

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Agenda Item 9

Agenda ID 13394

ENERGY DIVISION

RESOLUTION O-0054 (Rev. 2)

November 20, 2014

RESOLUTION

Resolution O-0054. San Pablo Bay Pipeline Company, LLC requests approval of its rules and regulations tariff, transportation and related services rates and a subsequent rate increase.

PROPOSED OUTCOME:

- The rules and regulations for petroleum pipeline transportation services contained in Tariff Cal P.U.C. No. 1 are approved.
- The rate of \$0.30/barrel (bbl.) and a Pipeline Loss Allowance of 0.10% for transportation service to the San Joaquin Refinery are approved.
- The determination of reasonable rates for transportation and truck rack unloading service on the San Pablo Bay Pipeline Company pipeline between San Joaquin Valley and the San Francisco Bay Area requires further proceedings in order to obtain required evidence. Therefore, the rate in Tariff Cal P.U.C. No. 2 for transportation service, including the increase approved in Decision 14-06-006, is approved only on an interim basis subject to refund.

SAFETY CONSIDERATIONS:

- The transportation and unloading of crude oil involves inherent safety risks. It is the utility's responsibility to adhere to all Commission rules, decisions, General Orders, and statutes including Public Utility Code Section 451 to take all actions "...necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public."

ESTIMATED COST:

- The rates approved are new. The resolution results in lower rates than those proposed in Advice Letter 1.

By Advice Letter 1 filed on July 18, 2011, Advice Letter 1-A filed on August 29, 2011, Advice Letter 1-B filed on December 7, 2011 and Advice Letter 3 filed on June 16, 2014.

SUMMARY

This Resolution approves San Pablo Bay Pipeline Company (SPBPC) Tariff Cal P.U.C. No. 1 (Tariff No. 1) which contains the rules and regulations governing the company's petroleum pipeline transportation services, but contains no rates. The corrections made by SPBPC in Supplemental Advice Letter 1-A, substantially conform this Tariff to what was ordered by Decision (D.) 11-05-026. To the extent that Tariff No. 1 as supplemented deviates from Attachment A to D.11-05-026, those deviations are warranted.

The resolution approves the proposed rate for a new transportation service to the San Joaquin Refinery (SJ Refinery). This is a negotiated rate between SPBPC and its sole shipper, SJR, which owns and operates the refinery, and does not include a separate rate for truck rack unloading service.

The Resolution concludes that further proceedings are necessary to determine reasonable rates for transportation and truck rack unloading services on the SPBPC line between the San Joaquin Valley and San Francisco Bay Area refineries.

Because it appears that there is not sufficient evidence in the current record, further proceedings before an Administrative Law Judge (ALJ) will be required in order to obtain necessary evidence and it will be necessary to reopen Application (A.) 08-09-024.¹ Based on Staff's review of the AL it appears that there is an inconsistency in D.11-05-026 which adopted: (1) a rate for transportation service on the line taking into account all costs of that service, including truck rack unloading service, and (2) the requirement that SPBPC establish an additional, separate, unspecified rate for truck rack unloading service (now contained in SPBPC's Tariff Cal P.U.C. No. 2. (Tariff No. 2). There is insufficient information in the documents provided in connection with this AL and in the record in A.08-09-024 to resolve the inconsistency between these rates.

In the interim, the rate proposed in Tariff No. 2 for transportation service, and adopted in D.11-05-026, and as increased by 4.1% from \$1.34/bbl. to \$1.395/bbl.

¹ Application (A.)08-09-024, in which D.11-05-026 was issued, is closed.

per Decision 14-06-006, shall remain in effect and the rate for truck rack unloading service shall be reduced to \$0.134 and will be subject to refund. The full amount of \$0.15 truck rack unloading rate charged between the date San Pablo Bay Pipeline Company implemented the rate and the date the rate could first become effective on August 17, 2011 and the amounts in excess of \$0.134 charged for truck rack unloading service beginning August 17, 2011 will be refunded.

BACKGROUND

On June 2, 2011 the Commission issued D.11-05-026. D.11-05-026 first established Commission-approved rates for SPBPC, and:

- **set rates at \$1.34/barrel (bbl.) with a 0.10% pipeline loss allowance (PLA) for transportation of crude oil via SPBPC's pipeline connecting the San Joaquin Valley and San Francisco Bay Area refineries;**
- **ordered refunds to shippers for overcharges made by SPBPC for the period from and after April 1, 2005 through the effective date of the tariff approved in D.11-05-026;**
- **denied exclusion of specific storage tanks and truck racks from the rate base;**
- **adopted a tariff, shown as Attachment A to D.11-05-026, which contains rules governing transportation service by SPBPC, but no rates;**
- **as part of the tariff governing transportation service, required SPBPC, to establish a rate, separate from that for pipeline transportation service, applicable to truck rack unloading service; and,**
- **made Attachment A and the approved transportation rate of \$1.34/bbl. with a PLA of 0.10% effective the first day of the following month, i.e., July 1, 2011.**

On July 18, 2011 SPBPC filed Advice Letter (AL) No. 1 to comply with Ordering Paragraph 5 of D.11-05-026. AL 1 provided two tariff schedules. The first, Tariff No. 1, defines the tariff rules and regulations governing its pipeline transportation services. Ordering Paragraph No. 5 of D.11-05-026 required Tariff No. 1 to comply with D.11-05-026 and be substantially in the form of Attachment A to D.11-05-026, which was originally proposed by the

“Independent Shippers”.² Incorporated in the tariff’s rules is a requirement that SPBPC establish an additional fee for the use of truck racks located at its facilities in Bakersfield and Coalinga.

