119 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Big West Oil Company Docket No. OR01-2-004

v.

Frontier Pipeline Company and
Express Pipeline Partnership

Chevron Products Company Docket No. OR01-4-004

v.

Frontier Pipeline Company and
Express Pipeline Partnership

ORDER ON REMAND AND MOTION TO DISMISS
AND ESTABLISHING HEARING

(Issued June 7, 2007)

1. This proceeding arises from consolidated complaints filed by Big West Oil Company (Big West) and Chevron Products Company (Chevron)[1] against Frontier Pipeline Company (Frontier) and Express Pipeline Partnership (Express) challenging the lawfulness of Frontier's local rates and Frontier's "portion" of certain joint rates filed by Express covering the transportation of crude oil and syncrude. The proceeding is now before the Commission on remand from the United States Court of Appeals for the District of Columbia Circuit (Court).[2] On July 26, 2006, Frontier filed a motion to dismiss the complaints, arguing that the Court vacated the Commission's orders.

[1] In this order, Big West and Chevron are referred to jointly as Complainants.

[2] *Frontier Pipeline Co. v. FERC*, 452 F.3d 774 (D.C. Cir. 2006) (Remand Order).

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2. Frontier and Express challenged Commission orders that addressed the calculation of reparations for past overpayments under the joint rates. In the order issued February 18, 2004, the Commission stated that the issue was "whether [the Commission] should base the calculation of the reparations on the sum of the local rates on file with the Commission or the sum of the indexed ceiling levels applicable to the local rates."[3] Citing *Texaco Pipeline, Inc*. (*Texaco*),[4] the Commission ruled that, under its joint rates policy, reparations must be calculated based on the sum of the local rates on file with the Commission rather than on the sum of the applicable ceiling levels.[5]

3. In an order issued August 10, 2004, the Commission denied rehearing of the February 18, 2004 Order and affirmed the award of reparations.[6] The Commission calculated the reparations based on the local rates on file during the applicable period for three of the four segments involved in the transportation and included a reduced rate stipulated by the parties as the just and reasonable rate for the fourth segment during the relevant period.

4. Frontier and Express sought judicial review of the August 10, 2004 Order. On May 26, 2006, the Court remanded the case to the Commission for further explanation of its joint rates policy.

5. The factual background and procedural history of the consolidated cases are fully described in previous Commission orders addressing the complaints[7] and generally will not be repeated in this order. As discussed below, the Commission denies Frontier's

[3] *Big West Oil Co., et al. v. Frontier Pipeline Co., et al.*, 106 FERC ¶ 61,171, at P 9 (2004) (February 18, 2004 Order).

[4] 72 FERC ¶ 61,313 (1995).

[5] *Big West Oil Co., et al. v. Frontier Pipeline Co., et al.*, 106 FERC ¶ 61,171, at P 9, 12-17 (2004).

[6] *Big West Oil Co., et al. v. Frontier Pipeline Co., et al.*, 108 FERC ¶ 61,183 (2004) (August 10, 2004 Order). The Commission also rejected Complainants' request for reparations applicable to shipments by third parties for which Complainants claimed to have paid the transportation charges. In the Remand Order, the Court affirmed the Commission's determination on that issue.

[7] *Big West Oil Co., et al. v. Frontier Pipeline Co., et al.*, 106 FERC ¶ 61,171 (2004) (February 18, 2004 Order), *order on reh'g*, 108 FERC ¶ 61,183 (2004) (August 10, 2004 Order).

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motion to dismiss the complaints and affirms its policy that a joint rate is just and reasonable if it does not exceed the sum of the local rates *on file* with the Commission. However, as further discussed below, the Commission also will allow an additional evidentiary hearing to afford Frontier the opportunity to demonstrate that the joint rate at issue in this proceeding is not unreasonable and that no reparations are due.

