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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)

And Related Matters.

Case 08-03-021

Case 09-02-007

Case 09-03-027

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE IMPLEMENTING REHEARING DECISIONS**

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this Scoping Memo is issued to implement the rehearing ordered in Decision (D.) 12-02-038 issued February 16, 2012 (First Rehearing Decision) and D.12-04-050 issued April 19, 2012 (Second Rehearing Decision).

1. Introduction

D.11-05-026 (Underlying Decision) involved Application 08-09-024, filed by San Pablo Bay Pipeline Company LLC (SPBPC) for approval of tariffs for the San Joaquin Valley Crude Oil Pipeline (Pipeline), and several related complaint cases. In the Underlying Decision, the Commission (1) denied SPBPC's request to charge market-based rates for the transportation of heavy crude oil (SJVH) on the Pipeline; (2) set rates for the transportation of crude oil, including both SJVH and a lighter crude oil (SJVH Blend) between the San Joaquin Valley and the San Francisco Bay Area at \$1.34 per barrel; (3) resolved complaints filed by

Independent Shippers¹ against SPBPC and Shell Trading US Company (STUSCO)² and ordered refunds for past overcharges from April 1, 2005 to the effective date of the Underlying Decision; (4) approved the transfer of physical assets from the Pipeline's former owner to SPBPC; (5) denied SPBPC's request to exclude certain tanks and truck racks from the assets transferred to it; and (6) adopted a tariff to govern the future provision of heated oil transportation service by SPBPC.

Both SPBPC and Independent Shippers filed for rehearing of the Underlying Decision. In the First Rehearing Decision, the Commission limited rehearing to the sole issue of how to calculate the refunds using the actual monthly variation in the transportation charges for deliveries of SJVH Blend to the Shell Martinez refinery during the refund period. In the Second Rehearing Decision, the Commission expanded the scope of the rehearing ordered in the First Rehearing Decision by modifying its Ordering Paragraph 1 to read as follows:

Limited rehearing of D.11-05-026 is granted to consider what the correct methodology for calculating the refunds is, and to address any related issues involving the actual calculation.

¹ "Independent Shippers" is the collective designation of Chevron Products Company, Tesoro Refining and Marketing Company, and Valero Marketing and Supply Company all of whom ship undiluted heavy crude oil on the Pipeline to their respective Bay Area refineries. (Underlying Decision at 3, fn. 1.)

² STUSCO is an affiliate of SPBPC, and both entities make up the "Shell Parties" that also include Shell Oil Products US and their parent corporation, Royal Dutch Shell. SPBPC was created to serve as the public utility; it is the successor of Equilon Enterprises LLC dba Shell Oil Products U.S, and Shell Trading (US) Company. (See Application at 1.)

(Second Rehearing Decision at 6 [Ordering Paragraph No. 1].)

The Commission further vacated statute of limitation determinations in the First Rehearing Decision and the Underlying Decision. (D.11-04-040, at 5 and 7.) The Second Rehearing Decision ordered those issues to be reconsidered as part of the limited rehearing.

On May 15, 2012, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) to determine the scope of the issues in the rehearing and to set a timetable for it. The discussion at the PHC centered on how to interpret the First and Second Rehearing Decisions and specifically, whether the Second Rehearing Decision should be read as permitting SPBPC and/or STUSCO to introduce new evidence regarding cost-based rates during the refund period. SPBPC and STUSCO argue that the language of the Second Rehearing Decision contemplates such new evidence. They cite the Commission's statements in the Second Rehearing Decision that the rehearing should consider "all matters related to the refund issues" and that such consideration should be based on "citations to the existing record...evidentiary hearings or comments, as appropriate." They argue that the record is devoid of adequate information regarding cost-based rates during the refund period and that the Commission's reliance on the rate charged to STUSCO by SPBPC during the refund period as a proxy for a market-based rate is unsupported by record evidence. They further argue that using the spread between the STUSCO rate – whether an annual rate or a monthly rate – and the rate charged to Independent Shippers is an incorrect method for calculating refunds and that the correct method requires comparison of the monthly cost of service rate with the rate charged to Independent Shippers.

Independent Shippers support the use of the STUSCO proxy rate as a basis for calculating refunds, claim that there is already adequate record evidence regarding SPBPC's cost of service, deny that there is a need for evidentiary hearings to calculate refunds, and argue that scheduling evidentiary hearings will lead to additional delay in the payment of refunds to which they are entitled.

