

Shell Pipeline Co.
Order Accepting Tariff Supplement
100 FERC ¶ 61,139 (2002), reh'g denied.
100 FERC ¶ 61,330 (2002)

Shell Pipeline Company LP (Shell) filed a tariff supplement to cancel through movements of crude oil between certain points. This supplement was filed because Shell was in the process of “selling certain assets that [were] essential to the through movement of crude oil between [those] points.” (at 61,535). Phillips Petroleum Company, Tosco Corporation, and Toscopetro Corporation (Tosco) filed a motion to intervene, a joint protest, and a request for rejection of the supplement, alleging that the cost increase the proposal would produce violated the applicable indexed ceiling level. (*Id.*).

In its answer, Shell relied on the Commission’s decision in Express Pipeline, L.L.C., 99 FERC ¶ 61,229 (2002), where the cancellation of joint rates was allowed if shippers could continue to ship under local rates.

The Commission agreed with Shell’s reasoning that if participants in joint rates could discontinue voluntary discounts, then a single carrier could also discontinue voluntary through rate discounts on its pipeline. Once the joint or through rate discount is ended, the carrier is entitled to charge rates for the movement that do not exceed the combination of the local rates. Shell’s tariff supplement was accepted.

COMM-OPINION-ORDER, 100 FERC ¶61,139, Shell Pipeline Company LP, Docket No. IS02-390-000, (Aug. 01, 2002)

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Shell Pipeline Company LP, Docket No. IS02-390-000

[61,533]

[¶61,139]

Shell Pipeline Company LP, Docket No. IS02-390-000

Order Accepting Tariff Supplement

(Issued August 1, 2002)

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

1. On July 2, 2002, Shell Pipeline Company LP (Shell) filed Supplement No. 1 to its FERC Tariff No. S-37. Shell states that the Supplement is issued to cancel movements of crude oil from origin points at Jal, New Mexico; and Hendrick/Wink, Midland, Colorado City and Wichita Falls, Texas, to Patoka and Wood River, Illinois. Shell states that it is filing the Supplement because it is selling certain assets that are essential to the through movement of crude oil between these points. Shell requests a shortened notice period and seeks an effective date of August 1, 2002, for the Supplement. The proposed cancellation is protested. However, as discussed below, the Commission accepts Supplement No. 1 to Shell's FERC Tariff No. S-37 to be effective August 1, 2002. The Commission's decision is in the public interest because it cancels movements that Shell states it will no longer be able to make, while allowing shippers to continue transporting crude oil to the same destination points under current local rates.

Protest and Answer

2. On July 25, 2002, Phillips Petroleum Company, Tosco Corporation, and Toscopetro Corporation (collectively, Tosco) filed a motion to intervene eight days out of time, a joint protest, and a request for rejection of Supplement No. 1 to Shell's FERC Tariff No. S-37. Tosco states that it operates a refinery at Wood River, Illinois, and that it ships a substantial volume of crude oil under Shell's FERC Tariff No. S-37. Tosco asserts that, under Shell's proposal to cancel its through rate,¹ it will be required to ship to its refinery under higher combined local rates from the origin points described above to an intermediate point at Cushing, Oklahoma, and then onward to its refinery.² Tosco maintains that Shell's proposal would increase its effective transportation rate by 20.12 cents, or 32.2 percent, and that the increase would violate the applicable indexed ceiling level.

3. On July 29, 2002, Shell filed an answer asking the Commission to reject Tosco's late-filed motion to intervene and protest. In the alternative, Shell argues that Tosco's protest lacks merit. Shell maintains that no joint rate is at issue here³ and that its filing will not cause an improper rate increase. Shell explains that it is cancelling discounted through rates from points of origin in Texas and New Mexico to destination points in Illinois, but that a combination of its local rates through Cushing, Oklahoma, to the Illinois destinations will remain in effect to provide service to the Illinois delivery points. Shell further contends that

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those local rates comply with the indexed ceiling levels.

4. Shell cites the Commission's recent order in *Express Pipeline LLC*,⁴ in which the Commission permitted cancellation of joint rates where the shippers could continue to ship under local rates. Shell reasons that, if participants in joint rates can discontinue voluntary discounts, then it must follow that a single carrier also can discontinue voluntary discounts on its pipeline. Shell points out that, in the *Express* order, the Commission emphasized that "[o]nce the discount is ended, shippers might be charged more, . . . in no instance can shippers be charged more than the rates set forth in the individual carrier's tariffs, all of which are subject to the jurisdiction of this Commission under the ICA."⁵

Discussion

5. The Commission will accept Tosco's motion to intervene out-of-time. Permitting the intervention at this stage of the proceedings does not delay or disrupt the proceedings, nor does it create an undue burden for Shell.

