

139 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Plains Pipeline, L.P.

Docket No. IS12-362-000

ORDER ACCEPTING TARIFFS

(Issued June 29, 2012)

1. On May 30, 2012, Plains Pipeline, L.P. (Plains) filed a number of tariffs to become effective July 1, 2012.¹ Valero Marketing and Supply Company (Valero) filed a motion to intervene and protest challenging proposed FERC Tariff Nos. 74.6.0, 86.2.0, 104.2.0, and 109.2.0. Plains filed a response to the protest, arguing that the protest lacks merit and should be dismissed.

2. As discussed below, the Commission accepts the tariffs listed in the Appendix to this order to become effective July 1, 2012.

Plains' Initial Filing

3. Plains states that it is filing the tariffs to increase its rates in accordance with the indexing methodology established in section 342.3 of the Commission's regulations.² Plains further states that, when previous versions of FERC Tariff Nos. 95.5.0, 96.2.0, and 97.3.0 were filed, the mainline shipping charges were broken down into components that resulted in lower overall shipping charges to the shippers. Plains explains that the Commission required that the overall cost to shippers under Plains' unbundled rates must not exceed the effective ceiling levels of its existing bundled rates for similar movements. Accordingly, states Plains, the instant filing complies with the Commission's directive.

4. Additionally, Plains states that FERC Tariff No. 112.3.0, which contains rates for the El Paso to Albuquerque Products system, is not subject to ceiling levels, but that it is adjusting those rates as well. According to Plains, this tariff is subject to Market Based

¹ The tariffs are listed in the Appendix to this order.

² 18 C.F.R. § 342.3 (2011).

Rate Authority, as established in Docket No. OR00-6-000, and it is included in Plains' Schedule of Rates for informational purposes.

Valero's Protest

5. Valero states that it protests FERC Tariff Nos. 74.6.0, 86.2.0, 104.2.0, and 109.2.0, which seek indexed-based rate increases of approximately 8.6 percent. Valero explains that it has not protested the other tariffs filed by Plains because it does not ship under those tariffs.

6. Valero argues that Plains' FERC Form No. 6, Page 700 shows that it seeks a rate increase so substantially in excess of cost changes that the proposed rates should be considered unjust and unreasonable. Valero contends that the Commission has stated that FERC Form No. 6, Page 700 can serve as the basis of a protest against proposed indexed-based rate increases.

7. Valero maintains that Form No. 6, Page 700 shows a 5.1 percent increase in cost of service between 2010 and 2011. Valero asserts that, when the cost of service is corrected to credit Allowance Oil Revenue against Oil Losses and Shortages Expense, it appears that Plains' total interstate cost of service actually decreased by 2.40 percent. In comparison, continues Valero, Plains proposes to increase its transportation rates by 8.6 percent. Valero contends that Plains' appears to have overstated its under-recovery of costs and has not credited the Allowance Oil Revenue against Oil Losses expense in its Page 700 calculation.³ Valero further asserts that the four tariffs it challenges should be rejected or suspended pending the filing of a corrected Form No. 6 and related Page 700, along with a complete explanation and justification (including workpapers) for Plains' treatment of the costs and revenues disputed by Valero.

Plains' Response

8. Plains filed a response to Valero's protest, contending that it is entitled to apply the Commission's 2012 index adjustment to its rates. Plains asserts that the Commission's regulations establish that a protest to an indexed rate filing 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 carrier's actual cost increases that the rate is unjust and unreasonable.⁴ Plains further explains that, in determining whether a

³ Valero explains at length the specific items analyzed by its expert, Dr. Daniel S. Arthur. Motion to Intervene and Protest of Valero Marketing and Supply Company, June 14, 2012, at 4-10 and Ex. C.

⁴ 18 C.F.R. § 343.2(c)(1) 2011.

protest meets the “substantially in excess” test, the Commission evaluates the protest using data reported in the FERC Form No. 6, Page 700 data in a percentage comparison test.⁵

9. Plains argues that the change in its rates is not so substantially in excess of its actual costs of service as to cause the rates to be unjust and unreasonable. In fact, continues Plains, the deviation between the 8.6011 percent 2012 index and its actual increase in its cost of service of 5.1823 percent is below the threshold level used by the Commission for determining when it will accept a protest to an index-based rate filing, i.e., a deviation of 10 percentage points or more. Moreover, states Plains, it is entitled to apply the 2012 index to its rates because it was under-recovering its cost of service at the time it applied the index to its rates.

10. Plains next asserts that it properly calculated Page 700, lines 9 and 10 of its FERC Form No. 6. Citing its own expert, Plains challenges the “adjustments” made by Valero’s expert in his analysis.⁶ Additionally, Plains asserts that Valero’s protest is an improper collateral attack on the instructions for FERC Form No. 6, Page 700 in that it essentially suggests that those instructions should be revised to require certain adjustments that Valero proposes.

