

121 FERC ¶ 61,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP West Coast Products, LLC

Docket No. OR07-22-000

v.

Calnev Pipe Line, L.L.C.

ORDER ON COMPLAINT

(Issued December 26, 2007)

1. On September 13, 2007, BP West Coast Pipeline, LLC (BP West Coast) filed a complaint against Calnev Pipe Line, L.L.C. (Calnev). The complaint challenges both Calnev's grandfathered rate of 83 cents per barrel and the portion of its existing rates in excess of that grandfathered rate. Calnev filed an answer on October 15, 2007. The Commission directs BP West Coast to refile the complaint in light of recent orders clarifying the standards for a complaint against both elements of an oil pipeline rate.¹

I. The Pleadings

2. The instant complaint challenges all of Calnev's rates, including its terminaling charges, as unjust and unreasonable. As noted, the challenge extends to both the grandfathered rate of 83 cents per barrel and the cumulative index-based increases that Calnev has taken since the grandfathered rate was established in late 1991. The complaint alleges that it establishes reasonable grounds for concluding that Calnev's rates are unjust and unreasonable either on a cost-of-service or a barrel-mile basis, that there are reasonable grounds for believing there are substantially changed circumstances to the grandfathered portion of the rate, and that there are damages to the complainant. The complaint requests that the Commission direct Calnev to file a cost and revenue study 45 days after the order setting the case for hearing, and that if that study does not support the pipeline's rates, that the Commission direct Calnev's rates to be reduced accordingly. The complaint also requests the Commission to deny Calnev any further increases under the Commission's indexing methodology until Calnev's rates are established at a just and reasonable level and to fast track the complaint.

¹ See *America West Airlines, Inc., et al. v. Calnev Pipe Line L.L.C.*, 121 FERC ¶ 61,241 (2007) (*America West*).

3. Calnev's answer states that its rates are not unjust and unreasonable and that the complaint does not establish reasonable grounds to conclude that its rates are unjust and unreasonable. It asserts that the request for an immediate reduction in rates is inconsistent with the provisions of the Interstate Commerce Act,² that there are no grounds for denying it indexed-based rate increases under the Energy Policy Act of 1992,³ and that fast tracking is appropriate only where a danger of immediate injury is involved.

II. Discussion

4. Because this complaint is governed by the rulings in *America West*, the Commission will not discuss all of the allegations in detail. Rather, this order focuses on certain points that are unique to this particular filing. BP West Coast is directed to refile its complaint within 45 days to conform to the standards of *America West*, with particular emphasis on the issue of substantially changed circumstances and the Commission's other comments. Calnev's arguments are addressed only as necessary for the context.

5. This is one of several recent complaints directed to all or part of Calnev's rates. As noted, there are two threshold standards that the instant complaint must meet. The first, discussed here, is that there are reasonable grounds to conclude that Calnev's rates are unjust and unreasonable. The Commission has previously held that the over-recovery stated on Page 700 of Calnev's 2006 FERC Form No. 6 is sufficient to meet this standard.⁴ The *America West* and *ExxonMobil* orders cited in footnote 4 control here and much of the argument in the complaint is unnecessary to reach this conclusion. Moreover, there are several points that BP West Coast would be wise to remove from any revised complaint, which the Commission addresses here.

6. The first is the addition of projected revenues from Calnev's July 1, 2007 index-based increase without any addition of the projected expenses, as discussed on pages 8 and 9 of the complaint. As Calnev points out, this wholly fallacious approach increases a projected over-recovery of return without even allowing for the future expenses that would reduce it. BP West Coast is directed to exclude this argument from any revised complaint. Second, the complaint addresses several income tax allowance matters. While these appear to be a recitation of issues to be addressed at hearing, the standards

² Citing Interstate Commerce Act, 49 U.S.C. app. §§ 13(1) and 16(1).

³ Energy Policy Act of 1992, Public L. No. 102-486, 106 Stat. 2276 (1992) (EPA Act of 1992) and 18 C.F.R. §342.3 (2007) for the details of the annual indexing procedure.

⁴ *America West* at P 5; *ExxonMobil Oil Corporation v. Calnev Pipe Line, L.L.C.*, 120 FERC ¶ 61,075 (2007) at P 4.

have been established by the Remand Order issued in December 2007.⁵ The order resolves certain points with finality, including incentive payments to general partners, the income losses attributable to limited partners, and related issues of allocation. The complaint also attacks the inclusion of an Accumulated Deferred Income Tax allowance in Calnev's rates and the related issues of income tax deferrals by the limited partners. The 2007 Remand Order also resolved these issues with finality. If the amended complaint continues to pursue these issues, it will be dismissed.

7. The complaint also asserts that the debt/equity ratio should be based on that of Knight, Inc. and not Kinder Morgan Energy Partners (KMEP), the publicly traded limited partnership that owns Calnev through a number of intermediate partnerships.⁶ This argument was addressed in *America West* and was rejected there for the reasons stated in the order and reiterated in Calnev's answer in the instant case.⁷ As with the tax issues, the matter is to be removed from any amended complaint. The complaint also asserts that Calnev's cost-of-service violates the *Petal* doctrine because Calnev is not placed at the lower end of the proxy range based on its relative risk.⁸ BP West Coast is correct that relative risk within the proxy group is a matter for hearing, but *Petal* does not address this issue. The case addresses only the construction of the proxy group, not the issue of relative risk within it for determining the return level, as Calnev correctly states.