6. The through rate that Shell proposes to cancel constitutes a discount from the sum of its local rates from the subject origin points to Cushing, Oklahoma, and thence from Cushing to the subject Illinois destinations. Shell had chosen to offer the discount for one reason or another, perhaps, e.g., to encourage increased throughput, but Shell is under no obligation to continue offering that discount. It can, thus, choose to end the discount at any time, and that is what it has done here. Service will continue to be offered under local rates set forth in Shell's jurisdictional tariffs. Accordingly, the Commission accepts Supplement No. 1 to Shell's FERC Tariff No. S-37 to be effective August 1, 2002.

The Commission orders:

Shell's Supplement No. 1 to FERC Tariff No. S-37 is accepted to be effective August 1, 2002.

- Footnotes -

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¹ Tosco mischaracterizes Shell's through rates as "joint" rates. A joint rate is one that applies to service over the lines of two or more carriers made by agreement between the carriers. Here, Shell is the only carrier.

² The movements from Cushing to the Illinois destinations are made under Shell's FERC Tariff No. S-15.

³ Shell points out that Section 341.0(a)(5) of the Commission's regulations defines a joint rate as one that applies for service over the lines or routes of two or more carriers. 18 C.F.R. §341.0 (a)(5) (2002).

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⁴ 99 FERC ¶61,229 (2002).

⁵ *Id.* at p. 61,951.

COMM-OPINION-ORDER, 100 FERC ¶61,266, All American Pipeline, L.P., Docket No. IS02-431-000, (Sep. 13, 2002)

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All American Pipeline, L.P., Docket No. IS02-431-000

[62,011]

[¶61,266]

All American Pipeline, L.P., Docket No. IS02-431-000

Order Accepting Tariffs

[62,012]

(Issued September 13, 2002)

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

1. On August 15, 2002, All American Pipeline, L.P. (All American) filed FERC Tariff Nos. 21 through 29. FERC Tariff No. 21 is an adoption notice, and the remaining tariffs generally bring forward tariffs issued by Shell Pipeline Company LP (Shell) and applicable to crude oil pipelines located in New Mexico, Texas, and Oklahoma, which All American purchased from Shell on August 1, 2002. As discussed below, the Commission accepts All American's FERC Tariff No. 21 to be effective August 1, 2002, and the Commission also accepts All American's FERC Tariff Nos. 22-29 to be effective September 1, 2002, as requested by All American. This order is in the public interest because it accepts tariffs that reflect the current ownership of certain pipeline assets but does not increase tariff rates.

Description of Filing

2. All American states that it filed FERC Tariff No. 21 to adopt the following Shell tariffs: FERC Tariff Nos. S-2, S-12, S-37, S-39, S-40, S-41, S-42, S-46, and S-59. All American states that Shell's FERC Tariff No. S-2 (rules and regulations) will remain Shell's rules and regulations, as well as becoming All American's rules and regulations.

3. All American further states that Shell's FERC Tariff Nos. S-12, S-37, and S-59 previously made reference to the rules and regulations in Shell's FERC Tariff No. S-2. According to All American, in bringing these tariffs forward, it has incorporated into its FERC Tariff Nos. 22, 23, and 29 the rules and regulations previously stated in Shell's FERC Tariff No. S-2. All American states that it has made the following additional changes to its FERC Tariff Nos. 22, 23, and 29: (1) the table of contents has been revised to add a new reference to the table of rates; (2) the definition of "Carrier" in Item 5 was changed to reflect the change in carrier; (3) Item 70 was changed to delete the options for pipeline loss allowance that do not apply to the movements under the tariff; (4) new language has been added to Item 90 indicating that if a per barrel charge is assessed, the amount of such charge will be stated in a FERC tariff; (5) Items 125, Quality Bank, and 130, Strategic Petroleum Reserve, were cancelled, because they do not apply to the movements covered by All American's FERC Tariff Nos. 22, 23, and 29; and (6) the wording of cross-references contained in Shell's FERC Tariff Nos. S-12, S-37, and S-59 to Item 70 of Shell's FERC Tariff No. S-2 have been revised.

4. All American states that it has brought forward unchanged the rates and routing from Shell's FERC Tariff Nos. S-12, S-37, and S-59. All American also states that it has brought forward unchanged into its FERC Tariff Nos. 25 and 28 the rates and routing from Shell's FERC Tariff Nos. S-40 and S-46, respectively. According to All American, the only change made to these tariffs was to the definition of "Carrier" in Item 5.

