June 6 Order).

rates that are unjust and unreasonable. They therefore request the Commission to reject Calnev's filing, or to at least suspend and investigate it.

4. On June 18, 2007, Calnev filed an answer to Indicated Shippers' protest. Calnev asserts that its proposed increase is fully justified under the Commission's indexing procedures and that the Commission has consistently rejected the arguments advanced by Indicated Shippers in previous annual index-based filings.<sup>3</sup> At bottom, Calnev asserts that its proposed index adjustment is not substantially in excess of its change in actual costs. To the contrary, it states that the change in the rate index from 2005-2006 is 4.3186 percent while Calnev's actual interstate cost of service increased from \$38,271,901 to \$40,494,137 in 2006. Thus, the dollar increase was \$2,222,236 or about 5.81 percent, which exceeded the permissible indexing rate increase. It further asserts that the Commission previously rejected protests even when the index increase exceeded the percentage change in Calnev's actual cost of service. As such, continues Calnev, the protest fails to present reasonable grounds for an investigation, and the claim of "excess profits" is overstated and irrelevant. Calnev contends that this is because the protest does not properly allow for the fact that the Page 700s for each year must be constructed using the same rate design in each year from the cost comparisons to be meaningful. Finally, it asserts that the Commission has consistently held that rate design issues are not appropriate in an index proceeding.<sup>4</sup>

### **Discussion**

5. As with prior years, the Commission's indexing regulations apply an annual index factor to the ceiling rate in effect on June 30 of each year. Calnev correctly applied the index factor to derive its new rates. Thus the only issue here is whether the resulting rates were so in excess of the actual cost increases incurred for the index year by the carrier that the increase was unjust and unreasonable. In making that determination the hallmark of the Commission's indexing system is simplicity.<sup>5</sup> This is because the

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<sup>3</sup> Citing *SFPP, L.P.*, 96 FERC ¶ 61,332 at 62,271-72 (2001) and subsequent cases in footnote 3 of its answer.

<sup>4</sup> Cf. June 6 Order at PP 9-11.

<sup>5</sup> Order No. 561 at 30,948. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs., Regs. Preambles, January 1991- June 1996 ¶ 30,985 (1993), 58 F.R. 58753 (Nov. 4, 1993), Order No. 561; *order on reh'g*, Order 561-A, FERC Stats. & Regs., Regs. Preambles, January 1991- June 1996 ¶ 31,000 (1994), 59 F.R. 40242 (Aug. 8, 1994); *aff'd*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *aff'd* *Association of Oil Pipe Lines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002) *order on remand*, *Five-Year Review of Oil Pipeline Pricing Index*, 102 FERC ¶ 61,195 (2003).

indexing approach allows pipelines to establish new rate ceiling rates without a detailed and comprehensive presentation and examination of the individual pipeline's cost of service in each case.<sup>6</sup> Thus, pipelines are able to adjust rates to just and reasonable levels for inflation-driven costs without the need for strict regulatory review of the pipeline's individual cost of service.<sup>7</sup> In fact, under this regulatory regime some divergence between the actual cost changes experienced by individual pipelines and the changes permitted by the index is inevitable.<sup>8</sup> While the indexing method is an efficient method to recover the inflation-driven cost increases occurring in a given year, it is not normally adequate to determine whether any specific rate is just and reasonable. This is because a reasonableness determination requires the detailed regulatory review of the pipeline's individual cost of service and the allocation of those costs among the different services and rates stated in the pipeline's tariff, a process that is clearly not simple.<sup>9</sup>

6. Thus, the determination Indicated Shippers urges here is not possible in the context of index proceeding because the specific costs necessary for such a determination are not available and in most cases a proceeding would be too protracted. For this reason, the Commission has consistently required a complaint under section 13(1) of the Interstate Commerce Act (ICA)<sup>10</sup> to pursue a determination as to whether specific rates are just and reasonable.<sup>11</sup> Section 343.2(c)(1) of the Commission's regulations provides in part as follows:

A protest or complaint filed against a rate proposed or established pursuant to [the indexing rules] must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable....<sup>12</sup>

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<sup>6</sup> *Id.* at 30,946.

<sup>7</sup> *Id.* at 30,948.

<sup>8</sup> *Id.* at 30,949.

<sup>9</sup> *Cf. ExxonMobil Oil Corporation v. FERC*, slip. op. dated May 29, 2007, No. 04-1102 (D.C. Cir.); *BP West Coast Products v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004).

<sup>10</sup> 49 U.S.C. App. §13(1) (1988).

<sup>11</sup> *See* SFPP, L.P., 111 FERC ¶ 61,510 (2005); SFPP, L.P., 107 FERC ¶ 61,334 (2004); SFPP, L.P., 102 FERC ¶ 61,344 (2003); SFPP, L.P., 96 FERC ¶ 61,332 (2001).

<sup>12</sup> 18 C.F.R. § 343.2(c)(1) (2006).

In determining whether reasonable grounds exist the Commission has consistently based its evaluation of a proposed index-based rate increase on Page 700 of the pipeline's annual FERC Form No. 6 report. Under that procedure, Indicated Shippers fail to make the requisite showing here. The revised index provides for an increase in rates of 4.3186 percent. Calnev's FERC Form No. 6 for 2006 shows an actual cost of service increase from \$38,271,901 to \$40,494,137, or a 5.81 percent increase, while the index increase was limited to 4.3186 percent. Thus, the difference between the change in the index and the change in the cost of service is not "so substantially in excess" of the actual cost increase as to render the resulting rates unjust and unreasonable.

7. Indicated Shippers may believe that the Calnev's rates on the date of filing are unjust and unreasonable, but that is not the issue here. The June 6 Order cited by Indicated Shippers is inapposite because it was a complaint case, Docket No. OR07-8-000. At bottom, Indicated Shippers agree here (1) that the accumulative increase in rates for several years of index increases unreasonably exceeds Calnev's actual increase over the same multi-year period and (2) that the base rates themselves are unjust and unreasonable. These arguments must be advanced by means of a separate complaint, not a protest filed in the suspension phase. In an index-rate adjustment proceeding the focus of an index adjustment case is only whether the index increase is so substantially in excess of cost changes for the index year. Otherwise, each proceeding is likely to evolve into litigation about the return already present in the base rates, in this case those in effect during the calendar year 2006. This would defeat the goal of administrative simplicity that is the core rationale of the indexing methodology. Accordingly, the complaint filed in Docket No. OR07-8-000 was the proper venue to address the concerns raised here. Similarly, if protesters believe that Calnev has not accurately calculated the index based on its existing costs and its internal records of those costs, they may file a separate complaint to that effect.

8. For these reasons, the Commission will not investigate Calnev's FERC Tariff Nos. 24 and 25. However, Calnev's index-based rate filing, and the resulting rates effective July 1, 2006, is under investigation in Docket No. IS06-296-000. Also, Calnev's based rates have been challenged in Docket Nos. OR07-5-000 and OR07-7-000. If the rates to which an index filing would apply are under investigation, any increase that results from the filing is subject to refund.<sup>13</sup> Under those circumstances, the Commission has accepted and suspended such filings, subject to refund, and will do so here.

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<sup>13</sup> See 18 C.F.R. §342.3(d)(5)(2006).

The Commission orders:

Calnev's FERC Tariff Nos. 24 and 25 are accepted and suspended, effective July 1, 2007, and subject to refund.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.