149 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Magellan Pipeline Company, L.P. — Docket No. IS15-38-001

ORDER ON TARIFF

(Issued December 12, 2014)

1. On October 31, 2014, Magellan Pipeline Company, L.P. (Magellan) filed FERC No. 184.3.0, to be effective December 1, 2014. Magellan proposes to change the rules and regulations applicable to the transportation of petroleum products on Magellan's Rocky Mountain System. On November 13, 2014, Magellan filed FERC No. 184.3.1 amending FERC No. 184.3.0. The amendment includes all the proposed changes in the October 31, 2014 filing and adds document references for product grade specifications. For the reason discussed below, the Commission accepts FERC No. 184.3.1, to be effective December 1, 2014.[1]

Background

2. Magellan filed tariffs containing rules, regulations, and rates for the movement of petroleum products on Magellan's Rocky Mountain System. The Rocky Mountain System transports refined products from origin points in Colorado and Wyoming to destination points in Colorado, Wyoming and South Dakota. Magellan acquired this system from Rocky Mountain Pipeline System LLC on November 13, 2013.[2] Magellan states that as of August 2014 the entire Rocky Mountain System pipeline operations have been transitioned to Magellan and the revisions reflected in the proposed tariffs incorporate Magellan's standards for operations. Magellan states the all transportation

[1] By virtue of Magellan's amending its initial filing, the December 1, 2014 requested date effectively becomes a date requested on short notice, which moves the effective date to 31 days from the date of the amendment. *See* 18 C.F.R. § 341.4 (2014).

[2] *See* Magellan Pipeline Company, L.P.'s Adoption Notice, Docket No. IS14-47-000 (filed Nov. 15, 2013).

rates for the Rocky Mountain System contained in Item No. 125 of its tariff remain unchanged.

Magellan's Filing

3. Item No. 10, Petroleum Products Defined, provides wording changes to depict the definition of petroleum products transported. Item No. 15, Testing, provides new provisions for guidance on the testing of the petroleum products and the amended tariff details the documents addressing product grade specifications are available on Magellan's website.

4. Item No. 20, Measuring, cancels the overage and shortage provision that requires each shipper to be allocated the overage and shortage and replaces the provision with a tender deduction as specified in new Item No. 12, Volume Correction and Tender Deductions. Magellan states the new tender deduction of $1/10^{th}$ of 1 percent will be applied to all shippers and is an efficient methodology for Magellan to handle the overages and shortages of its pipeline system.

5. Magellan cancels and removes Item No. 65, Injection Additives and Dyes, Item No. 77, Instantaneous Billing (Petrolex), Item No. 80, Storage Charges, and Item No. 85, Terminal Charges. It has cancelled and removed these provisions and related fees because it states these provisions and fees relate to non-jurisdictional terminalling and storage services.

6. Item No. 25, Facilities at Origin and Destination, contains wording changes to clarify Magellan's and the shipper's requirements for origin and destination.

7. Item No. 79, Transmix, contains wording changes and cancels the transmix fee of 4.07 cents.

8. Item No. 90, Payment for Charges for Transportation and Other Services, contains wording changes and new language specifying the obligations and rights of shippers and Magellan relating to the payment provisions for the transportation of product. Magellan states Item No. 90 also clarifies that Oklahoma law governs Magellan's lien rights and collection rights.

Protests

9. On November 17, 2014, Suncor Energy (U.S.A.) Inc. (Suncor) filed a motion to intervene and protests both Magellan's original and amended filings. Suncor is a refiner and marketer of petroleum products and operates a petroleum refinery at Commerce City, Colorado. Suncor states it is a regular shipper of gasoline and diesel fuel on Magellan's Rocky Mountain System. Suncor states that it has standing to protest the filings because it has a substantial economic interest in the tariff filings as a present and future shipper of petroleum products on the Rocky Mountain System.

10. Suncor states that the changes in rules and regulations proposed by the tariff filings include new provisions on product specifications and testing requirements (Item No. 15) and new financial security and collection rights for Magellan (Item No. 90). Suncor asserts that certain additions and modifications of the rules and regulations proposed by the tariff filings lack justification or legitimate purpose, create opportunities for arbitrary or discriminatory unilateral action by Magellan, and may be unjust and unreasonable or unduly discriminatory in violation of sections 1(4), 1(5), 1(6), 3(1), and 15(7) of the Interstate Commerce Act (ICA). Suncor asserts the tariff filings should be rejected. If not rejected, Suncor argues that the tariff filings should be suspended for the maximum statutory period of seven months and set for discovery and hearing before an Administrative Law Judge (ALJ).

