146 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Shell Pipeline Company LP — Docket Nos. IS14-104-000, IS14-105-000, IS14-106-000

ORDER ACCEPTING AND SUSPENDING TARIFFS SUBJECT TO REFUND AND CONDITIONS AND ESTABLISHING HEARING

(Issued January 9, 2014)

1. On December 10, 2013, Shell Pipeline Company LP (Shell) filed three related tariffs to establish initial rates for transportation of petroleum from markets in Houston, Texas to markets in Louisiana as a result of the reversal of its Houma, Louisiana to Houston, Texas pipeline system (Ho-Ho System). Shell requests the Commission permit all rates to become effective on December 12, 2013, on one day's notice. For the reasons discussed below, the Commission accepts and suspends Shell's tariffs, to be effective December 12, 2013, subject to refund, and establishes a hearing to determine whether Shell's initial uncommitted or non-contract rates are just and reasonable.

Background

2. Shell's Ho-Ho System comprises over 350 miles of pipe in two main flow patterns originating at Clovelly and Houma, Louisiana. The Ho-Ho System has multiple delivery points, including more than 15 delivery points serving major Gulf Coast refineries, and access to storage facilities at Houma and Erath, Louisiana, as well as in the Port Arthur area of Texas. Shell reversed its system to transport crude petroleum from Houston eastward to refineries in the Port Arthur and Louisiana markets.[1] The reversal of the Ho-Ho System was driven by the recent and ongoing surge of light, sweet 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.

[1] 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 that segment is incorporated into the new rate structure.

3. On June 21 2012, in Docket No. OR12-11-000, the Commission issued an order granting Shell's petition for declaratory order for its reversal of the Ho-Ho System.[2] The order approved Shell's proposed contract rates, service priority rights and prorationing provisions for shippers, and its use of a net present value (NPV) methodology to allocate requests for contract capacity during its binding open season. Shell proposed to file both the non-contract rates and the contract rates for which approval was sought in the petition shortly before the project is commissioned. Shell recognized that its non-contract rates would be filed pursuant to the Commission's regulations for initial rates (18 C.F.R. § 342.2).

4. On December 10, 2013, Shell filed three related tariffs to establish initial non-contract rates and to reflect the agreed-upon contracts rates for the various line segments comprising the Ho-Ho System. Shell states it filed the rates because the various line segments are operational and shippers' nominations are now being accepted.

5. In Docket No. IS14-104-000, Shell filed FERC Tariff No. S-158.0.0 to establish non-contract and contract rates for transportation from Houston, Texas to Houma, Clovelly and St. James, Louisiana. The contract rates are those agreed to by shippers as part of the open season for the reversal of the Ho-Ho System. With respect to the non-contract rates, Shell states that, pursuant to section 342.2 of the Commission's regulations, it filed an affidavit certifying that a non-affiliated shipper has indicated an intention to ship at the initial rates. The non-contract rates from Houston, Texas to Houma, Clovelly and St. James, Louisiana range from $1.74 to $2.49 per barrel. The rates will be lower for shippers with higher daily average barrels per month. The contract rates from Houston, Texas to Clovelly and St. James, Louisiana range from $1.75 to $2.75 per barrel. The contract rates will be lower for a shipper that has agreed to a longer contract term and has higher daily average barrels per month.

6. In Docket No. IS14-105-000, Shell filed FERC Tariff No. S-159.0.0 to establish non-contract 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. Shell states that, pursuant to section 342.2 of the Commission's regulations, it filed an affidavit certifying that a non-affiliated shipper has indicated an intention to ship at such initial rates.

7. In Docket No. IS14-106-000, Shell's FERC Tariff No. 160.0.0 establishes non-contract rates of $0.65 per barrel from Erath, Louisiana to the Houma, Clovelly and St. James, Louisiana destinations. Shell states that, pursuant to section 342.2 of the Commission's regulations, it filed an affidavit certifying a non-affiliated shipper has stated an intention to ship at such initial rates.

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[2] *Shell Pipeline Company LP*, 139 FERC ¶ 61,228 (2012).

8. Each of the tariffs also includes additional language, with reference to Shell's Petroleum Rules and Regulations tariff, FERC No. S-120.5.0, Item 75 (Apportionment When Nominations are in Excess of Facilities). The provision states that if the pipeline system monthly capacity becomes insufficient to transport the full volume of petroleum nominated by all shippers, the carrier will allocate the lesser of each contract shipper's nominated committed volumes or its actual nomination for the month. The sum of contract shipper's volumes shall not exceed 90 percent of the total monthly capacity. A contract shipper is a shipper who has executed a Transportation Services Agreement. The provision further states that the volumes of the remaining shippers will be allocated in accordance with the provisions of FERC No. S-120.5.0, Item 75.

