

133 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Enterprise TE Products Pipeline Company LLC

Docket Nos. IS10-203-005
IS10-203-000

ORDER GRANTING REHEARING IN PART, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued October 12, 2010)

1. This order establishes a hearing to determine whether Enterprise TE Products Pipeline Company LLC's (Enterprise TEPPCO) inventory policy is just and reasonable. The hearing will be held in abeyance pending the outcome of settlement judge procedures.

Background

2. On April 13, 2010, Enterprise TEPPCO submitted a filing to adopt the rates, routing, and rules from TE Products Pipeline Company, LLC. In addition, Enterprise TEPPCO made certain changes including the removal of the inventory policy from the tariff and the addition of a new maximum inventory requirement with penalties for exceeding it. The inventory policy changes were protested by the Propane Group. It asserted that the changes proposed by Enterprise TEPPCO could subject shippers to near automatic penalties and could result in discrimination against shippers who did not originate movements from facilities owned by Enterprise TEPPCO affiliates.

3. On May 13, 2010, the Commission issued a letter order accepting the tariffs filed by Enterprise TEPPCO to be effective May 14, 2010, subject to Enterprise TEPPCO filing its inventory policy with the Commission and subject to further Commission review and order.¹ The order found that the inventory policy, which was filed in the proceeding but was not officially filed by the pipeline, appeared to be necessary for the efficient and reliable operation of the pipeline.

¹ *Enterprise TE Products Pipeline Company, LLC*, 131 FERC ¶ 61,134 (2010).

4. On June 3, 2010, the Propane Group filed a request for rehearing of the May 13, 2010 Commission letter order. The Propane Group alleged that the proposed inventory policy is unjust and unreasonable, and that the Commission did not have sufficient information to properly evaluate the policy. Based upon the issues raised by the request for rehearing, on July 2, 2010, a data request was issued by the Director of the Division of Pipeline Regulation. The data request stated that in order for the Commission to resolve the issues in the proceeding, further explanation of and information concerning the proposed inventory policy was required. Among other things, the data request asked that Enterprise TEPPCO respond to the Propane Group's main allegation that the proposed inventory policy, in conjunction with Enterprise TEPPCO's existing batching requirements, will result in unavoidable or automatic penalties. In its rehearing request, the Propane Group asserted that especially in the summer months, penalties will be unavoidable given the low level of the inventory maximum, the large minimum batch sizes, and the timing restrictions imposed by the pipeline's batch system. The data requests also asked Enterprise TEPPCO to respond to the assertion that the new inventory and batching requirements will impose penalties on shippers following their regular, normal course of business on the pipeline, rather than for out-of-the-norm activity that should be deterred by assessing a penalty.

5. On July 16, 2010, Enterprise TEPPCO responded to the data request and on July 26, 2010, the Propane Group filed comments on Enterprise TEPPCO's response as permitted by the data request. Enterprise TEPPCO asserts that the claim of unavoidable penalties is without merit. Enterprise TEPPCO contends that the Propane Group overstates the batch size requirements imposed on shippers. Enterprise TEPPCO argues that if shippers continue to use the pipeline as a source of additional storage, they will appropriately incur penalties. Enterprise TEPPCO submits that penalties are not unavoidable but rather are a result of a shipper's own commercial decisions. On the other hand, the Propane Group alleges that shippers following their normal course of business are subject to penalties due to the pipeline's overlapping and inconsistent requirements with respect to batching and inventory, independent of their business practices or anything else within their control. The Propane Group submits that if Enterprise TEPPCO were to provide its actual historical calculations of minimum and maximum inventory limits, and the penalty calculations for each shipper during June and July, under an appropriate protective order, it would demonstrate the breadth of the harm the new inventory policy is already causing. The members of the Propane Group filed affidavits indicating that they either have been unable to avoid penalties under the new inventory policy or they do not foresee the ability to avoid penalties. The Propane Group also alleges that the interaction of inventory policy with operational requirements including the batching requirements leads to the imposition of penalties on shippers who

originate product at certain points. For example, the Propane Group alleges that at the Mount Belvieu, Texas injection point shippers using an unaffiliated facility are at a distinct disadvantage to shippers using the Enterprise TEPPCO affiliate's facility because certain rules were changed that limit the non-affiliate's ability to pump barrels into the Enterprise TEPPCO pipeline. The Propane Group argues that Enterprise TEPPCO schedulers do not always complete transfers in a timely manner. The Propane Group states that while these delays were an inconvenience before the new inventory policy, they can now result in penalties for a shipper. The Propane Group requests that the inventory policy be rejected or that a technical conference or hearing be established to investigate the operation of the inventory policy to determine whether it is just and reasonable.

Discussion

6. Based upon a review of the request for rehearing filed by the Propane Group, Enterprise TEPPCO's response to the July 2, 2010 data request, and the Propane Group's comments on Enterprise TEPPCO's response to the data request, the Commission finds that there are a number of material issues of fact in dispute concerning the justness and reasonableness of the inventory policy that require a hearing. A record needs to be developed to determine whether the inventory policy is needed to maintain operational efficiency on the pipeline, as alleged by Enterprise TEPPCO, or whether the inventory policy in conjunction with other Enterprise TEPPCO policies interact in such a way as to lead to unavoidable or nearly unavoidable penalties that result in an additional revenue stream to Enterprise TEPPCO. Issues have also been raised as to whether the inventory policies result in discrimination in favor of shippers using the service and facilities of Enterprise TEPPCO affiliates at certain origin points.

7. The Commission finds that there is not enough information to grant rehearing and reject Enterprise TEPPCO's inventory policy as requested by the Propane Group.² However, this will not leave the Propane Group without a remedy should they prevail, since the underlying order accepted the revised tariff provision subject to further Commission review and order as to the justness and reasonableness of TEPPCO's policies. Because the Commission is setting for hearing the issue of the justness and reasonableness of Enterprise TEPPCO's inventory policy, the Propane Group's request for rehearing is granted in part.

² Moreover, allowing the revised policy to remain in operation will also permit collection of data on whether it actually operates as the Propane Group alleges or as Enterprise TEPPCO alleges.

8. The Commission has consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. Accordingly, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³ If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.⁴ Absent settlement, the presiding administrative law judge shall issue an initial decision either upholding or rejecting the new inventory policy, and recommending refunds or other remedial measures, if appropriate.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised concerning Enterprise TEPPCO's inventory policy.

(B) The hearing established in Ordering Paragraph (A) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission 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 trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days

³ 18 C.F.R. § 385.603 (2010).

⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.