147 FERC ¶ 63,002
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Shell Pipeline Company LP Docket No. IS14-106-000

PARTIAL INITIAL DECISION

(Issued April 10, 2014)

APPEARANCES

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Carmen A. Cintron, Presiding Administrative Law Judge

[1] The Liquids Shippers Group consists of Anadarko Petroleum Corporation, ConocoPhillips Company, Marathon Oil Company, and Pioneer Natural Resources USA, Inc.

I. INTRODUCTION

1. Shell Pipeline Company LP (Shell) filed three related tariffs on December 10, 2013, to establish initial rates for petroleum transportation from Houston, Texas to Louisiana after reversing the flow on parts of its pipeline system (Houston to Houma System). At issue in Docket No. IS14-106-000 are Shell's initial uncommitted (or non-contract) rates for transportation of petroleum from Erath, Louisiana to Houma, Clovelly, and St. James, Louisiana (in FERC tariff No. S-160.0.0).

2. Anadarko Petroleum Corporation, ConocoPhillips Company, Marathon Oil Company and Pioneer Natural Resources USA, Inc. intervened and filed a joint protest to the three tariff filings as members of the Liquids Shippers Group (Producers). The Commission accepted and suspended Shell's three tariffs, effective December 12, 2013, subject to refund, and established a hearing to determine whether Shell's initial uncommitted rates are just and reasonable. The issue to be resolved in this partial initial decision is whether the Producers have standing to protest the tariff rates in IS14-106-000.

II. BACKGROUND

3. Shell's Houston to Houma System comprises over 350 miles of pipe. Shell reversed its system to transport crude petroleum from Houston eastward to refineries in the Port Arthur and Louisiana markets.[2] This reversal was driven by recent crude supplies into the Houston area market from shale plays in Texas and other western U.S. regions, as well as an influx of heavier Canadian production.

III. PROCEDURAL HISTORY

4. On December 10, 2013, Shell filed the three related tariffs to establish initial uncommitted rates the Houston to Houma System. In Docket No. IS14-104-000, Shell filed FERC Tariff No. S-158.0.0 to establish contract[3] and uncommitted rates for transportation from Houston, Texas to Houma, Clovelly and St. James, Louisiana ranging from $1.74 to $2.49 per barrel. In Docket No. IS14-105-000, Shell filed FERC Tariff No. S-159.0.0 to establish uncommitted rates for transportation from Houston, Texas to Nederland and Port Neches, Texas, and Lake Charles, Louisiana. The rates to Nederland and Port Neches are $0.95 per barrel and $1.04 per barrel to Lake Charles. In Docket No.

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[2] The entire system has not been reversed; transportation on the 18-inch line from Houma to St. James continues without a change in direction, although this segment is incorporated into the new rate structure.

[3] The contract rates are not at issue in this proceeding. *Shell Pipeline Company LP*, 146 FERC ¶ 61,009 (2014) (Hearing Order) at n.6.

IS14-106-000, Shell's FERC Tariff No. S-160.0.0 establishes uncommitted rates of $0.65 per barrel from Erath, Louisiana to the Houma, Clovelly and St. James, Louisiana destinations.

5. The Commission found that Shell's uncommitted initial tariff rates in Docket Nos. IS14-104-000, IS14-105-000, and IS14-106-000 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Pursuant to ICA section 15(7), the Commission accepted and suspended FERC Tariff Nos. S-158.0.0, S-159.0.0 and S-160.0.0, to be effective December 12, 2013, on one day's notice, subject to refund and subject to the conditions set forth in the Hearing Order. The Commission established a hearing to determine whether Shell's initial uncommitted Houston to Houma Reversal rates are just and reasonable. The Commission also directed the Presiding ALJ to determine whether the Producers have standing in Docket No. IS14-106-000 and to establish hearing procedures for those rates or dismiss the protest as appropriate.[4]

6. On January 13, 2014, the Chief Administrative Law Judge designated the undersigned as the Presiding ALJ. A prehearing conference was held on March 4, 2014. Shell and Liquids Shippers Group filed initial and reply briefs on the standing issue on March 10 and 18, 2014, respectively. Oral argument on the standing issue was held on March 31, 2014.