Interventions and Protests

9. Timely motions to intervene in each of the proceedings were filed by Anadarko Petroleum Corporation, ConocoPhillips Company, Marathon Oil Company and Pioneer Natural Resources USA, Inc. Each of the intervenors also filed a joint protest to each of Shell's proposed tariffs as members of the Liquids Shippers Group. Each of the members of the Liquids Shippers Group filed a verified statement asserting that they have a substantial economic interest in Shell's filing because they are producers of crude oil in locations positioned to utilize Shell's pipeline system either as a shipper on such system or as a supplier of crude oil to other shippers on the system.

10. The Liquids Shippers Group states that under section 342.2(b) of the Commission's regulations, a pipeline can establish initial rates by filing a sworn affidavit that the rates have been agreed to by at least one non-affiliated shippers who intends to use the service in question. However, if a party protests an initial rate, the pipeline must file cost, revenue and throughput data pursuant to Part 346 of the Commission's regulations to support that initial rate. The Liquids Shippers Group protests the non-contract (or uncommitted) rates in each of Shell's initial rate filings. The Liquids Shippers Group asserts that Shell's proposed uncommitted rates on the Ho-Ho Reversal are substantially higher than the rates it charged for service on the same pipeline facilities in the opposite direction. The Liquids Shippers Group contends that Shell failed to demonstrate that its uncommitted rates on the reversed portions of the system are just and reasonable under the Interstate Commerce Act (ICA). Accordingly, the Liquids Shippers Group request that the Commission accept the tariffs subject to refund and conditions, require Shell to provide supporting cost and revenue data for the proposed rates, and establish a hearing to determine whether the initial rates are just and reasonable.

Shell's Answer

11. On December 31, 2013, Shell filed a response to the protest of the Liquids Shippers Group. Shell asserts the four entities that collectively filed the protest are not shippers using the challenged tariff, nor have they taken any steps to become shippers thereunder, nor have they even alleged a direct interest in the challenged tariff. Shell asserts that not one of the protesting producers has submitted a nomination on the Ho-Ho Reversal system for December or January. Shell further submits not one of the protesting producers demonstrated that they have contracts to sell to shippers on the Ho-Ho Reversal or how they would be affected by the non-contract rates being challenged. Shell argues that their affidavits only allege that they are positioned to become shippers in the future or become suppliers of others that may use Shell's jurisdictional pipeline system. Shell contends that such allegations fall short of meeting the substantial economic interest standard to have standing to protest the specific tariffs at issue. Shell submits that none of its actual shippers have protested, and that the protesting potential shippers lack standing, such that their protest should be dismissed.

12. Specifically, with respect to FERC Tariff No. S-160.0.0 in Docket No. IS14-106-000, Shell argues there is nothing in the affidavits submitted by the Liquids Shippers Group that suggest they have any standing or substantial economic interest in transportation service from the Erath, Louisiana origin. Shell states that unlike the origins in the other two protested tariffs (Houston and Nederland), Erath is supplied by only local production. In a verified statement Shell's employee stated "[i]t is my understanding of the relevant producing interests that none of the Protesting Producers are active in the production area supplying Erath."

13. Finally, Shell asserts the only basis alleged for the proposition that the proposed reversal rates are unreasonable is the contention that rates under the pre-reversal Ho-Ho System were lower than the new rates for service between the same points on the reconfigured system. Shell asserts this argument is flawed because it is based on the premise that the prior rates were at a reasonable maximum level. Shell contends that it was significantly under-recovering its cost-of-service during the period in which the prior, westward Ho-Ho-System rates were in effect.

Discussion

14. In its three related tariff filings, Shell proposes, among other things, initial non-contract (uncommitted) rates for transportation service from Houston, Texas to various points in Louisiana on its recently reversed Ho-Ho System. Pursuant to section 342.2(b) of the Commission's regulations, Shell justified its initial rates by filing affidavits stating that at least one non-affiliated person intends to use the service in question at the rates proposed. However, if a protest to the initial rate is filed, Part 346 of the Commission's regulations requires Shell to file cost, revenue and throughput data supporting the rate.