Motion to Dismiss Complaints

6. In its motion to dismiss the complaints, Frontier contends that the Court vacated the Commission's orders; therefore, it argues, all amounts paid pursuant to the vacated reparations orders must be returned to Frontier, plus applicable interest. Frontier maintains that Complainants failed to state a proper joint rates reparations claim under section 1(5) of the Interstate Commerce Act (ICA).[8] Further, Frontier contends that the Commission's joint rate policy as stated in *Texaco* does not provide a basis for a reparations claim and that the Energy Policy Act of 1992 (EPAct)[9] does not justify overriding traditional standards for awarding reparations.

7. On August 24, 2006, Complainants filed an answer asserting that the Court did not vacate the Commission's orders and that the Commission should not dismiss the complaints. Complainants contend that the Commission should issue a new decision finding that, under applicable statutory provisions, the joint tariffs at issue in this proceeding were unjust and unreasonable and that the Commission properly awarded reparations to the Complainants.

8. Complainants rely on *National Cable & Telecommunications Association v. Brand X Internet Services* (*Brand X*),[10] arguing that the Supreme Court held in that case that an administrative agency has the right to interpret a statute in any manner it chooses, so long as the interpretation is plausible. Complainants emphasize that the Supreme Court further determined in *Brand X* that a judicial decision may override the agency's interpretation only if the court has found that the agency's decision is precluded by the unambiguous terms of the statute itself.

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[8] 49 U.S.C. app. § 1(5) (1988). Section 1(5) provides that all charges for transportation service shall be just and reasonable.

[9] Pub. L. No. 102-486, § 1801(a), 106 Stat. 2776, 3010, 42 U.S.C. § 7172 note.

[10] 545 U.S. 967 (2005).

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9. The Commission will not dismiss the complaints. Frontier's motion to dismiss is based on its erroneous claim that the Court vacated the Commission's orders awarding reparations. On the contrary, the Court's direction is clear from the following paragraph:

> On remand, FERC must consider whether the prior judicial constructions of ICA § 1(5) in *Sloss-Sheffield*, *Great Northern*, and *Patterson* preclude its condemnation of the joint rate here without considering the reasonableness of the rate as an aggregate. *See Natn'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 162 L.Ed. 2d 820, 125 S.Ct. 2688, 2700 (2005); *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-45, 81 L.Ed. 2d 694, 104 S.Ct. 2778 (1984). If they do not, of course, the Commission must explain why its approach is a reasonable construction. Further, to persist in the outcome here it would have to explain its deviation from the ICC's pre-1977 applications of § 1(5).[11]

10. In accordance with the Court's direction, the Commission explains below why its joint rates policy is just and reasonable and consistent with Interstate Commerce Commission (ICC) practice as applied in the instant case. The Commission further explains why the joint rate in this case is held to exceed the sum of the local rates deemed to be in effect contemporaneously with the movements at issue, and thus is unreasonable. At the same time, the Commission will consider the reasonableness of the joint rate as an aggregate and afford Frontier and the other joint rate participants a hearing to show that the joint rate is reasonable.

<u>Remand Order</u>

11. The Court examined the history of the ICA and its application to oil pipelines, as well as the EPAct and Order Nos. 561 and 561-A.[12] Reviewing the facts of the instant case, the Court also stated that, during the period at issue, the four carriers participating in the transportation from the Canadian border to Salt Lake City published their own local rates, although in 1998, they agreed to provide a discount to through shippers under joint tariffs published by Express. The Court further stated that the joint tariffs complied with

[11] *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 778-89 (D.C. Cir. 2006).

[12] *Id*. at 776-79.

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the Commission's joint rates policy stated in *Texaco*.[13] However, the Court observed that, as the result of settlement discussions, the parties agreed that reparations, if any, would be based on the filed local rates of three of the four carriers, but that the parties stipulated that the just and reasonable amount for Frontier's applicable filed local rate would be $0.57 per barrel instead of the approximately $1.50 per-barrel rate that was on file during the period at issue.[14]

12. On appeal, the carriers claimed that the Commission improperly rejected their argument that, although the parties agreed that one of the local rates was unjust and unreasonable, one or more of the other three local rates may have been below their

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[13] *Id*. at 779. The Court stated that "[i]n *Texaco*, FERC held that the ceiling level for such a rate 'is the sum of ceiling levels associated with individual rates currently on file' for the individual movements . . . covered by the joint rate," and "[t]he joint rate proposal's compliance with *Texaco* is no surprise, since the joint rate . . . could not be greater than the sum of the local rates," which must be at or below the ceiling level for each local rate.