IV. ISSUE

7. The issue to be resolved here is whether Producers have standing to protest the rates in Docket IS14-106-000.

Producers' position

8. Producers stipulate that its members currently have no production behind the Erath origin point. Producers, however, do not believe this fact is dispositive of the standing issue. Rather, Producers contend that the substantial economic interest standard for standing is construed broadly citing *Enbridge (Southern Lights) LLC.*

9. Producers argue that the Shell Houston to Houma system is one pipeline and the rates in the three dockets were filed together and are related. In particular, the IS14-106-000 rates (106 rates) govern transportation over a segment of the pipeline entirely subsumed under a larger segment of pipeline that is governed by the IS104-000 rates (104 rates), which Producers have standing to challenge. Producers contend that the Commission did not consider this fact when it made the determination on standing. According to Producers, the 106 rates must be examined in conjunction with the 104 and

[4] Hearing Order at ordering paras. (A)-(D).

105 rates in order to ensure that costs are allocated in a just and reasonable manner along the entire pipeline. In particular, Producers allege that costs and revenues attributable to the shipments from Erath must be allocated to those shipments. Producers contend that this is needed to calculate the other rates for shipments using the same facilities or else the pipeline would over-recover its cost of service for the Shell Houston to Houma pipeline. Producers also argue that because it was granted standing to challenge the 104 and 105 rates because it has a substantial economic interest in those rates, Producers therefore also have a substantial economic interest in the 106 rates because the rates are all mutually interdependent.

10. In response to a question at oral argument, counsel for Producers stated that it was unlikely Producers would have standing on the 106 rates if they did not have standing to protest the 104 and 105 rates. Tr. 41:19-42:12.

11. Producers, citing to 49 App. U.S.C. § 4(1) (1977), also argue that ICA section 4 requires that shorter hauls along the same line must have lower rates than longer hauls. As a result, Producers contend that if the 106 rates are not considered together with the other rates, the result could violate the ICA. According to Producers, the hearing for the 104 and 105 rates is the only forum at this time when all of the rates on the Houston to Houma System can be determined in relation to each other, and that the Erath rate should be adjusted in this proceeding, rather than in a duplicative proceeding after this case is resolved. Additionally, Producers further argue that there is no additional burden to litigating the 106 rates in this proceeding because all of the costs, revenues, and throughput associated with the rate for service from Erath must be considered in litigating the rates for the longer haul.

12. Lastly, Producers argue that its members could in the future become active in production behind the Erath point because production locations vary over time due to purchases, sales, and new discoveries.

13. As to precedent, Producers cite to *Enterprise TE Products Pipeline Company LLC*[5] to support the assertion that the lack of a market at a given point does not, in and of itself, defeat standing to challenge a rate at that point. In that case, Enterprise filed for market-based rates for three delivery locations all located on the same pipeline. That application was protested. Enterprise challenged the protesters' standing on grounds that they had not demonstrated they had any economic interest at one of the destination points at issue in the case. The Commission set for hearing the rates related to all three destination points and ruled that even if the Presiding Judge were to find that two of the rates could not be changed due to a settlement, the hearing would still go forward for the

[5] *Enterprise TE Products Pipeline Co., LLC*, 137 FERC ¶ 61,027, at PP 27, 28 (2011).

remaining destination point, which was the point Enterprise had claimed that the protesters did not have standing to protest.

