

Calnev Pipe Line, L.L.C.
Order Accepting Filing and Suspending Oil Pipeline Tariff
Subject to Refund and Conditions
95 FERC ¶ 61,491 (2001)

Calnev Pipe Line, L.L.C. (Calnev) filed a proposed tariff pursuant to the Commission's indexing methodology to conform its rates for petroleum products pipeline movements with the revised indexed ceiling level for the period July 1, 2001 to June 30, 2002. (Calnev Pipe Line, L.L.C., 95 FERC ¶ 61,491, 61,735-36 (2001)). Ultramar, Inc., ARCO and ExxonMobil Oil Corporation, and Tosco Corporation (Protestants) filed Motions to Intervene and Protest, alleging that Calnev was not eligible to make any such adjustments because it was over-recovering its underlying cost of service under the existing rates. (Id. at 61,736).

According to Section 343.2(c) of the Commission's regulations, a protest to an indexed rate increase must allege reasonable grounds for asserting 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. Thus, the Commission concluded, "a challenge to an indexed rate increase must rest solely on a comparison of the changes in rates and costs from one year to the next." (Id. at 61,736). It was, therefore, not appropriate to make comparisons to the underlying cost of service; rather, only changes in annual costs and revenues should be examined. Protestants did not have this data available to them, as Calnev had yet to file its 2000 FERC Form No. 6 information. The Commission ordered Calnev to submit its Form No. 6 Report to the Protestants. Pending a review of the data, the Commission accepted and suspended Calnev's proposed rates, subject to refund, and further order of the Commission.

COMM-OPINION-ORDER, 95 FERC ¶81,491, Calnev Pipe Line, L.L.C., Docket No. IS01-291-000, (June 29, 2001)

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Calnev Pipe Line, L.L.C., Docket No. IS01-291-000

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Calnev Pipe Line, L.L.C., Docket No. IS01-291-000

Order Accepting Filing and Suspending Oil Pipeline Tariff Subject to Refund and Conditions

(Issued June 29, 2001)

Before Commissioners: Curt Hébert, Jr., Chairman; William L. Massey, Linda Breathitt, Pat Wood, III and Nora Mead Brownell.

On June 1, 2001, Calnev Pipe Line, L.L.C. (Calnev) filed FERC Tariff No. 3 pursuant to the Commission's indexing methodology adopted under Order No. 561¹ and set forth in 18 C.F.R. §342.3 of the Commission's regulations. Calnev's filing was protested. As discussed below, the Commission accepts the subject filing, suspends Calnev's proposed FERC Tariff No. 3, allows the rates to become effective July 1, 2001, subject to refund, and directs Calnev to serve its FERC Form No. 6 filing for the 2000 reporting year on all parties filing protests in this docket on July 2, 2001.

Calnev's Filing

On June 1, 2001, Calnev filed proposed FERC Tariff No. 3 in accordance with Section 342.3(b) of the Commission's regulations.²

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Calnev states the proposed tariff conforms its rates for petroleum products pipeline movements from Colton, California, to McCarran Field and North Las Vegas, Nevada, and the Las Vegas terminal charge with the revised ceiling level for the period July 1, 2001 to June 30, 2002.³ Calnev requests that the proposed rates be made effective July 1, 2001.

Protests

On June 15, 2001, Motions to Intervene and Protest were filed by Ultramar, Inc.; ARCO and ExxonMobil Oil Corporation; and Tosco Corporation (collectively, Protestants).

Protestants allege that Calnev is substantially over-recovering its cost of service under its existing rates and that in light of this over-recovery, Calnev is not entitled to any upward adjustment in its rates based upon the increase in the index ceiling level. Protestants state that Page 700 of Calnev's FERC Form No. 6 for 1999 indicates that Calnev's cost per barrel-mile is decreasing when compared to same data for 1998. Furthermore,

Protestants state that Calnev was granted an extension of time to file its FERC Form No. 6 for the 2000 reporting year, which prevented Protestants⁴ from comparing the proposed changes in Calnev's rates against the change in Calnev's cost of service and throughput data, which would be shown on Page 700 of Calnev's 2000 Form No. 6.⁵

Section 343.3(b) of the Commission's regulations provides that the carrier may file a response to a protest no later than five days from the filing of the protest. No reply was filed by Calnev in response to the protests.