11. Suncor states that the tariff filings propose to require shipments of petroleum products to comply with product specifications published on Magellan's website. In addition, Suncor states the tariff filings would require shippers to demonstrate conformance with Magellan's product specifications through the submission of a certificate of accuracy that represents the product characteristics based on prescribed testing methods. Suncor states that for several of the pertinent specifications it does not perform testing, does not agree with the proposed specification limits, or does not perform testing in the manner prescribed in the proposed specifications to support a certificate of analysis. Suncor submits that the gasoline and diesel fuel produced at Suncor's refinery meet all currently applicable pipeline product quality specifications, comply with all federal and state fuel quality standards, and satisfy all applicable product specification requirements for the sale of fuel. Suncor asserts that to achieve and demonstrate compliance with the Magellan specifications, it would be required to incur significant costs. Suncor submits that the costs would include one-time investments in equipment and modified operations of $35,000, ongoing expenses for additional personnel and supplies, and ongoing operating inefficiencies and economic penalties of $14 million per year.

12. As noted above, Suncor challenges a number of tests and/or standards for gasoline and diesel fuel proposed by Magellan. Specifically, Suncor raises issues concerning the haze rating test for gasoline and No. 2 ultra-low sulfur diesel, arguing that under Magellan's proposed specifications (i.e., a Haze rating of 2 at 45 and 55 degrees Fahrenheit for gasoline and a Haze rating of 2 at 77 degrees Fahrenheit for No. 2 ultra-low sulfur diesel), Suncor would need to invest approximately $15,000 in new laboratory equipment to satisfy the proposed specifications. Suncor also argues that the proposed specifications for maximum sulfur content for No. 2 diesel fuel of 10 parts per million (ppm) rather than 15 ppm would require Suncor to operate process units at a higher severity, would degrade expensive catalyst material, and would limit the flexibility of refining operations, resulting in an economic penalty of approximately $2.5 million per year. As to the proposed specification for thermal stability for No. 2 diesel fuel at 75 percent maximum reflectance, Suncor states that it does not currently use the testing

method prescribed by the proposed specification, and in order to comply with the testing required by the proposed specification, Suncor would need to invest approximately $5,000 in new equipment. In order to meet the proposed specification for minimum flash point for No. 1 diesel fuel of 125 degrees Fahrenheit rather than the ASTM minimum flash point of 100 degrees Fahrenheit, Suncor would need to implement changes in refining operations that would reduce flexibility and result in an economic penalty of approximately $11.5 million per year, which would be unnecessary absent the proposed specifications.

13. Suncor asserts that under section 15(7) of the ICA, Magellan has the burden of proof to demonstrate the justness and reasonableness of any proposed changes in its tariff filing. Suncor contends that Magellan has failed to provide any justification or explanation as to why the product specifications are necessary. Suncor argues that the proposed specifications and testing go beyond the American Society for Testing and Materials' (ASTM) or industry standards, exceed applicable state and federal fuel quality standards, and exceed the quality and testing practices applicable to the products which Suncor has historically transported on the Rocky Mountain System. Suncor argues there are no operational or pipeline safety rationales that justify the proposed product standards.

14. Suncor states that Magellan's user guide for its web-based service for submitting product compliance data describes a process by which a shipper can request a waiver of the product specifications, but contains no description of how the Magellan Quality Group processes those waivers or what criteria are used in evaluating a waiver request. Accordingly, Suncor contends that Magellan could exercise its discretion to accept or reject shipments in a manner that could be arbitrary and capricious and unduly discriminatory against certain shippers or types of products.

15. Suncor states that under Magellan's proposed tariff, a default by a shipper would extend Magellan's setoff rights beyond the scope of the transportation charges. Suncor states that the tariff filings would allow Magellan, without notice, to set off (a) any amounts owed by Magellan to a shipper under any other agreements, instruments or undertakings between the shipper and Magellan against (b) any amounts owed by the shipper to Magellan under any other agreements, instruments or undertakings between the shipper and Magellan. Suncor asserts that Magellan provides no explanation or justification for this extension of setoff rights.

16. Suncor states Item No. 90, including the carriers' liens, which requires such liens to be construed in accordance with and governed by Oklahoma law, is not appropriate in a tariff of general applicability where the regulated entity has the ability to negotiate

choice of law and forum provisions on a case-by-case basis with individual customers pursuant to individual service agreements.[3]

Magellan's Answer

17. On November 24, 2014, Magellan filed an answer to Suncor's protest. Magellan asserts that the provisions Suncor protests are just and reasonable, supported by Commission precedent, and are consistent with, if not identical to, practices and FERC tariffs in effect throughout the refined petroleum products industry, including elsewhere on Magellan's pipeline system. Magellan contends that Suncor's protests should be denied, and the tariff should be allowed to take effect without suspension or hearing.