As discussed below, the *Texaco* formulation for a permissible joint rate suffers from an imprecision of language. The more precise formulation of the Commission's joint rate policy is as follows: A joint rate is just and reasonable if it does not exceed the sum of the individual local rates on file for the individual movements covered by the joint rate.

[14] *Id*. at 780-81. The parties' stipulation provided in part as follows:

> To facilitate the Commission's determination of this matter, Frontier, Big West and Chevron hereby stipulate as follows:
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> 1. For the purpose of calculating the reparations, if any, that Big West and Chevron are entitled to receive for their shipments on the joint tariff, the just and reasonable rate for Frontier's local tariff for the two year period prior to the date on which the Big West and Chevron Complaints were filed until February 1, 2002 was $0.57 for light petroleum.

Joint Stipulation By Complainants Big West Oil LLC and Chevron Products Company and Respondent Frontier Pipeline Company Regarding Reparations for Joint Tariff Shipments, July 18, 2002, at 7.

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applicable ceiling levels, thus offsetting the excess of the unreasonable rate and rendering the joint rate as a whole just and reasonable.[15] The Court found that the Commission failed to explain why this argument is inconsistent with the ICA and the EPAct. The Court focused primarily on two Supreme Court decisions: *Louisville & Nashville Railroad Co. v. Sloss-Sheffield Steel & Iron Co*. (*Sloss-Sheffield*)[16] and *Great Northern Railway Co. v. Sullivan* (*Great Northern*).[17] The Court interpreted these decisions as generally standing for the principle that the reasonableness of a joint rate is to be assessed as a whole rather than by reference to fewer than all of its segments.[18]

13. The Court found that the Commission's application of the *Texaco* policy in the instant case combines filed segment rates, but employs a stipulated rate for the fourth segment that was determined in the settlement of cost-of-service proceedings, thereby violating the principle that a through rate cannot be judged on the basis of a traditional cost inquiry into some segments *unless the agency allows the carrier to be heard on costs for other segments*.[19] The Court also questioned the Commission's determination that the reparations calculation should not be based on the applicable ceiling levels of the three filed underlying local rates in addition to the stipulated rate for the fourth segment.

14. The Commission has considered the judicial construction of ICA section 1(5), as cited by the Court. The Commission concludes, as set forth below, that it must judge the reasonableness of the joint rate here as an aggregate rather than looking at the reasonableness of only some of the joint rate's parts. This approach is consistent with the Remand Order and is in keeping with the ICC's pre-1977 application of section 1(5).

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[15] *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 781 (D.C. Cir. 2006).

[16] 269 U.S. 217 (1925).

[17] 294 U.S. 458 (1935). The Court also cited, *inter alia*, *Patterson v. Louisville & Nashville Railroad Co*., 269 U.S. 1 (1925) (*Patterson*).

[18] *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 782 (D.C. Cir. 2006).

[19] *Id*. at 785-86.

Commission Discussion

A. Statutory and Regulatory Basis for the Commission's Oil Pipelines Joint Rate Policy

15. Oil pipelines first became subject to the ICA in 1906 when Congress enacted the Hepburn Act and placed the pipelines under the jurisdiction of the ICC.[20] Because of the unique nature of oil pipelines, they never were subject to many of the provisions of the ICA that governed other types of common carriers, such as railroads and motor carriers. For example, oil pipelines are not subject to commodities clauses that prohibit carriers from transporting articles produced or owned by them, oil pipelines are not required to obtain certificates of convenience and necessity before constructing or extending their lines, oil pipelines do not have to obtain permission before abandoning their lines, and oil pipelines are not subject to the provisions regarding consolidation or merger of properties and acquisition of control.