Discussion

Section 343.2(c) of the Commission's regulations provides that a protest or complaint filed against a rate proposed or established pursuant to Section 342.3 (index rates) must allege reasonable grounds for asserting 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. In this regard, a challenge to an indexed rate increase must rest solely on a comparison of the changes in rates and costs from one year to the next. In order for the Protestants to make this comparison, they must have available Calnev's 2000 FERC Form No. 6 information, particularly the data reported on Page 700.

Accordingly, to afford Protestants the opportunity to support their allegation that the proposed rate increases are substantially in excess of the cost increases incurred by Calnev in 2000, the Commission will direct Calnev to serve its 2000 FERC Form No. 6 report on the Protestants on July 2, 2001. Protestants will be given 30 days from the July 2, 2001 service date to file their supporting arguments. Pending the filing of such supporting data and the final disposition of Protestants' allegations, the Commission will suspend Calnev's proposed rates and make them effective July 1, 2001, subject to refund, and further order of the Commission.

The Commission orders:

(A) Calnev's Supplement No. 1 to Calnev Pipe Line Company's FERC Tariff No. 20 and FERC Tariff Nos. 1 and 2 are accepted as filed and made effective July 1, 2001.

(B) Calnev's FERC Tariff No. 3 is accepted and suspended and made effective July 1, 2001, subject to refund, and further order of the Commission.

(C) Calnev is directed to serve Protestants with a copy of its FERC Form No. 6 for the 2000 reporting year on July 2, 2001.

(D) Within 30 days after Calnev files its FERC Form No. 6 on July 2, 2001, Protestants must file data supporting their allegations.

– Footnotes –

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¹ In Order No. 561, the Commission adopted a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶30,985 (1993), 58 Fed. Reg. 58753 (November 4, 1993); *order on reh'g, Order No. 561-A, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,000 (1994), 59 Fed. Reg. 40243 (August 8, 1994), *aff'd*, *Association of Oil Pipelines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

² Calnev's filing also includes tariffs to effectuate the changing of its name which are not at issue in this proceeding. Effective July 1, 2001, Calnev will change its name from Calnev Pipe Line Company. The following tariffs were filed to implement the name change in accordance with 18 C.F.R. §341.6 (c): Supplement No. 1 to Calnev Pipe Line Company's FERC Tariff No. 20 (Adoption Supplement); FERC Tariff

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No. 1 (Adoption Notice); and FERC Tariff No. 2 (Rate, Routing, and Rules).

³ On May 18, 2001, the Commission issued a notice in Docket No. RM93-11-000 of the annual change in the index used to compute index ceiling levels for the period July 1, 2001 through June 30, 2002 (2001/2002 ceiling index) (95 FERC ¶61,263 (2001)). The annual change in the index to be used in computing index ceiling levels for July 1, 2001 through June 30, 2002 is 0.027594.

⁴ Calnev was granted an extension of time to June 29, 2001, by Letter dated April 9, 2001, pursuant to Section 375.307 of the Commission's regulations. The filing deadline for FERC Form No. 6 is March 31 of each year for the previous calendar year. See 18 C.F.R. §357.2 (2000).

⁵ Page 700 of FERC Form No. 6 was intended to be a preliminary screening tool that would permit a shipper to compare proposed changes in indexed rates against the pipeline's jurisdictional cost of service. Also, the data reported on Page 700 is intended to permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate. See *Cost-Of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,006, at p. 31,168 (1994), 59 *Fed. Reg.* 59137 (November 18, 1994); *order on reh'g, Order No. 571-A, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,012 (1995), 60 *Fed. Reg.* 356 (January 4, 1995).

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