127 FERC ¶ 61,311
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Belle Fourche Pipeline Company	Docket Nos. IS09-305-000
Bridger Pipeline LLC	IS09-306-000
Butte Pipe Line Company	IS09-307-000

ORDER ACCEPTING TARIFFS

(Issued June 30, 2009)

1. On May 29, 2009, pursuant to the indexing methodology in section 342.3 of the Commission regulations,[1] Bridger Pipeline Company (Bridger), Belle Fourche Pipeline Company (Belle Fourche), and Butte Pipe Line Company (Butte) (The True Pipelines)[2] filed tariff supplements to increase the rates for services outlined in their tariffs, effective July 1, 2009. The True Pipelines enclosed index summaries outlining the previous index ceilings, effective July 1, 2008, and the index ceilings that will be effective July 1, 2009. As indicated in their index summaries, the True Pipelines state that the proposed rates under their supplements will be equal to or less than their respective index ceiling rates effective July 1, 2009. This order accepts the tariff supplements to be effective July 1, 2009.

Background

2. The Commission's regulations allow oil pipelines to change their rates through the use of an index system that establishes ceiling levels for such rates. The ceiling levels are established by the Commission, and are based on the annual change in the Producer Price Index for Finished Goods (PPI) plus 1.3 percent. Pursuant to section 342.3, "[a] rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level established" by the Commission. On May 14, 2009, in Docket No. RM93-

[1] 18 C.F.R. § 342.3 (2009).

[2] These affiliated pipelines are owned by the True Companies.

11-000, the Commission published its annual notice of the changes to the PPI.[3] In the notice, the Commission established 1.076025 as the index multiplier to be used by oil pipelines to compute their index ceiling levels for July 1, 2009. On May 29, 2009, The True Pipelines submitted their tariff filings pursuant to this notice and section 342.3 of the Commission's regulations. Their tariff supplements are proposed to be effective July 1, 2009. The True Pipelines state that in compliance with the section 342.3, they enclosed an index summary indicating that their proposed rates would be equal to or less than the index ceiling rates effective July 1, 2009.

Enserco's Protest

3. Enserco Energy, Inc. (Enserco) filed a protest to the three index rate filings asserting that it is a past, current, and future shipper on the various pipeline systems. Enserco argues that Butte is not entitled to an index-based rate increase because it already is over-recovering its cost of service and application of the index will substantially exacerbate that overrecovery. Enserco contends that according to Page 700 of Butte's 2008 FERC Form No. 6 (Form 6), Butte's rates yielded $5,256,990 of revenues in excess of its reported cost of service for 2008. Enserco submits that applying a further increase of 7.6 percent to its already unjust and unreasonable rates would substantially exacerbate that overrecovery by more than 30 percent. Enserco asserts that it has demonstrated reasonable grounds to believe that the rates so adjusted would be even more unjust and unreasonable than they already are. Enserco requests that the Commission set Butte's proposed index rate increases for hearing with the burden of proof on the pipeline to justify the resulting rates. In the alternative, Enserco asserts that Butte's index rates should be consolidated with and made subject to the outcome of the on-going investigation in Docket Nos. IS09-92 and IS09-93.

4. Enserco asserts that Bridger has used the incorrect ceiling level for the rate on its Little Missouri Pipeline segment. Enserco states that pursuant to section 342.3(d)(5) of the Commission's regulations, "[w]hen an initial rate, or rate changed by a method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year." Enserco contends that because Bridger's FERC Tariff No. 20 became effective during the index year through a method other than indexing, FERC Tariff No. 20 sets the 2008 index ceiling for the Little Missouri Line at 70.00 cents per barrel (cpb). Ensersco argues that Bridger, however, incorrectly claims that the 2008 index ceiling is 84.24 cpb. As a result of misstating the 2008 index ceiling, Ensersco asserts that Bridger has incorrectly calculated the 2009 index ceiling and rate.

[3] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* 127 FERC ¶ 61,184 (2009).

5. Enserco asserts that the proposed index rate increases of the True Pipelines should be accepted and suspended for the maximum period, subject to refund and to the ongoing investigation in Docket Nos. IS09-92 and IS09-93. Enserco contends that the rates of return reported by the True Pipelines in their Forms 6 filed for the year 2008 are far in excess of other oil pipelines in the Rocky Mountain region of the United States. Based on the issues raised in the existing dockets and the disproportionate rates of return the True Pipelines are reporting, Enserco protests the usage by the True Pipelines of the FERC Index and requests that a Commission Staff audit be incorporated into the ongoing investigation under Docket Nos. IS09-92 and IS09-93. Additionally, Enserco requests that the Commission only accept the new ceiling rates proposed in the tariffs subject to refund and to the outcome of the ongoing investigation.