16. Contemporaneously with the enactment of the Hepburn Act, the ICC adopted a policy that it would presume a through rate to be unreasonable if it exceeded the sum of the local rates then on file for service between the same points. However, this policy was not absolute. The ICC permitted a carrier to rebut the presumption of unreasonableness if it demonstrated that good cause existed for the through rate to exceed the sum of the local rates on file.[21] Additionally, the policy applied only when the carrier's joint rate exceeded the sum of the local rates in effect at the time of the shipment in question. The ICC did not permit a later finding that one of the local rates applicable to the movement was unjust and unreasonable to create a presumption that the joint rate was unreasonable.[22]

17. Congress codified the ICC's policy in 1910 by amending ICA section 4, making it unlawful for a carrier "to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter." While that prohibition remains in effect today,[23] Congress further amended section 4 to allow

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[20] Pub. L. No. 59-337, § 1, 34 Stat. 584.

[21] *See Windsor Turned Goods Co. v. Chesapeake & Ohio Ry. Co.*, 18 ICC 162, 163 (1910); *Michigan Buggy Co. v. Grand Rapids & Indiana Ry. Co.*, 15 ICC 297, 299 (1909).

[22] *See White Brothers v. Atchison, Topeka & Santa Fe Ry.*, 17 ICC 288 (1909).

[23] 49 U.S.C. app § 4(1) (1988).

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carriers to seek permission to deviate from either the long haul/short haul provision or the "aggregate of the intermediates" provision upon prior application to the ICC. The amendment required a carrier to file such an application concurrently with or in advance of the tariff filing, and, upon approval by the ICC, the rate could become effective on the next day.

18. In 1977, as part of the Department of Energy Reorganization Act, Congress transferred jurisdiction over oil pipelines to the newly-created Federal Energy Regulatory Commission. In the EPAct, Congress required the Commission to issue, within one year, a final rule establishing a simplified and generally applicable ratemaking methodology. In compliance with that directive, the Commission issued a series of orders[24] promulgating regulations that established, *inter alia*, a rate cap system that frees oil pipelines from the obligation to initiate full-blown rate cases to adjust their rates, so long as the rates do not exceed ceiling levels, which are calculated on the basis of a formula that anticipates annual percentage changes for the entire oil pipeline industry. On appeal, the Court upheld the Commission's orders.[25] The Commission's joint rates policy and its rulings in the instant case have been consistent with the simplified procedures it adopted to comply with the Congressional mandate. At the same time, as further discussed below, the Commission's regulations anticipate the possibility that a joint rate can exceed the sum of the underlying local rates on file.

B. The Commission's Joint Rate Policy

19. The Commission's procedures have been simplified considerably; nevertheless, the standards established in ICA sections 1(5) and 4(1) remain essential foundations of oil pipeline ratemaking. In the orders below, as here on remand, the Commission is relying on both sections. Although there was some confusion during oral argument on this point, the Commission was not acting solely pursuant to section 1(5), which requires

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[24] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. Preambles (1991- 1996) ¶ 30,985 (1993), *order on reh'g*, Order No. 561-A, FERC Stats. & Regs. Preambles (1991-1996), ¶ 31,000 (1994); *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs. Preambles (1991-1996) ¶ 31,006 (1994), *order on reh'g*, Order No. 571-A, FERC Stats. & Regs. Preambles (1991-1996) ¶ 31,012 (1994); *Market Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. Preambles (1991-1996) ¶ 31,007 (1994), *order on reh'g*, Order No. 572-A, 66 FERC ¶ 61,412 (1994).

[25] *Association of Oil Pipelines v. FERC*, 83 F.2d 1424 (D.C. Cir. 1996).