5. Further, states All American, it has brought forward unchanged into its FERC Tariff Nos. 24 and 27 the rates and routing from Shell's FERC Tariff Nos. S-39 and S-42, respectively. All American states that the only changes made to these tariffs were the addition, below the table of rates, of a cross-reference to Item 85 and a change to the definition of "Carrier" in Item 5.

6. All American explains that it has brought forward in its FERC Tariff No. 26 the rates and routing from Shell's FERC Tariff Nos. S-41, but has added new routes (Route Nos. 07-14) and rates. The new routes are from Wasson and Salisbury Junction, Gaines Co., Texas, to the following destinations: (1) McCamey/Mesa, Upton Co., Texas; (2) Eldorado, Schleicher Co., Texas; (3) Genoa Junction, Harris Co., Texas; and (4) Houston, Harris Co., Texas. All American states that, in accordance with 18 C.F.R. §342.2 (b) (2002), it has supported the initial rates with the affidavit of Harry N. Pefanis, President of Plains Marketing GP, Inc., General Partner of All American. All American states that the affidavit indicates that the initial rates set forth in All American's FERC Tariff No. 26 are agreed to by a non-affiliated person who intends to use the services in question. All American states that the only other changes to its FERC Tariff No. 26 are an update to the definition of "Carrier" in Item 5 and an addition, below the table of rates, of a cross-reference to Item 85.

7. Finally, All American requests a shortened notice period to permit its FERC Tariff Nos. 22 through 29 to become effective as of September 1, 2002. All American states that having the rates become effective as of the first of the month will greatly simplify its accounting and billing. Because it is not changing any rates brought forward from Shell, All American contends that allowing the tariffs to become effective on less than 30 days notice will not harm shippers and, in fact, will allow the new movements in All American's FERC Tariff No. 26 to be available to shippers at an earlier date.

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Intervention, Protest, and Answer

8. On August 30, 2002, Phillips Petroleum Company, Tosco Corporation, and Toscopetro Corporation (collectively, Tosco) filed a motion to intervene and a protest. In particular, Tosco addresses All American's FERC Tariff Nos. 21 and 23, which adopt and bring forward rates previously contained in Shell's FERC Tariff No. S-37. Tosco objects to the failure by All American to bring forward the rates to Wood River and Patoka, Illinois, that previously were contained in Shell's FERC Tariff No. S-37.

9. Tosco states that, on May 31, 2002, Shell filed FERC Tariff No. S-37, which contained 32 transportation rates, including rates for movements from certain origin points in New Mexico and Texas to various destinations in Texas, Oklahoma, and Wood River and Patoka, Illinois. Tosco maintains that Shell's FERC Tariff No. S-37 increased the rates to these two destinations to the new indexed ceiling levels, effective July 1, 2002. However, states Tosco, Shell subsequently filed Supplement No. 1 to its FERC Tariff No. S-37, which cancelled alternate rates and routings to the two Illinois destinations. Tosco maintains that this action now requires it to ship to these two destinations under a combination of intermediate rates that is substantially higher than the previous single tariff rates from the Texas and New Mexico origin points to the Illinois destinations. Tosco states that it intervened and protested Supplement No. 1 to Shell's FERC Tariff No. S-37, but that the Commission accepted Supplement No. 1, finding that the cancelled rates were discount rates that Shell was not required to maintain. ¹ Tosco states that it filed a petition for reconsideration of that order.

10. Tosco asserts that it has standing to intervene in this proceeding, as it is a shipper from the five origin

points in All American's FERC Tariff No. 23 to the Wood River destination and occasionally to the Patoka destination. Tosco maintains that it will be required to pay the higher transportation costs resulting from All American's failure to establish a joint tariff with Shell to bring forward the rates to Wood River and Patoka that previously were set out in Shell's FERC Tariff No. S-37. According to Tosco, this failure results in effective rate increases that do not comply with any of the Commission's methodologies for changing oil pipeline rates. Tosco contends that the Commission recognized in *West Texas LPG Pipeline Limited Partnership*² that elimination of oil pipeline tariff rates can affect the rates, terms, and conditions of service, thus requiring suspension and investigation. Tosco also asserts that the Commission has held that a change in ownership of oil pipeline assets does not justify an increase in rates in the absence of a new public use or a demonstrated benefit to shippers.³ Further, argues Tosco, the effective increases cannot be justified under the rationale of *Express Pipeline LLC*.⁴ Tosco asks the Commission to suspend All American's FERC Tariff Nos. 21 and 23 and to establish an investigation.

11. On September 4, 2002, All American filed an answer to Tosco's protest. All American asserts that Tosco's protest constitutes a collateral attack on the Commission's August 1, 2002 Order in Docket No. IS02-390-000, in which the Commission accepted a filing that allowed Shell to cancel through movements from origins in Texas and New Mexico to the Wood River and Patoka, Illinois destinations.⁵ All American further argues that Tosco has no legal basis for requiring All American and Shell to enter into a joint tariff. Finally, All American states that Tosco's argument that the combined local rates exceed the applicable ceiling is baseless.