11. Plains also argues that Valero does not have standing to challenge FERC Tariff No. 109.2.0 because it does not have the “substantial economic interest” required to protest a tariff filing.⁷ Plains contends that its records for the period from 2010 through the current date do not record a single instance when Valero has been a shipper of record for crude oil under that tariff.

Commission Analysis

12. Valero claims that Plains’ FERC Form No. 6, Page 700, shows a rate increase substantially in excess of cost changes, when adjusted as proposed by its expert, Dr. Daniel S. Arthur. Plains asserts in its Response that Valero’s witness conflates the accounting principles of revenues and expenses, misinterprets the instructions to the Form No. 6, which produces an error message, and improperly misallocates jurisdictional and non-jurisdictional figures.

⁵ Plains cites *SFPP, L.P.*, 135 FERC ¶ 61,274, at P 9 (2011).

⁶ Response of Plains Pipeline, L.P. to Motion to Intervene and Protest of Valero Marketing and Supply Company, June 19, 2012, at 5-9 and Ex. RGV-1.

⁷ 18 C.F.R. § 343.2(b) (2011).

13. To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the data reported in the carrier's FERC Form No. 6, Page 700 data in a "percentage comparison test."⁸ The percentage comparison test is a very narrow test that "compare[s] the Page 700 cost data contained in the company's annual FERC Form No. 6 to the data that is reflected in the index filing for a given year with the data for [the] prior year. . . ."⁹ This test is the "preliminary screening tool for pipeline [index-based] rate filings,"¹⁰ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.¹¹

14. The Commission is not persuaded by Valero's argument that Plains' Page 700 cannot be utilized. Plains correctly calculated its ceiling level rates, and as indicated on Plains' FERC Form No. 6, Page 700, the 5.18 percent increase in cost of service between 2010 and 2011 does not demonstrate a substantial over-recovery by Plains.

⁸ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) and *SFPP, L.P., et al.*, 129 FERC ¶ 61,228, at P 7 (2009). The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase. *See id.* P 11 (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at PP 8-9 (2007)).

⁹ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10; *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test compares proposed changes in rates against the change in the level of a pipeline's cost of service.

¹⁰ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 Fed. Reg. 59,137 (November 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh'g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

¹¹ *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 6 (2007) ("[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure. It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry's average annual cost increases.").

15. Valero's protest fails to show any decrease in costs that, combined with the proposed index-based rate increase, would result in revenues so substantially in excess of its actual costs of service as to cause the rates to be unjust and unreasonable. Accordingly, the Commission dismisses Valero's protest and accepts the tariffs listed in the Appendix to become effective July 1, 2012.

The Commission orders:

The Commission accepts the tariff records listed in the Appendix to become effective July 1, 2012.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Plains Pipeline, L.P.

FERC Oil Tariff

[Plains Pipeline, L.P. FERC tariff filings](#)

Tariff records accepted effective July 1, 2012

[FERC Tariff, Plains Pipeline, L.P. F.E.R.C. No. 72.0.0, 72.4.0](#)
[FERC Tariff, Plains Pipeline, L.P. F.E.R.C. No. 73.0.0, 73.5.0](#)
[FERC Tariff, Plains Pipeline, L.P. F.E.R.C. No. 74.0.0, 74.6.0](#)
[FERC Tariff, Plains Pipeline, L.P. F.E.R.C. No. 75.0.0, 75.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 78.0.0, 78.5.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 79.0.0, 79.3.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 80.0.0, 80.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 81.0.0, 81.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 83.0.0, 83.5.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 85.0.0, 85.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 86.0.0, 86.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 87.0.0, 87.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 88.0.0, 88.4.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 89.0.0, 89.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 92.0.0, 92.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 94.0.0, 94.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 95.0.0, 95.5.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 96.0.0, 96.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 97.0.0, 97.3.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 98.0.0, 98.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 100.0.0, 100.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 101.0.0, 101.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 102.0.0, 102.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 104.0.0, 104.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 106.0.0, 106.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 109.0.0, 109.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 111.0.0, 111.2.0](#)
[FERC tariff, Plains Pipeline, L.P. F.E.R.C. No. 112.0.0, 112.3.0](#)
[FERC Tariff Filing, Plains Pipeline, L.P. F.E.R.C. No. 118.0.0, 118.1.0](#)
[FERC Tariff Filing, Plains Pipeline, L.P. F.E.R.C. No. 119.0.0, 119.1.0](#)
[FERC Tarif Filing, Plains Pipeline, L.P. F.E.R.C. No. 121.0.0, 121.2.0](#)