6. Enserco also asserts that an increase in rate base is not an appropriate justification for an index rate increase**.** Enserco contends that because the True Pipelines are subject to investigation in other proceedings, their proposed index rates must be made subject to refund if they are accepted and made effective. Enserco argues that the use of the 7.6 percent index is dramatically out of line with current inflation rates. Enserco states that to the extent that these PPI index percentages either level off or continue to decline, the use of an index based on an average that includes the much higher 2008 average clearly results in an unduly high rate increase, and is inappropriate. Enserco respectfully requests that the tariffs filed by the True Pipelines on May 29, 2009, be accepted and suspended for the maximum seven-month statutory period, subject to refund and to the outcome of the investigation in Docket Nos. IS09-92 and IS09-93.

<u>The True Pipelines' Answers</u>

7. Bridger, Butte and Belle Fourche each filed separate answers to Enserco's protests. Since the answers are materially the same, they will be consolidated here for brevity. The True Pipelines assert that Enserco has not shown a substantial economic interest in the tariffs at issue and therefore lack standing to protest. Butte asserts that its proposed rate increase is not in excess of actual costs increases. Butte asserts that when determining whether proposed index-based rate increases should be set for hearing and investigation, the Commission consistently has based its determination on a comparison between the percentage increase in the pipeline's actual cost of service, obtained from Page 700 of the pipeline's FERC Form 6 submission, and the index increase.[4] Butte states its total cost of service for 2007 was $13,420,852, and in 2008, its total cost of service was $15,341,926. Thus, Butte submits that from 2007 to 2008, Butte's total cost of service increased by approximately 14 percent. Butte states that the Commission's index increase, however, was only 7.6 percent. Thus, Butte argues that its proposed

[4] *Citing, Calnev Pipe Line LLC,* 119 FERC ¶ 61,332, at P 6 (2007); and *SFPP, L.P.*, 119 FERC ¶ 61,330, at P 6 (2007).

index rate increases are substantially less than Butte's actual cost of service increases. Accordingly, Butte contends there is no basis for a claim that Butte's proposed rate increases pursuant to the Commission's indexing methodology are substantially in excess of Butte's actual cost increases, let alone for an argument that the proposed rates are unjust or unreasonable.

8. Bridger asserts that it used the correct ceiling level for the rate on the Little Missouri Pipeline segment. Bridger asserts that section 342.3(d)(5) is inapplicable to the rate change proposed by Bridger for the Little Missouri Line because it only applies to rates changed by methods other than indexing. Bridger contends that the index ceiling for the 2008-2009 index year is properly 84.24 cpb. Bridger states that the filing of FERC No. 20 did not change the index ceiling; it merely reduced the rate being charged by Bridger to a level below the then current index ceiling.

9. The True Pipelines assert that Enserco's argument that an increase in rate base is not an appropriate justification for an index rate increase is entirely irrelevant to their index rate filings in these proceedings. They state that the changes proposed in their tariff filings were made pursuant to the Commission's indexing regulations. They state that neither the Commission's indexing methodology, nor the rate filings under this methodology, are in any way based upon changes in rate base. They assert that the Commission's indexing methodology is based solely on the PPI. The True Pipelines assert that they justified their tariff filings on the indexing methodology, not an increase in its rate base.

10. The True Pipelines state that none of the rates that they propose to change pursuant to the Commission's indexing methodology are subject to investigation. They assert that since section 342.3(a) of the Commission's regulations applies only to rates that are subject to investigation, there are no grounds for subjecting Bridger's proposed index increases to refund.

11. The True Pipelines assert that Enserco's argument that FERC's index multiplier is dramatically out of line with current inflation rates is an impermissible collateral attack on the Commission's indexing methodology and has no place in this proceeding. They state that Enserco's arguments regarding Bridger's rate of return are irrelevant. The True Pipelines submit that the test used by the Commission in considering a protest to a pipeline's proposed index rate increases involves a comparison of the proposed index rate increases and the pipeline's actual cost of service increases. They state that the Commission consistently has ruled that generic cost issues regarding how the cost of service is constructed are not properly raised against an index for a single year. They assert that the proposed index rate increases are substantially less than actual cost of service increases. The True Pipelines oppose the motion to consolidate stating that issues with respect to the practices of these pipeline companies have nothing to do with proposed index rate increases.

Discussion

12. In these related proceedings, the True Pipelines filed to increase their rates pursuant to the Commission's indexing methodology in section 342.3 of the regulations. The indexing methodology is a streamlined procedure whereby oil pipelines can increase their rates pursuant to the published index by computing the index ceiling level pursuant to section 342.3(d) and providing for each rate schedule the proposed new rate, the prior rate, the prior ceiling level and the applicable ceiling level. A protester can challenge the rates on two grounds: (1) the rate violates the applicable ceiling level or (2) the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable. While Enserco has made a number of general allegations against the True Pipelines proposed rate increases, it has made only two specific allegations with respect to the rates of Butte and Bridger. Enserco asserts that allowing Butte to increase its rates pursuant to the index would be substantially in excess of actual costs increases. With respect to Bridger, Enserco argues that it has incorrectly calculated the ceiling level. We address these issues in turn.