Shell's position

14. Shell's position is that Producers have not satisfied the Commission Hearing Order requirement for granting them standing. In particular, Shell points out that the Commission stated that "it is unlikely that the members of the Liquids Shippers Group could establish a substantial economic interest in the rates in Docket No. IS14-106-000 either as a potential shipper or supplier to potential shippers" if it is not active in the production area supplying the Erath origin point. Shell points out that the Commission then specifically directed the Presiding Judge to determine whether the Liquids Shippers Group has standing to protest the rates in Docket No. IS14-106-000 based on whether they are active in the production area supplying Erath. Acknowledging Producers' statement that it currently has no production behind the Erath origin point, Shell considers it dispositive and avers that Producers failed to meet the Commission's requirement for standing as set forth in the Hearing Order.

15. Nevertheless, Shell goes on to rebut each of Producers arguments for standing. Shell argues that the need to allocate costs among services does not create a substantial economic interest. Shell asserts that the Commission knew that the service from Erath is part of the longer haul that is involved in rates set for hearing and still required certain facts to permit standing to protest the Erath origin rates. Shell contends that not all rates for service on the pipeline need to be subject to hearing for proper cost allocation, and that the Presiding Judge has full authority to ensure that an appropriate record will be developed regarding the justness and reasonableness of the 104 and 105 rates, even if the 106 rates are dismissed for lack of standing. Shell cites *Rocky Mountain Pipeline System LLC*, 101 FERC ¶ 61,269, at P 35 (2002) for the proposition that standing in that case was not permitted on cross subsidization (which Shell likens to cost allocation) arguments. Finally, Shell asserts that Producers' cost allocation argument is inconsistent with the plain meaning of 18 C.F.R. § 343.2(b), which requires that a protesting party show an interest in "the tariff filing in question." Producers' theory, Shell claims, would allow a protester to show an interest in any tariff along the pipeline to obtain standing, and yet, the language of this regulation precludes it.

16. Shell views Producers ICA section 4 argument as entirely speculative and merely a hypothetical issue that might arise in the future. Further, in the event of a section 4 violation, Shell contends that the Commission could remedy the issue at that point. Shell cites to *Lime From Truck Line To Central Territory*, 231 I.C.C. 197, 198 (1938) in support of the proposition that the mere possibility that Section 4 relief may be needed in the future is not sufficient to justify granting the relief before such need actually arises.

17. Shell points out that the fact that the Erath rates may never be litigated in the future or that there could be an over-recovery from Erath rates do not suggest that Producers have a substantial economic interest in those rates.

18. Shell counters Producers argument for standing based on its members' potential future activity in the area supplying Erath by stating that nearly any producer or marketer could claim that they might possibly acquire production or contract obligations in a given market and this would render the standing obligation of section 343.2(b) meaningless.

19. Shell counters Producers citation to *Enterprise TE Products Pipeline Co., LLC*, 137 FERC ¶ 61,027 (2011) by stating that that case did not address a rate tariff filing under 18 C.F.R. § 343.2, but a market power application, and it did not include any discussion of standing.

V. DISCUSSION

20. The Commission regulation conferring standing to file a protest requires that: "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, a verified statement that the protestor has a substantial economic interest in the tariff filing in question must be filed." 18 C.F.R. § 343.2(b) (2013). Commission regulations further specified that: "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." 18 C.F.R. § 343.3(a) (2013).

21. The substantial economic interest standard in section 343.3(a) was applied in *Enbridge (Southern Lights) LLC*,[6] as quoted by the Commission in the Hearing Order.

> Whether an entity is a current or future shipper is relevant for purposes of determining substantial economic interest but it is not the only consideration. There is not a bright line test. As the Commission has stated, the "'substantial economic interest' standard is intended to assure that parties protesting a filing have sufficient interest in the matter to warrant the commitment of agency and pipeline resources to a review of the merits."[ ] Such standing is therefore based on all the facts and circumstances of the particular proceeding.[7]

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[6] 134 FERC ¶ 61,067 (2011).

