Express Pipeline, L.L.C.
Order Accepting Tariff Supplements
99 FERC ¶ 61,229 (2002)
See also, Shell Pipeline Co., 100 FERC ¶ 61, 139 (2002), reh'g denied, 100 FERC ¶ 61,330 (2002); All American Pipeline, L.P., 100 FERC ¶ 61,266 (2002)

Express Pipeline, L.L.C. (Express) filed tariff supplements to cancel two joint and proportional pipeline tariffs for the transportation of crude oil and syncrude from Canada to Salt Lake City. (Express Pipeline, L.L.C., 99 FERC ¶ 61,229, 61,949 (2002)). A joint protest and motion to intervene was filed by Big West Oil, L.L.C., Chevron Products Co. and Tesoro Refining and Marketing (Protesters), alleging that the tariff cancellation would adversely affect the public interest and requesting that it be suspended in order to conduct an investigation and hearing as to its lawfulness. (Id. at 61,950).

The Commission found that the joint rates constituted a "discount based on a voluntary agreement . . . that none of the carriers [was] obligated to continue when [that] agreement terminate[d]." (Id. at 61,951). Though the Commission had the authority under ICA Section 15(3) to order that the joint rates be maintained, in this instance there was no need, as the Commission concluded that there was no public interest basis to make such a ruling. Even though the shippers might have to pay more once the discounted joint rate was terminated, and despite the fact that the shippers would have to deal with five separate carriers, there would still be transportation available to Salt Lake City over an established through route, via the local rates of the individual carriers.

Finding that the Protesters had "failed to establish that continuation of the joint rates [was] economically necessary in the public interest," the Commission accepted the tariff supplements. (Id. at 61,952).

COMM-OPINION-ORDER, 99 FERC ¶61,229, Express Pipeline LLC, Docket No. IS02-216-000, (May 31, 2002)

Express Pipeline LLC, Docket No. IS02-216-000

[61,949]

[¶61,229]

Express Pipeline LLC, Docket No. IS02-216-000

Order Accepting Tariff Supplements

(Issued May 31, 2002)

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

1. On April 16, 2002, Express Pipeline LLC (Express) filed tariff supplements to cancel two joint and proportional pipeline tariffs for the transportation of crude oil and syncrude from Canada to Salt Lake City, Utah. [1] The proposed cancellations are protested by certain shippers. As discussed below, we will accept the cancellations, to be effective June 1, 2002, as proposed. This order is in the public interest because it enables continuation of service consistent with the provisions and requirements of the Interstate Commerce Act.

Background

2. The pipeline carriers that participate in the joint rates provide interconnected transportation of crude oil and syncrude from Canada to the United States, as follows: Express extends from the U.S. border to Casper, Wyoming, where it connects, through a "pumpover" facility operated by Platte Pipe Line Company (Platte), with a pipeline owned by Frontier Pipeline Company (Frontier). The Frontier pipeline extends from Casper to Kimball Junction, Utah. A line owned by Anshutz Ranch East Pipeline, Inc. (Anshutz) extends across Kimball Junction and connects with a pipeline owned by Chevron Pipeline Company (CPL). The CPL line extends from Kimball Junction to refineries in the Salt Lake City area.

3. The joint tariff agreement that governs the current joint rate was entered into effective April 1, 1998, and is between Express, Frontier and Anshutz. [2] This joint rate agreement will terminate on May 31, 2002. Although the joint

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tariff also includes CPL as a participating carrier, CPL is not a party to the joint tariff agreement. CPL is, however, a party to a written agreement with Frontier and Anshutz. Express contends that the Chevron/Frontier/Anshutz agreement is subordinate to the Express/Frontier/Anshutz joint tariff agreement, which comprehensively provides for the administration of the entire joint tariff and sets forth Express's role as tariff administrator. [3]

Description of the Filing

4. On April 16, 2002, Express filed tariff supplements to cancel FERC Nos. 29 and 30. Express states that the rates set forth in FERC Nos. 29 and 30 resulted from an agreement between the carriers to establish joint rates at a discount from the otherwise applicable local rates of Express, Platte, Frontier, Anshutz and CPL. Express further states that the agreement will terminate as of June 1, 2002 and that, consequently, the joint rate will be cancelled effective June 1, 2002. Express indicates that, following June 1, 2002, shippers will still be able to transport petroleum on all of the routes to which the cancelled joint tariffs apply. [4]

Interventions and Protest

5. On May 1, 2002, a joint protest and motion to intervene was filed by Big West Oil LLC, Chevron Products Company and Tesoro Refining and Marketing (Protesters). In addition, CPL filed a motion to intervene, stating that it does not concur in the tariff cancellation filings. Frontier and Anschutz filed letters simply stating that they have not concurred in the proposed joint tariff cancellation.