8. The complaint also raises issues regarding the determination of a master limited partnership's cost of equity, the allocation of revenues and costs between jurisdictional or non-jurisdictional services, the impact and appropriateness of surcharges, overhead cost allocation, reserve accounts, and whether Calnev's rate base and depreciation calculations are correct. These are certainly legitimate matters of inquiry in an oil pipeline rate case and any complaint is free to pursue them if the relevant threshold standards are met. However, the pejorative tone of the complaint, which implies that Calnev has knowingly distorted or deliberately misrepresented these costs, is not. These are complex issues about which reasonable people can disagree and should be treated as such. If any

⁵ See *SFPP, L.P.*, 121 FERC ¶ 61, 240 (2007) (December 2007 Order).

⁶ Knight, Inc. is a holding company controlling several entities that provide managerial services to KMEP and the operating entities it owns. Knight Inc. is also the statutory general partner of several of those operating entities.

⁷ *America West* at P 17-18. See also Calnev's answer at pp 16-20 for a thorough and accurate analysis of this issue.

⁸ Absent a citation the Commission assumes the complaint is referring to *Petal Gas Storage, L.L.C v. FERC*, No. 04-1166, slip op. issued August 7, 2007 (D.C. Cir. 2007) (*Petal*).

amended complaint does not avoid these attacks on Calnev's integrity and business purposes, it will be dismissed.

9. The complaint also misapplies the barrel-mile test by increasing revenues per barrel mile to reflect the index-based cost increases, but excludes the increased costs that Calnev actually incurred under the index method. These were in fact in excess of the revenue increases permitted by the applicable index increase for 2006, effective July 1, 2007.⁹ The Commission includes the barrel-mile test only for purposes of reviewing the relative increase in costs and revenues between the two years at issue in any particular year. It has never used the test for purposes of a rate complaint case and declines to do so here. The analysis of the numbers on the face of the Page 700 is sufficient to address the issue of whether there are reasonable grounds to conclude that the pipeline's rates are unjust and unreasonable. A misplaced and faulty reliance on the barrel-mile figures is an unnecessary burden for all that must review these types of complaints.

10. The second issue a complaint must address is substantially changed circumstances. It does so by reviewing Calnev's 1990 and 1992 FERC Form No. 6 reports, developing an estimated revenue level, and assuming that the revenue in that year covered all of Calnev's costs. It then compares the increase in costs and revenues in percentage terms and concludes that the Commission's standards are met. The Commission addressed the limits of this approach in detail in *America West*. In particular, the Commission notes that the instant complaint alludes to the cost analyses presented in Docket Nos. OR07-18-000 and OR07-19-000. As discussed in *America West*, it is incorrect (1) to use a ratio comparison of percentage increases unless the percentages are derived from the same base, and (2) to determine the increase from a negative return as was done there.¹⁰ Thus, BP West Coast could not assume that the grandfathered rate would recover its full costs in either the partial or first full year of operations. BP West Coast has also referred to the discussion of the substantially changed circumstances and the evaluation of the base rate contained in *America West* with the suggestion that it address the Commission's concerns in detail if it elects to pursue the substantially changed circumstances issue.

11. BP West Coast also states that Calnev's 1991 FERC Form No. 6 "mysteriously disappeared (notwithstanding the Commission's document retention policy)."¹¹ This implies some malicious action within (or without) the Commission when a simple inquiry to the Commission staff or to the carrier might have resolved the matter and made the

⁹ See *Tesoro Refining and Marketing Company v. Calnev Pipe Line, L.L.C.*, 121 FERC ¶ 61,142 (2007) and *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243 (2007).

¹⁰ *America West* at P 8.

¹¹ Complaint at 27.

relevant information available. Since destruction of official government records is a criminal offense, there is no room for this type of assertion in a Commission proceeding without some convincing evidence that any misplacing of the report was intentional.

12. Finally, BP West Coast requests three additional remedies beyond a reduction in Calnev's current rates. First, it requests that the Commission require Calnev to file a cost-of-service study within 45 days and to reduce the instant rates if the study does not support Calnev's position, citing *Panhandle Complainants v. Southwest Gas Storage Company*.¹² This was a gas complaint and as such reparations are not available, as is the case under the ICA. Since reparations provide the remedy, the request is denied. Second, BP West Coast asserts that Calnev should be denied any additional indexed-based rate increases until its base rates are determined to be just and reasonable. This request is inconsistent with the simplified method of cost recovery adopted pursuant to the Energy Policy Act of 1992. As its recent orders on the indexing method indicate, the Commission has adopted different procedures for addressing the limited circumstances under which an index-based rate increase may result in a rate that is unjust and unreasonable.¹³ The request is denied. Third, BP West Coast requests fast tracking of the complaint. Since reparations are available, there is no threat of immediate injury and fast tracking is inappropriate.

The Commission orders:

(A) The instant complaint has established reasonable grounds to conclude that Calnev's 2006 rates may not be just and reasonable.

(B) BP West Coast's request that Calnev file a cost-of-service study within 45 days and set its rate accordingly is denied, as are its request that Calnev be denied any further index-based rate increases until its rates are determined to be just and reasonable and that the instant complaint be fast tracked.

(C) BP West Coast is afforded 45 days to file a revised complaint that conforms to the holdings of this order.

¹² 117 FERC ¶ 61,318 at P 20 (2006).

¹³ *Cf.* note 9, *supra*.

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(D) This complaint is held in abeyance until further order of the Commission.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.