Thus, the only issue to be addressed in this proceeding is whether the Liquids Shippers Group has standing to file a valid protest. Shell's argument concerning the reasonableness of its rates is irrelevant because once a valid protest is filed the requirement that the pipeline file supporting data pursuant to Part 346 of the Commission's regulations is automatic.

15. The Commission finds that the members of the Liquids Shippers Group have adequately shown that they have a substantial economic interest in Shell's initial non-contract rates in Docket Nos. IS14-104-000 and IS14-105-000 because they are either potential future shippers on Shell's system or potential suppliers to shippers on Shell's system. Accordingly, the members of the Liquids Shippers Group have standing to protest the initial rates. The Liquids Shippers Group members' motions to intervene are also granted since they have an interest which will be directly affected by the outcome of the proceeding.

16. In its answer requesting that the Commission dismiss the protest, Shell emphasizes that the members of the Liquids Shippers Group are not shippers on the system and have not taken steps to become shippers on the system. The Commission finds Shell has narrowly construed the substantial economic interest standard contained in section 343.3(a) of the Commission's regulations as applied by the Commission. In *Enbridge (Southern Lights) LLC*,[3] the Commission explained:

> 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.[4]

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.[5] The Commission finds that, with respect to the rates in Docket No. IS14-104-000 and IS14-105-000, the members of the Liquids Shippers Group have demonstrated a substantial economic interest consistent with recent Commission precedent.

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[3] 134 FERC ¶ 61,067 (2011).

[4] *Id.* P 11 (footnote omitted).

[5] *Id.* P 10.

17. The Commission also finds that is unclear whether the members of the Liquids Shippers Group have standing with respect to the initial rates filed in Docket No. IS14-106-000. It is Shell's understanding that the members of the Liquids Shippers Group are not active in the production area supplying the Erath, Louisiana origin point. The Commission has no way of determining at this juncture if this is in fact true. However, if this is the case, then 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. Since the initial uncommitted rates in this proceeding will be set for hearing to determine whether they are just and reasonable, the members of the Liquids Shippers Group will have the opportunity to clarify the facts supporting their position in Docket No. IS14-106-000. The Commission directs the Presiding Administrative Law Judge (ALJ) 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.

18. Pursuant to section 342.2 of the Commission's regulations, the Commission finds that the Liquids Shipper Group have filed a viable protest to the uncommitted initial rates sufficient to warrant further investigation at hearing. Shell is directed to file cost, revenue and throughput data supporting the initial rates in Docket Nos. IS14-104-000 and IS14-105-000 as required by Part 346 of the Commission's regulations. Shell is directed to file its supporting information within 30 days of the date of this order. Further, should the Presiding ALJ find that the members of the Liquids Shippers Group have standing to protest the initial rates in Docket No. IS14-106-000, Shell shall then be required to file the Part 346 cost, revenue and throughput data in accordance with the directions of the Presiding ALJ.

19. Based upon a review of the filings, the Commission finds that Shell's non-contract 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. Accordingly, pursuant to section 15(7) of the ICA, the Commission accepts and suspends FERC Tariff Nos. S-158.0.0, S-159.0.0 and 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 body of this order and in the ordering paragraphs below.[6]

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[6] The Commission emphasizes that although the Commission is suspending all three of Shell's tariffs, the contract rates have been agreed to by shippers and approved in a declaratory order and are not subject to hearing. Suspension of all the rates is required because they are part of the same tariff.

The Commission orders:

(A) Pursuant to the authority contained in the ICA, particularly section 15(7), Shell's FERC Tariff Nos. S-158.0.0, S-159.0.0 and S-160.0.0, are accepted and suspended, to be effective December 12, 2013, subject to refund.

(B) Pursuant to the authority contained in the ICA, particularly sections 15(1) and 15(7), and the Commission's regulations, a hearing is established to determine whether Shell's initial uncommitted Ho-Ho Reversal rates are just and reasonable.

(C) Within 30 days of the date of this order, Shell is directed to file cost, revenue, and throughput data required by Part 346 of the Commission's regulations to support the rates in Docket Nos. IS14-104-000 and IS14-105-000.

(D) Consistent with the discussion in the body of this order, the Presiding ALJ is directed to make a determination with respect to the Liquid Shippers Group's standing in Docket No. IS14-106-000 and to either establish hearing procedures for those rates if it is determined Liquid Shippers Group has a substantial economic interest in that docket as well, or to dismiss the protest in that docket if it is determined they do not.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)