The second tariff, Tariff No. 2, includes the rate, adopted in D.11-05-026, of \$1.34/bbl. and a PLA of 0.10% for transportation of crude petroleum from the San Joaquin Valley to the San Francisco Bay Area. Also included in this Tariff is a rate of \$0.15/bbl. for use of the truck rack unloading service. In addition, Tariff No. 2 includes a negotiated rate of \$0.30/bbl. and a PLA of 0.10% for a new service from Station 36 in Bakersfield on SPBPC’s main pipeline to a destination point 7.36 miles away at the SJ Refinery, also in Bakersfield (Route 11 of the Tariff). D.11-05-026 notes that in oral argument by counsel it was represented that discussions were currently underway between the pipeline and the refinery to address the refinery’s concerns.

Both tariffs submitted with AL No. 1 were marked effective July 1, 2011, based on SPBPC’s understanding of D.11-05-026. Thus, the tariffs contained an effective date of July 1, 2011 not only for the Rules and Regulations contained in Tariff No. 1 and for the rate of \$1.34/bbl. for transportation service between the San Joaquin Valley and the Bay Area (with a PLA of 0.10%), but also contained an effective date of July 1, 2011 for the \$0.15/bbl. rate for truck rack unloading service; and the rate of \$0.30/bbl. for the new transportation service to the SJ Refinery.

Two supplemental Advice Letters were filed. AL 1-A was filed on August 25, 2011 and AL 1-B on November 22, 2011.³ AL1-A made changes to Tariff No.1 in order to respond to certain points made by protestants to AL 1. AL-1-B did not change the tariffs but, in response to a request by the Energy Division, provided further information in support of SPBPC’s proposed Tariff No. 2.

² The “Independent Shippers” are Tesoro Refining and Marketing Company, Valero Marketing and Supply Company and Chevron Products Company.

³ On August 29, 2011 SPBPC refiled AL 1-A as instructed by the Energy Division. This revision incorporated minor corrections to the labeling of the prior Advice Letter and Tariffs; changed the requested date for Tariff No. 1 to July 1, 2011 (as originally requested in AL-1); and provided clean and redline copies of the Tariffs.

SPBPC had applied for rehearing of D.11-05-026. On February 16, 2012, D.12-02-038 ordered a limited rehearing concerning the calculation of refunds. On March 19, 2012, the Independent Shippers jointly filed an Application for rehearing of D.12-02-038. In response, D.12-04-050 extended the limited rehearing of D.11-05-026 to cover all issues involving refund calculations and the correct methodology for determining refund amounts.

On June 12, 2014 in response to SPBPC Application 14-01-003, Decision (D.) 14-06-006 approved an increase of 4.1%, equating to \$0.055 to the transportation service rate of \$1.34/bbl resulting in a new rate of \$1.395/bbl. D.14-06-006 made no changes to the truck rack unloading rate.

Coincident with the filing of Application 14-01-003, SPBPC filed Advice Letter 2 requesting approval of the increase requested in the application. Advice Letter 2 was subsequently withdrawn.

On June 16, 2014, SPBPC filed Advice Letter 3 (AL 3) to implement the rate increase authorized in D. 14-06-006.

NOTICE

Notice of AL 1, AL 1-A and AL 1-B was made by publication in the Commission's daily calendar. San Pablo Bay Pipeline Company states that a copy of AL 1 and supplements 1-A and 1-B were distributed to its shippers and all parties to A.08-09-024. Notice of AL 3 was made by publication in the Commission's daily calendar. San Pablo Bay Pipeline Company states that a copy of AL 3 was distributed to all parties in A.08-09-024/C.08-03-021 *et. al.*, as well as to SPBPC's shippers of record.

PROTESTS

Protests were timely filed on matters concerning: (1) the specific wording of Tariff No. 1 relative to that approved by D.11-05-026 and represented by Attachment A to D.11-15-026; and, (2) inclusion, in Tariff No. 2, of both a separate rate for truck rack unloading services and a separate rate for transportation services between Station 36 and the SJ Refinery. The substance of the protests is more thoroughly discussed below in the Discussion section.

San Pablo Bay Pipeline Company, LLC. AL 1; AL 1-A; AL 1-B; AL 3/GSR

On August 8, 2011, Tesoro Refining and Marketing Company (Tesoro) and Valero Marketing and Supply Company (Valero) filed a joint protest to SPBPC AL 1. The protest concerns both Tariffs No. 1 and No. 2.