13. The Commission finds that Enserco's argument that Butte's rate increase is substantially in excess of actual cost increases is without merit. Enserco based its determination on an incorrect comparison. Enserco compared 2008 revenues reported on Form 6 to the 2008 cost of service reported on the Form 6. Under Enserco's comparison, Butte would have excess revenues for 2008 and applying the 7.6 percent index increase to these excess revenues would yield a 30 percent overrecovery. However, as Butte has pointed out and the Commission has held, the Commission has based its determination of whether a substantial overrecovery is occurring on a comparison between the percentage increase in the pipeline's actual cost of service, obtained from Page 700 of the pipeline's Form 6 submission, and the index increase. As Butte has shown here, its cost of service increase is 14 percent compared to the 7.6 percent increase for the index level. Thus, Butte will not be overrecovering its cost of service.[5]

14. The Commission also finds that contrary to Enserco's assertions Bridger did correctly calculate the index ceiling level for its Little Missouri Line. While Enserco is correct that a 70 cpb rate was in effect for Bridger's Little Missouri Line, that rate was reduced pursuant to the indexing methodology and the 84.24 cpb rate was always the applicable ceiling level for the prior year. As Bridger explained, due to its purchase of another pipeline's segment of the Little Missouri system and its adoption of its tariff, a 70 cpb rate would apply to one segment of the Little Missouri system while an 84.24 cpb

---

[5] Although Enserco did not make specific allegations against Bridger and Belle Fourche, they have also shown that the actual cost of service increase based on the Form 6 is less than the index increase.

rate would apply to other segments. In order to avoid conflicting rates for service, onerous accounting and operational complexity, Bridger reduced the rate to 70 cpb even though it was eligible to charge the 84.24 cpb rate pursuant to the Commission's indexing methodology.

15. Enserco has also made a number of other general arguments which are without merit. Enserco's argument that the 7.6 percent index increase is too high is an impermissible collateral attack on the Commission's index methodology. All parties had an opportunity to challenge the Commission's methodology when it was changed in 2006. Enserco's arguments that the True Pipelines are making high rates of return or that the rate increases are due to increase to rate base are also irrelevant to whether The True Pipelines' proposed rate increases are consistent with the Commission's index rate regulations.

16. The Commission rejects Enserco's requests that the rates be made subject to refund, consolidated with and subject to the outcome of the investigation in Docket No. IS09-92-000 and IS09-93-000 and subject to an audit. Enserco incorrectly asserts that the True Pipelines' rates are subject to investigation in Docket No. IS09-92-000 and IS09-93-000 and therefore the rate here must be made subject to refund pursuant to section 342.3 (a). In those proceedings, the Commission is investigating the prorationing policies of some of the True Pipelines and the allegation that they are favoring their crude marketing affiliate. Thus, the Commission is only investigating practices and not rates. Moreover, the only rate issue in those proceedings is the Commission's pending analysis of Bridger's cost justification for initial rates on the Heart River Line and is not relevant to the rates at issue here. The rate increases here have been made in compliance with the Commission's regulations and there is no reason to consolidate these proceedings with unrelated proceedings concerning the True Pipelines' prorationing policies. Finally, because Enserco's protests fail on the merits, we will not address the challenges to Enserco's standing raised by the True Pipelines.[6]

The Commission orders:

(A) Belle Fourche's Supplement No. 12 to FERC. No. 83, Supplement No. 6 to FERC No. 103, Supplement No. 9 to FERC No. 106, Supplement No. 4 to FERC No.

---

[6] Pursuant to section 343.3(a) of the Commission's regulations, "Only persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the Interstate Commerce Act. Along with the protest, the protestant must file a verified statement which must contain a reasonably detailed description of the nature and substance of the protestant's substantial economic interest in the tariff filing."

107, Supplement No. 15 to FERC No. 108, and Supplement No. 2 to FERC No. 109 are accepted to be effective July 1, 2009.

(B) Bridger's Supplement No. 14 to FERC No. 2, Supplement No. 12 to FERC No. 3, Supplement No. 9 to FERC No. 5, Supplement No. 9 to FERC No. 7, Supplement No. 3 to FERC No. 11, Supplement No. 3 to FERC No. 12, Supplement No. 2 to FERC No. 13, Supplement No. 1 to FERC No. 14, and Supplement No. 1 to FERC No. 20 are accepted to be effective July 1, 2009.

(C) Butte's Supplement No. 3 to FERC No. 556, Supplement No. 3 to FERC No. 557, Supplement No. 3 to FERC No. 558, Supplement No. 3 to FERC No. 559, Supplement No. 2 to FERC No. 560, Supplement No. 2 to FERC No. 561, and Supplement No. 2 to FERC No. 562 are accepted to be effective July 1, 2009.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.