Discussion

12. The Commission will accept All American's FERC Tariff Nos. 22, 24, 25, 26, 27, 28, and 29 to be effective September 1, 2002, as requested. Tosco has not challenged those tariffs. In addition, as discussed below, the Commission will accept All American's FERC Tariff No. 21 to be effective August 1, 2002, and All American's FERC Tariff No. 23 to be effective September 1, 2002, as requested.

13. Tosco's protest with respect to All American's FERC Tariff Nos. 21 and 23 has no merit. The propriety of Shell's cancellation of the through routes from Texas and Oklahoma to the two Illinois destinations was resolved in the Commission's August 1, 2002 Order in Docket No. IS02-390-000. The Commission will not permit its ruling in that proceeding to be challenged here. In the August 1, 2002 Order in Docket No. IS02-390-000, the Commission found that the through rates Shell proposed to cancel represented a discount from the sum of the applicable local rates to the destination

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points Tosco cites here. The Commission emphasized that Shell was under no obligation to maintain such a discount when service between the origin and destination points would continue to be available under a combination of the local rates established in Shell's jurisdictional tariffs.⁶

14. The Commission's rationale in that order was consistent with its previous decision in *Express Pipeline LLC*.⁷ In the *Express* case, the Commission approved the cancellation of joint rates, even though shippers could be required to incur higher costs for transportation to the same destination under a combination of local rates. There the Commission recognized that the public interest, as set forth in Section 15(3) of the Interstate Commerce Act, does not require continuation of joint rates when service will continue to be available under the local rates of individual carriers,⁸ despite a higher cost for that service. As the Commission stated:

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 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 the Commission under the ICA.⁹

In the *Texaco* order cited in the *Express* order, the Commission stated as follows:

[S]ection 342.3(a) provides: A rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level. . . . We interpret this Section of the regulations to mean, in the context of a joint rate proposal, that the ceiling level for a joint rate is the sum of the ceiling levels associated with individual tariff rates currently on file.¹⁰

15. The rationale of the *Express* and *Texaco* cases is persuasive here. Where circumstances are such that the public interest would not require a pipeline to maintain a joint rate, it follows that a pipeline should not be required to establish a joint rate. Tosco has in effect argued that All American should be required to establish a joint rate with Shell. Tosco acknowledges, however, that it will continue to be able to reach the Wood River and Patoka, Illinois destinations under a combination of local rates on file with the Commission. Thus, the fact that Tosco may be paying a higher total rate to reach those destinations does not mean that All American must be required to establish a discounted joint rate to those destinations, and All American's failure to do so does not amount to an improper rate increase or a situation where the public interest would require establishing a joint rate. The ceiling rates applicable to movements from the New Mexico and Texas origin points to Wood River and Patoka, Illinois, are those established in the local tariffs on file with the Commission.

16. The Commission also finds that All American has justified its request for a shortened notice period in this case. All American is not changing any of the tariff rates brought forward from Shell, and Tosco's protest does not challenge the initial rate established in All American's FERC Tariff No. 26. Allowing the tariffs to become effective as All American has requested is appropriate in these circumstances.

The Commission orders:

(A) All American's FERC Tariff No. 21 is accepted to be effective August 1, 2002, as discussed in the body of this order.

(B) All American's FERC Tariff Nos. 22 through 29 are accepted to be effective September 1, 2002, as discussed in the body of this order.

– Footnotes –

[62,013]

¹ Tosco refers to the order issued August 1, 2002, in Docket No. IS02-390-000. *Shell Pipeline Company, LP*, 100 FERC ¶61,139 (2002).

² 100 FERC ¶61,038 (2002).

³ Tosco cites *Longhorn Partners Pipeline*, 82 FERC ¶61,146 (1998); *Rio Grande Pipeline Co.*, 78 FERC ¶61,020 (1997), *reh'g denied*, 82 FERC ¶61,147 (1998); *Williams Pipe Line Co.*, 21 FERC ¶61,260 (1982).

⁴ 99 FERC ¶61,229 (2002).

⁵ *Shell Pipeline Company, LP*, 100 FERC ¶61,139 (2002).

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⁶ *Id.* at P 6.

⁷ 99 FERC ¶61,229 (2002).

⁸ *Id.* at P 8.

⁹ *Id.* at P 10, citing *Texaco Pipeline Inc.*, 72 FERC ¶61,313 (1995).

¹⁰ *Texaco Pipeline Inc.*, 72 FERC ¶61,313 (1995).

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