6. Protesters contend that the public interest will be adversely affected by the Express tariff cancellation, which the Protesters claim will result in increases of up to 40% in the cost of transporting crude and syncrude to the Salt Lake City market. Protesters also contend that the cancellation will result in the diversion of crude and syncrude away from the Salt Lake City market, disrupting and creating other problems for refiners and consumers in Utah and Idaho. Protesters note that, upon cancellation of the Express joint tariff, they will be required to deal with five different pipelines to obtain crude and syncrude from the sources in Canada. Protesters assert that Express' tariff cancellation represents a retaliatory maneuver against the shippers who protested Express' local rates before this Commission. Finally, Protesters contend that the cancellation will result in undue preferences and discrimination against Salt lake City refiners and is anti-competitive.

7. Protesters request that the Commission suspend the proposed cancellations for a period of seven months and institute an expedited hearing and an investigation into its lawfulness. On May 6, 2002, Express filed answers to the protest and to the filings of CPL, Frontier, and Anschutz. Express supplemented its answer on May 8, 2002, filing corrections to the affidavits filed on May 6. On May 15, 2002, Protesters filed an answer to Express' answer. On May 16, CPL filed a motion for leave to file a response to Express' answers, and on May 20, Express filed its own motion for leave to file an answer and its answer to the pleadings filed by Protesters on May 15 and by CPL on May 16. These pleadings were all supported by affidavits of personnel within the respective companies in support of the respective positions taken in the pleadings. Finally, on May 22, 2002, Protesters filed a motion for leave to respond and a response to Express' May 20 answer. While our rules do not generally permit these types of pleadings, [5] we find that they are helpful to us in reaching our decision in this matter and are therefore received as a part of the record in this case. [6]

Discussion

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8. Section 15(3) of the Interstate Commerce Act (ICA) provides that

> [t]he Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing . . . establish . . . joint rates. . . . If any tariff or schedule canceling any through route or joint rate, . . . without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest. . . . [7]

Upon review of the filings in this case, we conclude that the public interest does not require continuation of the joint rates proposed to be cancelled, and that the Commission can authorize the proposed cancellation without suspension and investigation of the cancellation tariffs. This is because there is a through route already

established from the U.S. border to Salt Lake City, and service over that route will continue to be available under the local rates of the individual carriers, just as it has been under the joint rates. Express recognizes that there will be continued service by stating that "after cancellation, the shippers will continue to have full access to continued transportation under just and reasonable local rates." (Answer at 1) Protesters also acknowledge this by pointing out as one of their bases for the protest the fact that the shippers will have to deal with five different carriers on their shipments to Salt Lake City. (Protest at 4).

9. Protesters contend that the cost of transportation from the Canadian Border to Salt Lake City will increase from 20% to 40%. (Protest at 24) Express, however, disputes this and protesters' claim of consequential hardship. Express contends that the cancellation effective June 1, 2002, in fact will result in Protesters paying local rates whose sum will be lower than the joint rates that these shippers had routinely paid for nearly five years during the period between April 1, 1997 and January 30, 2002. Moreover, Express notes, Protesters in their May 15 answer have reduced their claim from a 20% to 40% increase to a 12% increase, reflecting a difference between the sum of the local rates post cancellation and the joint rates in effect in 2001. As Express points out, however, Protesters have improperly compared the total of the local uncommitted rates with the joint 15-year term rates to arrive at the 12% figure. A proper comparison shows that, contrary to Protesters' contention, the sum of the applicable local rates is in fact lower than the joint rates. [8]

10. Even *if* Protesters were correct and shippers could be paying more under local rates for transportation to Salt Lake City than under the current joint rates, that is only because the joint rates constitute a discount from the sum of the individual local rates, which are established under the provisions of the ICA. Shippers receive these types of discount only under certain circumstances, such as when the carriers agree to offer a discount to encourage increased throughput. That discount is based on a voluntary agreement among the pipeline carriers that none of the carriers is obligated to continue when their agreement terminates. Once the discount is ended, shippers might be charged more, but in no instance can shippers be charged more than the rates set forth in the individual carriers' tariffs, all of which are subject to the jurisdiction of this Commission under the ICA. [9]

11. As to the level of those rates, the local rates of two of the participating carriers have been the subject of recent settlements reached by two of these same shipper refiners who have filed the protests here. [10] These settlements resulted in the parties' agreement to resolve the local rate issues between Big West and Chevron Products Company, and the local carriers, Frontier and Anschutz. These local rates provide for the maximum rates that can be charged. The local rates of two of the other carriers involved, Platte and Express, are the subject of challenge in complaints filed by these same shippers in Docket Nos. OR02-5-000 and OR02-8-000. [11] To the extent

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that Protesters have concerns about the rates to be paid Express and Platte, they have raised them in those proceedings.