2. Scope

In deciding the scope of the rehearing proceedings that were granted by the two rehearing decisions, we look to what the Commission ordered in these decisions.³ With respect to the methodology and the calculation of the refund, the Commission stated that it "did not intend to restrict the limited rehearing to one particular methodology, nor prevent other proposals from being considered. The intent was to grant limited rehearing so that the further proceedings could be held on the correct methodology and calculations of the refund, based on the record." (Second Rehearing Decision at 4.) With regard to the statute of limitations, the Commission ordered rehearing of the entire issue including, *inter alia*, which statute of limitations is properly applied to these refund claims. As the Commission stated:

Our statute of limitations determinations are closely related to the refund issues. Since we have decided to grant limited

³ It is useful to review what the Commission did not order in the way of rehearing. Neither of the Rehearing Decisions altered the basic findings of the Underlying Decision that SPBPC has a monopoly on the transportation of crude oil from the San Joaquin Valley to the San Francisco Bay Area; that SPBPC dedicated its Pipeline to public service at a point in time well before the earliest date for which refunds might be claimed; that SPBPC used its monopoly power to charge Independent Shippers unlawfully high transportation rates; and that Independent Shippers are owed substantial refunds as a result.

rehearing on all the issues related to the methodology and calculation of the refund together in one consolidated proceeding, it makes sense for us to reconsider our determinations on these issues.

(Second Rehearing Decision, at 5 and 7 [Ordering Paragraph No. 7].)

Based on the above, the issues in the rehearings ordered by the Commission are as follows:

1. What is each party's position regarding the correct methodology for calculating the refunds? What evidence in the existing record supports this position? What additional evidence is needed, if any, to determine the correct methodology?
2. What statute of limitations should apply to the Independent Shippers' refund claims? What factors should be considered in applying this statute?

We conclude that unless the parties are able to resolve these issues through voluntary mediation, evidentiary hearings, including the opportunity to cross-examine adverse witnesses, will be required. The Second Rehearing Decision in particular broadened the scope of this proceeding to include consideration of all factors that may affect the calculation of refunds and the application of the correct statute of limitations and authorized the introduction of new evidence bearing on these issues. If the parties choose to engage in voluntary mediation, they should promptly contact ALJ Jean Veith who will assign a mediator. The schedule set out below will be tolled during the period of the mediation and will be adjusted as necessary to reflect the results of the mediation.

At the PHC, the ALJ indicated his tentative rulings for implementing the Rehearing Orders were (1) to deny SPBPC's request to suspend proceedings; (2) not to schedule evidentiary hearings; (3) to calculate the refund by using the

spread between the STUSCO monthly rate and the monthly rate charged to Independent Shippers; (4) to affirm that the start date for refunds is April 1, 2005; and (5) to adopt the procedural schedule proposed by Independent Shippers. We affirm only the ALJ's tentative ruling to deny SPBPC's request to suspend the proceedings.

Also at the PHC, Independent Shippers asked the ALJ to enter an order directing SPBPC and STUSCO to pay immediately the undisputed amount of refunds due them. Such an order can only be issued by the Commission and must be sought by means of a petition for modification of the Underlying Decision.

3. Schedule

We adopt, with one minor modification, the schedule for this proceeding proposed by SPBPC and STUSCO:

Discovery	Immediately
Concurrent Opening Testimony	July 9, 2012
Concurrent Reply Testimony	August 13, 2012
Evidentiary Hearings	September 20, 2012, 10:00 a.m. Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Concurrent Opening Briefs	October 15, 2012
Concurrent Reply Briefs	November 12, 2012

This Scoping Memo and Ruling extends, by 18 months from today's date, the period of resolution of this matter.

4. Categorization and Need for Hearings

This proceeding is characterized as ratesetting and hearings have been determined to be necessary. *Ex Parte* communications are permitted subject to the requirements of Rule 8.3(c) of the Commission's Rules of Practice and Procedure.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Karl J. Bemederfer is the assigned ALJ in this proceeding.

IT IS SO RULED.

Dated June 7, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

/s/ KARL J. BEMESDERFER
Karl J. Bemederfer
Administrative Law Judge