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that "[a]ll charges made for any service rendered or to be rendered . . . shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."[26] The Commission also was applying section 4(1) of the ICA, which provides in pertinent part that "[i]t shall be unlawful for any common carrier subject to this chapter . . . to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter. . . ."[27]

20. The *Texaco* decision first enunciated the Commission's joint rate policy by stating somewhat imprecisely that "the ceiling level for a joint rate is the sum of the ceiling levels associated with individual tariff rates on file. The Commission approves Texaco's proposed joint rate because it is below the combination of actual index ceiling levels made up of the individual tariff rates currently on file."[28] The statement in *Texaco* may have created some confusion because the underlying local rates on file were at the applicable ceiling levels, and *Texaco* thus imprecisely spoke in terms of summing the local *ceiling* levels, which ceiling levels happened to be *the same as the rates on file* in the *Texaco* proceeding. However, in subsequent decisions applying the joint rate policy, the Commission repeatedly clarified that "a joint rate is just and reasonable if it is less than or equal to the sum of the individual tariff rates for that movement currently on file with the Commission."[29] In other words, the Commission has made it clear that the justness and reasonableness of a joint rate is measured against the sum of the underlying local rates *on file* with the Commission. The Commission never has allowed joint rates to be measured against the sum of hypothetical rates at the ceiling levels applicable to the underlying local rates if the ceiling levels were higher than the actual local rates on file.

21. That policy has been applied to the agreement of the parties in this case to substitute a stipulated lower rate for one local segment that had a higher rate on file during the period at issue. The agreement, as discussed below, provides that the

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[26] 49 U.S.C. app. § 1(5)(a) (1988).

[27] 49 U.S.C. app. § 4(1) (1988).

[28] 72 FERC ¶ 61,313, at p. 62,310-11 (1995).

[29] *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,128 at P 23 (2005). *See also Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC,* 116 FERC ¶ 61,175 at P 18 (2006); *Enbridge Energy Company, Inc*., 110 FERC ¶ 61,211 at P 54 (2005); *Express Pipeline, LLC*, 104 FERC ¶ 61,207, at P 8 (2003); *Plantation Pipe Line Co*., 98 FERC ¶ 61,219, at p. 61,866 (2002).

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stipulated rate existed *as if it were the rate on file for the past period relevant to the reparations calculation*.[30] By employing the stipulated reduced rate for one segment, the parties agreed that for reparations purposes the stipulated rate would be considered to be a local rate in effect contemporaneous with the movements at issue, and thus to be appropriately included in summing the local rates on file to determine the just and reasonable level of the joint rate. To hold otherwise would render the stipulation meaningless and a nullity. This approach is both consistent with the Commission's joint rates policy for oil pipelines and the Commission's interpretation of ICA sections 1(5) and 4(1) in support of that policy.

22. Perhaps because of the imprecision of the statement in *Texaco*, the Court at one point in the Remand Order stated that "even if the joint rate *were* somehow calculated 'based on' the sum of the locals, reliance on *one* local rate to condemn the joint rate would seem to violate *Sloss-Sheffield's* instruction not to use less than all the 'factors' constituting a rate to judge the whole."[31] Accordingly, on remand, the Commission is applying its joint rate policy in this case to the whole joint rate and is affording Frontier the opportunity to demonstrate that the joint rate it would propose for calculating reparations (which exceeds the sum of the applicable intermediates, as described below) is nevertheless just and reasonable on a cost-of-service basis. This action is in accordance with *Sloss-Sheffield* and the related precedents cited by the Court, which require that the reasonableness of a joint rate under section 1(5) of the ICA must be determined based on the whole joint rate rather than upon consideration of the reasonableness of fewer than all of the joint rate's segments.

C. Application of the Joint Rates Policy in This Case

23. Frontier maintained that the joint rate never exceeded the sum of the local rates contemporaneously on file, thus satisfying the "aggregate of the intermediates" requirement of ICA section 4(1). In fact, Frontier stated that, when the local rate was lowered as a result of the settlement among the parties, the joint rate was lowered at the same time. Thus, Frontier argued, the Commission erred in applying ICA section 4(1) in this case, because Frontier never had a joint rate in effect that exceeded the sum of the local rates contemporaneously on file. Frontier maintained that once that was established, long-standing ICC and judicial precedent required the Commission to examine the joint rate in its entirety to determine whether the joint rate was just and

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[30] *Supra* note 14.

[31] *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 783 (D.C. Cir. 2006) (emphasis in original).

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reasonable. Further, Frontier asserted that, even if it had violated ICA section 4(1), it owed no reparations, which could be assessed only after a hearing establishing that the entire joint rate was excessive based on the collective cost of service of the individual participating carriers.