[7] *Id.* P 11 (footnote omitted). In this case Imperial Oil was given standing to protest a rate filing since it will make direct payments (the actual transportation costs) to

22. The Commission also held in *Enbridge (Southern Lights) LLC* that there is no requirement that a future shipper's plan to ship must be imminent.[8] Thus, the Commission in the Hearing Order found that the members of the Producers demonstrated a substantial economic interest consistent with Commission precedent for Docket Nos. IS14-104-000 and IS14-105-000.[9] The substantial economic interest was based on the fact that the members of the Producers are potential future shippers on Shell's system or potential suppliers to shippers on Shell's system.[10] The Commission determined this satisfied the substantial economic interest standard consistent with recent Commission precedent in *Enbridge (Southern Lights) LLC*.[11]

23. It is found that this same rationale applies to the rates in Docket No. IS14-106-000. As the Producers assert, there is a potential that they could be "potential future shippers" or "potential suppliers to shippers" at Erath because production locations vary over time due to purchases, sales, new discoveries, etc.[12] Shell cites to the Hearing Order language that directed a determination on standing "based on whether they are active in the production areas supplying Erath."[13] However, Shell, Producers, Commission Trial Staff and the undersigned have not found any relevant cases limiting standing to activities in "the production area."[14] As a result, this partial decision focuses on the specific language of Section 343.2(b), Order Nos. 561 and 561-A,[15] the cited *Enbridge* case and

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ExxonMobil.

[8] *Id.* P 10.

[9] Hearing Order at 16.

[10] Hearing Order at 15.

[11] 134 FERC ¶ 61,067 (2011).

[12] Producers Initial Br. 8.

[13] Hearing Order at P 17.

[14] In this case "whether they are active in the production area supplying Erath." Hearing Order at P 17.

[15] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats & Regs ¶ 30,985 at 30,939 (1993), *order on reh'g*, Order No. 561-A, FERC Stats and Regs ¶ 31,100, at 31,092 (1994) ("Section 343.3 … has been modified to require that a protestant must file a verified statement which contains a detailed description of the nature and substance of the protestant's substantial interest in the pipeline's tariff filing). *See also* Order No. 561-A at 31,107-08. (Shell cites to Order No. 561 at 31,103; however, the cited page is inapposite. Shell Initial Br.

paragraphs 15 and 16 of the Hearing Order. In Order No. 561, the Commission specifically refused to base standing upon classifications, such as customers, customer of customer, and competitor. Instead, it chose application of a generic test based on economic interest stating that "the key factor in determining standing should be the magnitude of the economic stake of the person seeking standing to challenge a proposed rate."[16] "The Commission believes that the policy of the Act of 1992 would be furthered by restricting the ability to initiate investigations of proposed rates to those who have a substantial economic interest in those rates."[17] This was codified as section 343.2(b).

24. Additionally, as the Producers point out, the Shell Houston to Houma and Clovelly is one pipeline with multiple delivery points and storage facilities at Houma and Erath.[18] The Commission gave standing to the Producers to protest the rates from Houston to Houma, Clovelly and St. James, thus by logical extension, they also have standing to contest the rates along a segment within this pipeline flow. Stated another way, Erath is just a point in the flow of volumes for which the Commission granted standing. As the map attached to the Producers' initial brief shows, Erath is a point between Houston and Houma (closer to Houma).[19] The Erath movements will use the same facilities that provide service from Houston to Houma, Clovelly and St. James, Louisiana. As a result, the costs and revenues associated with the Erath shipments will need to be examined at a hearing in order to ensure proper and accurate rates for service from Houston.

25. Moreover, the rates in the three dockets, as noted by the Commission, are related.[20] This is due to the fact that each docket relates to a specific haul for origin and destination points on the same pipeline. Docket Nos. IS14-104 and IS14-105 are for petroleum injected at Houston delivered to various downstream points. Docket No. IS14-

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n.18.) The original Producers' filing together with their initial and reply briefs comply with this requirement.

[16] *Id*. at 30,964.

[17] *Id*.

[18] Shell's Houston to Houma provides crude oil service from Houston, Texas to Houma, Louisiana, and intermediate origin and destination points. Shipments may also travel past Houma, to Clovelly and St. James, Louisiana.