18. Magellan states that it had meetings with its shippers, including Suncor, to explain in detail that the revisions to the rules and regulations on the Rocky Mountain System were required in order for Magellan to guarantee that the products it delivers downstream will meet federal and state requirements, and to ensure the operating policies and procedures on the Rocky Mountain System would be consistent with the rest of Magellan's pipeline system. Magellan states that twenty refineries, including Suncor's, are located along and connected to Magellan's Central, South, Mountain, and Rocky Mountain systems and those refiners, as well as numerous additional shippers, have complied with the rules and regulations and product specifications reflected in the subject tariff filings for many years.

19. Magellan states that the product specifications that apply on Magellan's pipeline system, as well as on other United States petroleum products pipeline systems, are established based on federal and state regulations that govern the standards that the petroleum products are required to meet when those products are delivered into trucks after being transported on the pipeline. Magellan states that from the time a petroleum product enters Magellan's or any refined product pipeline system at its origins some degradation of the product occurs which varies depending on a number of operational factors, including the number and size of the product interfaces, batch sizes, and the distance traveled on the pipeline. Magellan states that for this reason the pipeline must establish product specifications at its origins that allow for such normal and unavoidable degradation, while still ensuring that the product ultimately delivered at its destinations meets federal and state standards. Magellan asserts that if the pipeline were to accept product at its origins at the level established by federal and state law for delivery, as Suncor suggests in its protest, the product would not meet those standards at delivery over the truck rack. Magellan submits that it also seeks to maintain consistent product

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[3] *Citing New York State Electric & Gas Corporation,* 82 FERC ¶ 61,209, at 61,283 (1998).

specifications throughout its system in order to achieve operational efficiencies, as well as for the benefit of all of its shippers.

20. Magellan also submits that the haze rating test for gasoline and No. 2 ultra-low sulfur diesel in the proposed product specifications is required to ensure that there is no water in the product. Magellan states that water can be very difficult to detect visually at elevated temperatures, which is why a visual inspection that is not temperature bound, as Suncor uses, is unreliable. Magellan contends that haze rating testing requirements reflected in the tariff filings are standard in the petroleum products pipeline industry.[4]

21. Magellan submits that contrary to Suncor's protest, its proposed specification for thermal stability allows for three alternative testing methods. Magellan states that thermal stability specification is required to demonstrate that the diesel fuel will not develop sediment or gums at higher operating temperatures. Magellan states that as with the other product specifications in the tariff filings, the other major petroleum product pipelines also require thermal stability testing for No. 2 ultra-low sulfur diesel according to the same ASTM test methods in the tariff filing.

22. Magellan states that the basis for Suncor's objection to the proposed flashpoint standard for No. 1 ultra-low sulfur diesel seems to be that it exceeds the ASTM minimum flashpoint of 100 degrees Fahrenheit. Magellan states that when it accepts delivery of diesel fuel at an origin it must do so at a specification that will ensure that it will be able to deliver product that meets the ASTM standard at the destination, after the product has transited the pipeline system. Magellan states the minimum flashpoint standards for ultra-low sulfur diesel are standard throughout the petroleum products pipeline industry. Magellan states that NuStar has the same flashpoint as proposed by Magellan, 125 degrees Fahrenheit, and several other pipelines have a more stringent flashpoint standard of 130 degrees Fahrenheit. Magellan notes, however, it is surveying its shippers to determine if they would agree to reduce the flashpoint standard to 115 degrees Fahrenheit. Magellan states that Suncor currently meets the 115 degrees Fahrenheit standard and such change will still allow Magellan sufficient margin to meet the standards at its destinations.

23. Magellan asserts that the 10 ppm sulfur content standards for ultra-low sulfur diesel is similar to the 10-11 ppm standards of a number of other petroleum products pipelines. Magellan contends that although Suncor asserts it would incur $2.5 million in expenses to meet the standards, its refinery has already been subject to the 10 ppm standard that was applied by Plains Pipeline, the prior owner of the Rocky Mountain System, which has been in place since 2012.

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[4] Magellan states that NuStar, Colonial, Buckeye, Explorer, and Plantation have the same or similar requirements.