24. In the Remand Order, the Court described the applicable principles reflected in *Sloss-Sheffield*, *Great Northern*, *Patterson*, and pre-1977 ICC practice as: (1) a through rate that exceeds the sum of intermediate rates is presumptively unreasonable; (2) the presumption is rebuttable, not conclusive; (3) the reference to intermediate rates is to contemporaneously filed rates; and (4) a showing that a joint rate exceeds the sum of intermediate rates shifts the burden of proof of reasonableness to the carrier to justify the excess. On remand, the Commission concludes that its orders in this case are consistent with those decisions in light of the parties' stipulation concerning reparations.

25. The Commission explains here (first briefly, and then in some detail) why its actions and regulations are in harmony with the above principles. The short response is that (1) as to the contemporaneity requirement, the parties' stipulation specifically established not only the underlying rate for Frontier, *but also the time period* to which the rate would apply; and (2) as to the rebuttability requirement, the Commission will provide the joint rate participants the opportunity to rebut.

26. The Commission acknowledges that the filed joint rate initially did not exceed the sum of the filed local rates. That, however, does not end our inquiry because the parties' unanimous stipulation as to Frontier's rate for the period during which the movements in this case took place must change the way we look at what the relevant local rates were in determining whether the joint rate exceeded their sum. To explain why the stipulated rate for one of the local components of the joint rate fulfills the requirement of contemporaneity, one must examine the language of the stipulation itself. Big West, Chevron, and Frontier filed the joint stipulation on July 18, 2002. As stated above, the stipulation provides, in relevant part, as follows:

> To facilitate the Commission's determination of this matter, Frontier, Big West and Chevron hereby stipulate as follows:
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> 1. For the purpose of calculating the reparations, if any, that Big West and Chevron are entitled to receive for their shipments on the joint tariff, the just and reasonable rate for Frontier's

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> local tariff *for the two year period prior to the date on which Big West and Chevron Complaints were filed until February 1, 2002* was $0.57 for light petroleum.[32]

Thus, by Frontier's and the other parties' own agreement, the $0.57 rate was made contemporaneous with the other local rates on file during the period at issue *for the purpose of calculating the reparations*. Accordingly, the Commission finds that the contemporaneity requirement of *Patterson* is met under these circumstances. The stipulation itself thus proves the violation of section 4(1).

27. The Commission's existing regulations at 18 CFR § 341.15 codify the statutory provision of section 4(1) to permit a carrier to apply for and establish its entitlement to relief from the prohibition of section 4(1). The regulations thus address the second requirement of *Patterson* (and *Sloss-Sheffield* and *Great Northern*) -- that a carrier be allowed to rebut the presumption that a joint rate exceeding the sum of intermediate rates is unreasonable -- albeit with the expectation that the carrier will rebut this presumption at the time such a joint rate is filed.

28. Specifically, the Commission's regulations provide in pertinent part:

> (a) *Requests for relief from section 4.* Carriers may file requests for relief from the provisions of section 4 of the Interstate Commerce Act in order to . . . charge greater compensation as a through rate than the aggregate of the intermediate rates. Such request will be deemed granted unless the Commission denies the request within 30 days of the filing . . . [and] (c) . . . Applications for section 4 relief must be filed concurrently with the tariff publication filing establishing those rates. . . ."[33]

Of course, prior to the parties' stipulation in this case, the through rate had not exceeded the aggregate of the local rates on file, and thus there was no need to seek relief from section 4 when the joint rate was filed. Nevertheless, the parties have stipulated a replacement local rate that results in a joint rate that is too high.

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[32] *Supra* note 14 (emphasis added). The stipulation also addressed the quantity of shipments during the relevant period and the joint rate paid.

[33] 18 C.F.R. § 341.15(a) and (c) (2006).