12. Once the contract between Express, Frontier and Anschutz terminates by its terms, there will be no contractual underpinning for the current joint rate. Express is well within its rights not to renew the contract, and the Commission cannot compel the continuation of the contract once the contract expires. The Commission could, nevertheless, under Section 15(3) of the ICA require that joint rates be maintained. As already discussed above, however, there is no basis for our concluding that the public interest requires continuation of joint rates, since there will be transportation to Salt Lake City available over the same through route as at present at local tariff rates.

13. Finally, Protesters contend that the cancellation will be unduly preferential and discriminatory and will lead to a diversion of supplies away from Salt Lake City refiners. They contend that the sum of the local rates for transportation to other delivery points will be substantially cheaper than to Salt Lake City, and thus will encourage refiners located elsewhere on the Express delivery system to obtain more of the supplies of crude and syncrude. (Protest at 29-31) However, as Express points out, the calculations used by Protesters do not reflect all the transportation costs of getting product to the other markets, and therefore the computation of the claimed cost of getting the product to other refineries is flawed. (*See* Answer, Affidavit of Fischer at point 10) Moreover, Salt Lake

shippers will have service available at established tariff rates. We find that Protesters have therefore failed to establish that continuation of the joint rates is economically necessary in the public interest.

The Commission orders:

The tariff supplements listed in footnote number one are accepted, to be effective June 1, 2002.

– Footnotes –

[61,949]

[1] Supplement No. 1 to FERC No. 29 and Supplement No. 1 to FERC No. 30.

[2] This is a binding contractual agreement among the carriers to file joint rates from the U.S. border to Salt Lake City reflecting a discount below the sum of their local rates. Between April 1, 1997 and March 31, 1998, a predecessor joint rate agreement governed the

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joint rates, which did not include participation in the joint rate by CPL.

[3] Affidavit of Ralph J.W. Fischer, Paragraph 3. But see answer of CPL of May 16, 2002, mentioned below.

[4] Such transportation, according to Express, may be effectuated using Express Pipeline LLC FERC No. 15, Platte Pipe Line Company FERC No. 1472, Frontier Pipeline Company FERC No. 25, Anshutz Ranch East Pipeline FERC No. 9 and Chevron Pipeline Company FERC No. 714. On April 29, 2002, Express filed a Notice of Withdrawal of FERC No. 15, a tariff in effect subject to refund in Docket No. IS02-81-000 (98 FERC ¶61,008 (2002)), thereby reinstating the prior, lower local uncommitted rates set forth in FERC No. 4.

[5] 18 C.F.R. §385.213 (2001).

[6] The CPL May 16 answer for the most part attempts to clarify the relationship between the various carriers, and their willingness or unwillingness to extend the term of the existing joint tariff agreements. CPL also notes that it had only a few days' prior notice from Express that it planned to file the joint tariff cancellation on April 16, 2002. Without deciding whether CPL has accurately described the contractual arrangements and discussions among the parties, we will assume that all the matters raised by CPL are true. Except for clarifying the relationship between the parties, however, they have no bearing on our decision and CPL's answer of May 16 is not further discussed.

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[7] 49 App. U.S.C. §15(3) (1988).

[8] As confirmed by the Commission's review of the applicable tariffs on file, for light crude, the joint uncommitted rate was $2.4482, and the sum of the local uncommitted rates will be $2.3835 (Express–$1.078 under reinstated FERC No. 4; Platte–$0.3201; Frontier–$0.60; Anschutz–$0.255; and Chevron $0.1304); the joint 15-year term rate was $2.1244, and the sum of the local rates for 15-year term shippers will be $2.1025 (Express–$0.797; Platte –$0.3201; Frontier–$0.60; Anschutz–$0.255; and Chevron–$0.1304). A comparison of the rates for *moving other grades of crude shows the same result.*

[9] *See Texaco Pipeline Inc.*, 72 FERC ¶61,313 (1995).

[10] *See Big West Oil Company, et al. v. Frontier pipeline Company and Express Pipeline Partnership*, 98 FERC ¶63,013 (2002) and *Big West Oil Company, et al. v. Anshutz Pipeline, Inc.* and *Express Pipeline Partnership*, 98 FERC ¶63,027 (2002). These initial decisions terminating proceedings have become final Commission decisions pursuant to Rule 708(d) of the Commission's Rules of Practice and Procedure. 18 C.F.R. §385.708 (d) (2001).

[11] While CPL (whose rate constitutes less than 10% of the sum of the local rates) had filed a notice of

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rate increase in Docket No. IS02-92-000, it withdrew its proposed increase on January 28, 2002 after such increase was protested by two of the shippers involved in this proceeding. Thus, it is charging local rates which are not currently subject to challenge.