150 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mars Oil Pipeline Company | Docket No. IS15-151-000

ORDER REJECTING TARIFF FILING

(Issued February 27, 2015)

1. On January 28, 2015, Mars Oil Pipeline Company (Mars) filed FERC Tariff No. 27.9.0 to increase its inventory management fee penalty from 45 cents per barrel to 60 cents per barrel. As discussed below, the Commission rejects Mars' filing.

Background

2. Item 65 of Mars' tariff requires that shippers contribute petroleum inventory for use as linefill. Each shipper's inventory requirement is determined based upon the shipper's *pro rata* share of the pipeline's total monthly receipts. Mars' tariff permits assessment of an inventory management fee upon any shipper with a closing monthly inventory balance of: (a) 30 percent greater than its inventory requirement; or (b) 10 percent less than its inventory requirement.

3. In its January 28, 2015 filing, Mars proposed to increase the inventory management fee from 45 cents per barrel to 60 cents per barrel. Without providing any elaboration, Mars' transmittal letter claims that the inventory management fee is a "non-jurisdictional fee." Mars also states, however, that the inventory management program is necessary to maintain the efficient and safe operation of its system.

Protests and Answer

4. On February 11, 2015, Chevron Products Company (Chevron) filed a motion to intervene and a protest. Chevron states that under the Interstate Commerce Act, pipelines

are obligated to justify new inventory management policies[1] and the imposition of new penalties.[2] Chevron argues that Mars has not demonstrated that the proposed 33 percent increase to the inventory management fee is necessary to address issues on Mars' system. Chevron adds that Mars' filing provides no evidence that Mars has experienced problems with shippers maintaining inadequate inventory levels or that the current inventory management fee of 45 cents per barrel is insufficient to deter shipper misconduct. Chevron emphasizes that penalty fees are not intended to be a source of revenue for the pipeline.

5. On February 18, 2015, Mars filed an answer.[3] In its answer, Mars asserts that the inventory management fee applies to a non-jurisdictional storage service provided at the salt cavern in Clovelly, Louisiana. Mars states that it only uses a small portion of its capacity in the Clovelly cavern for its own operational needs. Mars explains that its shippers sometimes place additional petroleum on Mars' system and elect to pay the inventory management fee. Mars states that it accommodates these shippers by using the unused portion of its storage capacity in the Clovelly cavern. Thus, Mars states that the inventory management fee operates as a charge for non-jurisdictional storage. Mars states that it only includes the inventory management fee in its tariff as a convenience to its shippers.

<u>Discussion</u>

6. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2014), all timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted.

7. The Commission rejects Mars' contention that the inventory management fee is entirely non-jurisdictional. As a pre-condition for obtaining transportation service on Mars' pipeline, a shipper must provide a certain level of petroleum inventory to meet the

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[1] Chevron Protest at 3 (citing *Mid-America Pipeline Co.*, 99 FERC ¶ 61,119, at P 24 (2002), *reh'g denied*, 103 FERC ¶ 61,233 (2003); *Kinder Morgan Operating L.P. "A,"* 99 FERC ¶ 61,133, at 61,150 (2002), *order on reh'g,* 101 FERC ¶ 61,017 (2002)).

[2] *Id.* (citing *Colonial Pipeline Co.*, 92 FERC ¶ 61,289, at 62,022 (2000)).

[3] On February 19, 2015, Mars filed an errata to its answer.

pipeline's linefill needs.[4] The inventory management fee applies to shippers that fail to maintain an appropriate inventory level as specified by Mars' tariff,[5] and in prior filings Mars has represented that the inventory management fee is a penalty to deter shippers from disregarding these linefill obligations.[6] Thus, the inventory management fee is inextricably tied to Mars' jurisdictional pipeline transportation service. Although it is possible that in some circumstances the inventory management fee has been applied by Mars in lieu of a non-jurisdictional storage charge, this does not sever the close link between the inventory management fee and the linefill requirement which serves as a pre-requisite to jurisdictional transportation service on Mars' system.[7]

8. Mars has also failed to justify the proposed increase to the management fee. As it pertains to jurisdictional service, the sole purpose of the management fee penalty is to deter shippers from failing to contribute appropriately to system linefill. Mars has not provided any explanation for why the increased inventory management fee is necessary to deter harmful shipper behavior related to this linefill obligation. Accordingly, Mars' proposed inventory management fee increase is rejected.

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[4] Mars Answer at 4-5. As Mars states in its filing, this inventory requirement serves "to ensure an efficient and safe operation for those shippers who transport barrels on our pipeline system." Mars Transmittal Letter at 1.

[5] Mars Answer at 4-5.

[6] Mars Oil Pipeline Company, Transmittal Letter, Docket No. IS06-296-000, at 1 (filed May 5, 2006); Mars Oil Pipeline Company, Transmittal Letter, Docket No. IS13-267-000 (filed May 1, 2013).

[7] 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." Mars' transmittal letter included no assertion that the inventory management fee was a charge for storage at the Clovelly cavern, yet this claim served as the sole basis for Mars' contention in its answer that the inventory management fee is non-jurisdictional. In the future, the Commission expects Mars 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. Failure to provide an adequate explanation in the transmittal letter may result in the rejection of the pipeline's filing as patently deficient.

The Commission orders:

FERC Tariff No. 27.9.0 is rejected as described in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)