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29. The regulations at section 341.15 were promulgated on October 22, 1993, in Order No. 561.[34] Interestingly, the regulations they fine-tuned had included oil pipeline regulations transferred from the ICC to the Federal Energy Regulatory Commission. Those regulations described the ICC policy, adopted by this Commission, that stated:

> Section 4 of the act, as amended, prohibits the charging of any greater compensation as a through rate than the aggregate of the intermediate rates that are subject to the act. The Commission has frequently held that through rates which are in excess of the sum of the intermediate rates between the same points via the same route are prima facie unreasonable. The Commission has no authority to change or fix a rate except after full hearing. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider a rate which is higher than the aggregate of the intermediate rates between the same points via the same route as prima facie unreasonable and that the burden of proof would be upon the carrier to defend such unreasonable rate.[35]

30. In its prior orders, the Commission established a level of reparations owed for joint rate movements. Frontier claims no reparations are owed. Frontier's position throughout has been that it never violated ICA section 4(1) because it never had a joint rate in effect that exceeded the sum of the contemporaneous local rates on file. The Commission, however, has explained how *by stipulation* the joint rate for the movements at issue in fact does violate section 4(1). Frontier also argued that even if there were a violation of section 4(1), it must be allowed to justify the overall joint rate under ICA section 1(5). The stipulated $0.57 rate is significantly below the $1.51 Frontier rate that would apply in the absence of the stipulation. The joint rate, however, consistent with the principles of *Sloss-Sheffield, Great Northern, Patterson*, ICC precedent and the Court's opinion, cannot be judged on the basis of only some segments. Frontier, thus, must be allowed to show that because other intermediate rates, aside from the stipulated $0.57

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[34] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. Preambles (1991-1996) ¶ 30,985 (1993). Section 1802 of the EPAct required the Commission to streamline its procedures relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

[35] *See* former section 341.56(a), promulgated on March 23, 1984, in *Transfer of Oil Pipeline Regulations*, Order No. 367, FERC Stats. & Regs. Preambles (1982-1985) ¶ 30,552 (1984). Former section 341.56 is found at FERC Stats. & Regs. Vol. II ¶ 26,356.

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rate, were below their respective reasonable maximums, the overall joint rate was reasonable. This will require all individual participating pipelines to file cost, revenue, and throughput data pursuant to the Commission's Opinion No. 154-B cost-of-service methodology for determining oil pipeline rates,[36] and the statements, schedules, and supporting workpapers required by Part 346 of the Commission's regulations.[37]

31. Accordingly, under these unique circumstances, the Commission shall convene a hearing to afford Frontier the opportunity to establish a cost-of-service basis for the joint rate, unless Frontier advises that it no longer seeks such a ruling. In addition, the Commission's litigation staff is directed to participate to assist in developing a full and complete record on the cost of service supporting the joint rate.[38]

The Commission orders:

(A) Pursuant to the authority of the Interstate Commerce Act, particularly section 15(1) thereof, and the Commission's regulations, a hearing is established to examine the justness and reasonableness of the joint rate in this proceeding.

(B) Frontier must, if it still seeks a determination based on the overall costs of the carriers participating in the joint rate, file all supporting cost material, consistent with the requirements of the Opinion No. 154-B methodology and Part 346 of the Commission's regulations within 60 days of issuance of this order. If Frontier elects otherwise, it must so notify the Commission within 30 days of issuance of this order.

(C) Pursuant to Section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2006), the Chief Administrative Law Judge shall designate a presiding administrative law judge (ALJ) for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

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[36] *Williams Pipe Line Company*, Opinion No. 154-B, 31 FERC ¶ 61,377 (1985); Opinion No. 154-C, 33 FERC ¶ 61,327. *See also ARCO Pipe Line Company*, Opinion No. 351, 52 FERC ¶ 61,055 (1990); Opinion No. 351-A, 53 FERC ¶ 61,398 (1990).

[37] 18 C.F.R. Part 346 (2006).

[38] The participating pipelines' tariffs show that the rates on file during the reparations period were all at, or very nearly at, the pipelines' ceiling levels, so cost evidence consistent with Opinion No. 154-B and Part 346 of the Commission's regulations will be necessary to justify rates above ceiling levels.

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(D) Litigation staff is to participate to assist in developing a record on costs of the joint rate participants.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.