[19] *Id*. at Attachment A. The Producers stipulated they have no production behind the Erath origin point. *Id*. at 3. The Producers are correct that an analogous case is found in *Enterprise TE Products Pipeline Col, LLC*, 137 FERC ¶ 61027, at PP 27, 28 (2011). In this case the Commission ordered a hearing to go forward for the destination point which the pipeline had claimed that the protesters did not have standing.

[20] Hearing Order at 1.

106 is for petroleum injected at Erath and delivered to the same downstream points. Erath is located between Port Neches, Texas and Houma, Louisiana. Shipments from Erath to Houma, Clovelly and St. James will use the same pipeline as the shipments from Houston to these same markets.

26. Further, Producers have a substantial economic interest in the Erath rates since the costs and revenues must be allocated among all of the origin and destination shipments on the Shell Houston to Houma system to establish just and reasonable rates for Houston-sourced shipments. The costs and revenues attributable to the Erath shipments also must be considered and allocated to those shipments in order to calculate the other rates for shipments from Houston, since all shipments use the same facilities. If all of these costs are not considered there is a potential for over-recovery and or over or under apportionment of costs to specific tariff rates in question. The costs allocated to Erath will affect the costs allocated to Houston shipments or vice versa. The rates for all the hauls are interrelated and mutually interdependent, since the total costs of the service for the system must be allocated across all of the shipments. The Producers are correct that the Houston rates cannot be designed in a vacuum or ignoring the Erath rates. The Erath shipments are essentially a shorter haul than the Houston shipments over the same facilities and by law they have to be lower than the rates for the Houston shipments.[21] Cost and revenue responsibility must be allocated among all of the volumes on the Houston to Houma system, including volumes form the Erath origin, to calculate a just and reasonable rate for the Houston origin.

VI. CONCLUSION

27. Therefore, it is found that the members of the Producers have shown a substantial economic interest in the rates in Docket IS14-106-000 to warrant the commitment of resources to review the merits. An appropriate allocation of the total cost of service is essential to ensure that all tariffs in question have their appropriate allotment of cost responsibility. It is found that the members of the Producers have standing to protest the rates in Docket No. IS14-106-000. In addition, it is administratively efficient to look at all of the rates in one proceeding so that the just and reasonable rates for all the related

[21] In this regard, *Rocky Mountain Pipeline System, LLC*, 101 FERC ¶ 61,269, at P 35 (2002) cited by Shell is distinguishable. *Rocky Mountain* did not involve one continuous pipeline. Instead, the cited case involved the Western Corridor pipeline system which consists of three separate but integrated pipeline segments and different crudes. The Commission decided that Sinclair/Tesoro lacked standing due to the fact they were not shippers or users of Bow River crude and could not protest the initial rate. Notwithstanding this some of their concerns were addressed in the Commission's order.

dockets can be established at the same time, at the initiation of the new service due to the reversal of the pipeline flow.[22]

VI. ORDER

28. Accordingly, IT IS ORDERED, subject to review by the Commission on exceptions or on its own motion, as provided by the Rules of Practice and Procedure that:

(A) Shell shall file cost, revenue and throughput data supporting the initial rates in Docket No. IS14-106-000 as required by Part 346 of the Commission's rules. Shell is directed to file this information within 15 days of this order.

(B) The hearing schedule adopted in the related proceeding will be followed for Docket No. IS14-106-000 as well.[23]

Carmen A. Cintron
Presiding Administrative Law Judge

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[22] Producers are correct that the failure to establish a just and reasonable rate for Erath in this proceeding would create additional administrative burdens. As pointed out, a complaint would need to be filed in the future to address any over-recovery issues and ICA issues (short haul rate may not be higher than the long haul) may also have to be litigated in the future.

[23] *Order Establishing Procedural Schedule, Shell Pipeline Co. LP*, Docket Nos. IS14-104-000 *et al.* (March 6, 2014).