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02-12-10

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Pablo Bay Pipeline Company LLC for Approval of Tariffs for the San Joaquin Valley Crude Oil Pipeline.

Application 08-09-024
(Filed September 30, 2008)

Case 08-03-021
(Filed March 27, 2008)

Case 09-02-007
(Filed February 13, 2009)

Case 09-03-027
(Filed March 23, 2009)

And Related Matters.

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION TO COMPEL RESPONSES TO DATA REQUESTS**

Background

This case arises from Commission Decision (D.) 07-07-040 which found that a 20-inch heated crude oil pipeline from the San Joaquin Valley to the San Francisco Bay area (Pipeline) had been dedicated to public service. That decision ordered the Pipeline's owner (Applicant or San Pablo) to file an

application for approval of tariffs for the Pipeline.¹ The present Application was filed in response to that order. It requests Commission approval of so-called “market-based rates” for the shipment of crude oil on the Pipeline.

The Application was protested by Chevron Products Company, Valero Marketing and Supply Company and Tesoro Refining and Marketing Company (Tesoro) all of whom ship crude oil via the Pipeline from the San Joaquin Valley to refineries in the San Francisco Bay Area.

On December 29, 2009, San Pablo filed a motion to compel Tesoro to respond to six groups of data requests previously served on Tesoro. The data sought relate to the operations of Tesoro’s Golden Eagle refinery. Tesoro objected to the data requests as outside the scope of the proceeding, excessively burdensome and unlikely to lead to the discovery of admissible evidence. Tesoro’s response emphasized the highly confidential nature of the information sought by an affiliate of a direct competitor and questioned whether the confidentiality order entered earlier in this proceeding provided adequate protection against possible misuse of the information.

Discussion

A. Scope of the Proceeding

The Scoping Memo includes as an issue whether Tesoro has “reasonable competitive alternatives to supply the crude oil requirements of its refinery in Martinez.” Tesoro maintains that this language should be read to apply only to

¹ At the time the Commission issued D.07-07-040, the pipeline was owned by Equilon Enterprises LLC (Equilon), and operated in conjunction with Shell Trading, U.S. Company (Shell Trading). Both Equilon and Shell Trading are affiliates of Shell Oil. Ownership of the pipeline was subsequently transferred to the Applicant.

alternative sources of transportation for San Joaquin Valley Heavy (SJVH) crude oil from the wells to the refineries. Applicant maintains that this language should embrace potentially competitive crude oils such as, for example, foreign crudes.

I concur with Applicant's reading of the scoping memo. The scoping memo clearly distinguishes between market-based rates and cost-of-service rates and entertains the possibility that Applicant may be entitled to charge market-based rates. Competitive constraints on transport pricing, including competitive sources of supply, are clearly relevant to an application for market-based rates. Applicant is entitled to argue that such constraints exist.

B. Burdensomeness of the data requests

Tesoro objects that complying with the data requests is burdensome, that these requests are likely to give rise to many others, and that responding to the data requests potentially confers an enormous competitive advantage on a direct competitor. Tesoro also argues that the previously entered confidentiality order is not sufficient protection against these risks.

In addition, Tesoro claims that SJVH is uniquely suited to serve as a base feed stock for its refinery and that no other crude oil can serve that function in an economical way.

San Pablo denies that the data requests are excessively burdensome. It claims it needs the requested information to test the proposition that SJVH is the only suitable crude available to Tesoro.

In balancing these competing claims, I have concluded that Tesoro's risk of harm from disclosing highly confidential, granular data about its refinery operations outweighs the benefit to San Pablo of obtaining that information. However, I am sensitive to San Pablo's argument that without such information

it cannot test Tesoro's claim that there are no available substitutes for SJVH. Accordingly, I am putting the burden of proof on that claim on Tesoro. San Pablo still retains the burden of proof on the application for market-based rates.

IT IS RULED that:

1. The motion of San Pablo Bay Pipeline Company to compel Tesoro Refining and Marketing Company to respond to its data requests is denied.
2. Tesoro Refining and Marketing Company has the burden of proof on the issue of whether there are available crude oils that can be economically substituted for San Joaquin Valley Heavy.
3. San Pablo Bay Pipeline Company has the burden of proof on the issue of whether it is entitled to charge market-based rates for transporting crude oil on the Pipeline.

Dated February 12, 2010, at San Francisco, California.

/s/ KARL J. BEMESDERFER

Karl J. Bemederfer
Administrative Law Judge