24. Magellan argues that the specification waiver provision is applied in a non-discriminatory manner, and facilitates operations for the benefit of all shippers. Magellan asserts that Suncor neither points to any evidence that Magellan has applied its waiver procedures in a discriminatory manner nor cites to any precedent where the Commission has disallowed similar waiver provisions. Magellan contends that Suncor's claim there is a risk that large shippers such as Suncor will be discriminated against and denied waiver while smaller shippers will be granted waivers is sheer speculation. In fact, Magellan submits that Suncor has requested and been granted product specification waivers on Magellan's pipeline system. Magellan states that the main purpose of such waivers is to assist shippers with process exceptions at refineries and quality incidents on connecting carriers. Magellan states that if there is a quality error on the shipper's part and Magellan can absorb it and still deliver product that meets legal requirements, Magellan will consider accepting the shipment. Magellan states that the waiver can also be used where a refinery lab experiences a malfunction of a lab instrument. Thus, Magellan submits that the waiver process can be used to help a refinery clear barrels where it could otherwise be shut in. Magellan asserts that provisions for waiver of product specifications are not uncommon in the petroleum product pipeline industry.

25. Magellan asserts that the setoff provision is reasonable and consistent with precedent and industry standards. Magellan asserts that the setoff provision only applies in the case of a shipper default under the tariff. Magellan submits that the Commission has recognized that pipelines may impose financial consequences for non-compliance with tariffs.[5] Magellan submits that setoff provisions such as those contained in the proposed tariff filing are found in tariffs throughout the petroleum products pipeline industry. In fact, Magellan states that Holly Energy's rules and regulations contain setoff language that is identical to the language in Item No. 90. Similarly, Magellan states that Sunoco's tariff allows the carrier to set off any unpaid charges against any money owed to the shipper.

26. Magellan asserts the basis for Suncor's protest is irrelevant because it cited a case under the Federal Power Act which disallowed a choice of law provision because it was inconsistent with the *pro forma* tariff. Magellan states that there are no *pro forma* tariffs for oil pipelines and, in fact, choice of law provisions in oil pipeline tariffs are quite commonplace. Magellan contends that a choice of law provision in the tariff provides predictability to both shippers and the pipeline, particularly in the case of a major interstate pipeline that passes through numerous states, where the laws of any of those states could arguably govern the tariff lien and payment terms.

[5] *Chaparral Pipeline Co., LLC*, 148 FERC ¶ 61,080 (2014); *Mid-American Pipeline, LLC,* 148 FERC ¶ 61,079 (2014).

Discussion

27. The Commission has reviewed Magellan's proposed tariff revisions in light of Suncor's protest and Magellan's answer to Suncor's protest and finds that Magellan's changes are adequately supported and are accepted to be effective December 1, 2014.[6] Magellan has also explained that the product specifications and testing standards are in accord with ASTM guidelines and are the same or similar to product specifications and testing standards in effect on various refined products pipelines. Magellan has also explained that the changes to the product specifications and testing standards are to ensure that the Rocky Mountain System is consistent with the other parts of Magellan's system. Magellan has explained that the more stringent standards applied at a shipper's origin point are necessary to account for degradation that occurs during the transportation process to ensure that refined products meet federal and state standards when they are delivered to the truck rack. Finally, Magellan has explained that the product specification waiver process is designed to benefit all shippers on the Magellan system and that the waiver provision is applied in a non-discriminatory manner.

28. Magellan has also explained that the financial setoff provisions are consistent with provisions in effect on other pipelines and are consistent with industry standards and are only applied in the event of a shipper default under the tariff. In addition, Suncor's concern that Magellan's setoff rights go beyond transportation charges under the tariff is not a basis to reject the provision, since any disputes concerning a shipper's financial responsibility for charges would be governed by state debt collection laws.

29. Finally, the Commission finds that Magellan has adequately explained that a choice of law provision is commonplace in the oil pipeline industry and provides predictability for the pipeline and the shippers as to what law will apply to the pipeline's liens. In sum, the Commission finds that Magellan has adequately supported the subject tariff revisions.

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[6] Section 341.2(c)(1) of the Commission's regulations requires an oil pipeline's transmittal letter to "explain any changes to the carrier's rates, rules, terms of conditions of service." Magellan's transmittal letter lacked the detail and explanations contained in its Answer. In the future, the Commission expects Magellan and other oil pipelines to fully comply with section 341.2(c)(1) by providing an adequate explanation in their transmittal letters as opposed to waiting to justify a filing in an answer.

The Commission orders:

The Commission accepts Magellan's FERC No. 184.3.1, to be effective December 1, 2014, on short notice.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)