

NuStar Logistics, L.P.

ORDER ACCEPTING TARIFFS

140 FERC ¶ 61,107 (2012)

In this case, NuStar Logistics, L.P. (NuStar), on July 5, 2012, filed for an index-based rate increase to be effective August 5, 2012. One party intervened and protested. Applying its 10 percent rule for index-based rate increases that are protested, the Commission accepted NuStar's proposed increase. Relying on Page 700 data from FERC Form No. 6 for calendar years 2010 and 2011, the Commission concluded that NuStar's percent cost decrease between 2010 and 2011 of 1.56 percent, added to the index-based rate increase of 8.29 percent, summed to a divergence of 9.85 percent. This met the 10 percent test, and the increase was not so substantially in excess of actual cost increases incurred by NuStar that the proposed rate adjustment should be disallowed.

20120003 0000 FERC EDF (UNOFFICIAL) 08/03/2012

140 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NuStar Logistics, L.P.

Docket No. IS12-503-000

ORDER ACCEPTING TARIFFS

(Issued August 3, 2012)

1. On July 5, 2012, NuStar Logistics, L.P. (NuStar)¹ filed revised tariffs² to implement an index-based rate increase under section 342.3 of the Commission's regulations. As discussed herein, the Commission accepts NuStar's tariff filing to be effective August 5, 2012.

Background and Filings

2. On July 5, 2012, NuStar submitted tariffs proposing an index-based rate increase of approximately 8.29 percent. This increase is less than the Commission's 2012 Index adjustment factor of 8.6011 percent. Page 700 of NuStar's Form No. 6 reports a cost decrease of 1.56 percent between 2010 and 2011. NuStar states that when this cost decrease is combined with NuStar's proposed index-based rate increase of 8.29 percent, the proposed rate increase results in a divergence of 9.85 percent under the Commission's percentage comparison test.

¹ NuStar is a common carrier pipeline, which transports crude oil and refined petroleum products in interstate commerce in Texas, New Mexico, Colorado, Oklahoma, Kansas, and Illinois.

² NuStar Logistics, L.P., FERC Oil Tariff, Oil Pipeline Tariffs, Tariff, FERC No. 65.9.0, 65.9.0; Tariff, FERC No. 66.6.0, 66.6.0; Tariff, FERC No. 68.5.0, 68.5.0; Tariff, FERC No. 70.7.0, 70.7.0; Tariff, FERC No. 73.6.0, 73.6.0; Tariff, FERC No. 74.6.0, 74.6.0.

3. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted.

4. On July 20, 2012, Valero filed a protest stating that NuStar's proposed 8.29 percent index-based rate increase is so substantially in excess of the actual cost changes incurred by NuStar that the proposed rates are unjust and unreasonable. Valero contends the Commission should deny the index increase because NuStar's costs declined between 2010 and 2011. Valero also asserts NuStar should file a corrected FERC Form No. 6 and related Page 700 along with a complete explanation and justification (including workpapers) for its treatment of Rental and Incidental Revenue.

5. On July 25, 2012, NuStar filed a response stating that its proposed rate increase is not substantially in excess of its cost changes. NuStar states Valero's critique of its FERC Form No. 6 data is not relevant and the Commission's analysis under the percentage comparison test does not contemplate consideration of data that does not appear on the face of the Page 700.

Discussion

6. The Commission accepts NuStar's proposed tariff. Protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission's regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter 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 unreasonable³

7. To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the carrier's FERC Form No. 6, Page 700 data in a percentage comparison test.⁴ The percentage comparison test is a very narrow test that "compare[s] the Page 700 cost data contained in the company's annual

³ 18 C.F.R. § 343.2(c)(1) (2012).

⁴ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) (*Calnev*) 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) (*BP West Coast*)).

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. . . .”⁵ This test is the “preliminary screening tool for pipeline [index-based] rate filings,”⁶ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.⁷

8. NuStar’s FERC Form No. 6, Page 700 shows a total cost of service decrease between 2010 and 2011 of approximately 1.56 percent. NuStar’s 1.56 percent decrease in costs combined with the proposed index-based rate increase of 8.29 percent results in divergence of 9.85 percent under the percentage comparison test. This magnitude of divergence between the pipeline’s costs and revenues, as expressed in percentage terms, is not sufficient for the protest to satisfy the requirements of section 343.2(c)(1).⁸ The Commission has previously explained that section 343.2(c)(1) does not automatically bar an index increase for pipelines that have experienced a cost decrease.⁹ Further the Commission has never found an index rate increase to be “substantially in excess” of actual cost changes under section 343.2(c)(1) when the difference between the proposed index rate increase and the pipeline’s actual change in cost is less than 10 percent. At 9.85 percent, NuStar’s proposed rate increase is not so substantially in excess of the actual cost changes incurred by the carrier that the rate adjustment should be disallowed.

⁵ *Calnev*, 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.

⁶ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs., Regulations Preambles Jan. 1991-June 1996 ¶ 31,006, at 31,168, *order on reh’g and clarification*, Order No. 571-A, FERC Stats. & Regs., Regulations Preambles, Jan. 1991-June 1996 ¶ 31,012 (1994).

⁷ *BP West Coast*, 121 FERC ¶ 61,141 at P 6 (“[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.”).

⁸ Shippers may file complaints against the index increases, which would allow for the consideration of factors beyond the percentage comparison test. *SFPP, L.P.*, 129 FERC ¶ 61,228 at P 8.

⁹ *Calnev Pipeline LLC*, 115 FERC ¶ 61,387 (2007).

9. The Commission is not persuaded by Valero's argument that NuStar's should be required to file a revised Form No. 6 and Page 700. NuStar correctly calculated its ceiling level rates, and as discussed above, the 1.56 percent decrease in costs reported on Page 700 combined with the proposed index-based rate increase of 8.29 percent, and the resulting divergence of 9.85 percent under the percentage comparison test, does not demonstrate a substantial over-recovery by NuStar.

The Commission orders:

NuStar's proposed tariff records are accepted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.