On August 8, 2011, Chevron Products Company (Chevron) filed a protest to SPBPC AL 1. The protest concerns Tariff No. 1.

On August 15, 2011 SPBPC replied to the joint protest of Tesoro and Valero and the protest of Chevron.

On August 15, 2011 San Joaquin Refining Company, Inc. (SJR) responded to the protests to SPBPC AL 1. The response states its support for the rate schedules included in the AL, particularly the rate for transportation service from Station 36 to the SJ Refinery.

On August 18, 2011, Tesoro filed a supplement to the joint protest made by Tesoro and Valero. The supplement accepts changes made by SPBPC to Tariff No. 1 in AL 1-A, and restates Tesoro's concerns regarding Tariff No. 2.

On December 14, 2011, Tesoro filed a protest to SPBPC's AL 1-B. The protest repeats arguments concerning Tariff No. 2 made in the joint protest of Tesoro and Valero and Tesoro's supplement to that protest.

SPBPC did not reply to the Tesoro supplement to the joint protest or to the Tesoro protest of AL 1-B.

AL 3 was not protested.⁴

DISCUSSION

Tariff No. 1

Tariff No. 1, as revised in AL 1-A, is substantially consistent with the tariff required by D.11-15-026 and should be approved. To the extent that the revised Tariff No. 1 differs from Attachment A to D.11-05-026, it is consistent with the text of D.11-05-026, and the Independent Shippers have not objected to, or have agreed with, all revisions made by SPBPC.

⁴ AL 2 was protested by Tesoro and SPBPC replied to the protest. However, AL 2 was withdrawn.

Both the joint protest of Tesoro and Valero, and the protest of Chevron noted that D.11-05-026, in Ordering Paragraph 5, required the tariff submitted as Tariff No. 1 to “be consistent with and comply with [D-11-05-026] and shall be substantially in the form of Attachment A to [D.11-05-026].”⁵ Both protests further note that the tariff generally complies with D.11-05-026 but that there are several items, primarily typographical errors, which require correction. Chevron goes into no further detail concerning needed changes, deferring to the discussion and changes requested in the Tesoro/Valero protest. The Tesoro/Valero protest identifies the specific typographical errors requiring change. In addition to the typographical errors, the Tesoro/Valero protest identified two other items in SPBPC’s originally proposed Tariff No. 1 that they objected to: (1) SPBPC’s tariff uses a single uniform PLA, rather than the two separate PLAs shown in Attachment A; and, (2) the tariff refers to test method ASTM D-4292, when it should instead refer to ASTM D-4294.

The Tesoro/Valero protest notes that in an email⁶ from SPBPC’s counsel to counsel for Chevron, Valero and Tesoro, SPBPC acknowledges the typographical errors that need correction. SPBPC’s e-mail further acknowledged that it made only one intentional change, inserting ASTM D-4292, where Attachment A referenced ASTM D-1552.⁷ The Tesoro/Valero protest notes that the insertion of ASTM D-4292 was still incorrect and that SPBPC may have intended to insert the correct test, ASTM D-4294.

In its response to the protests concerning Tariff No. 1 SPBPC made all of the requested changes, including changing the reference to ASTM D-4294, with one

⁵ D.11-05-026, Ordering Paragraph 5, pp. 36-37.

⁶ The email referenced above is footnoted on page 2 of the joint protest of Tesoro/Valero.

⁷ Attachment A to D.11-05-026, Section 150.18, addresses the testing of crude oil samples for sulfur content. This section incorrectly references test ASTM D-1552. ASTM D-1552 is a testing method used to monitor the sulfur level of petroleum products and additives rather than crude oil. In AL-1, SPBPC replaced ASTM D-1552 with ASTM D-4292. However, ASTM D-4292 is a test for the density of calcined petroleum coke and is also not the correct reference. The Tesoro/Valero joint protest references the correct test, ASTM D-4294. ASTM D-4294 is the test method used to determine the total sulfur in petroleum including crude oil.

exception. That exception concerns the use of multiple PLAs. SPBPC notes there is no need to differentiate between differing crude oil streams with regard to the PLA and that D.11-05-026 establishes a uniform PLA of 0.10% applicable to all crude oil transportation services. In its supplement to the joint Tesoro/Valero protest Tesoro accepted all of the changes made to the tariff including the use of a uniform PLA. The other protesting parties have not objected to the resulting revised Tariff No. 1 as presented in AL 1-A.

Thus, two deviations from Attachment A remain. The first is the insertion of the correct test method, ASTM D-4294, replacing the incorrect ASTM D-1552 as discussed above. The second, is the use of a uniform PLA as called for in the body of D.11-05-026. These two deviations are consistent with the text of D.11-05-026.

Tariff No.2's Rate for Transportation Service from the SPBPC main line Station 36 to the SJ Refinery

SPBPC's proposed rate of \$0.30/bbl. and PLA of 0.10% for transportation service between Station 36 and the SJ Refinery should be approved, effective July 18, 2011, the date of its filing.

The rate is for an initial utility service and the result of a negotiation between SPBPC and SJR. SJR is the only shipper using this service.⁸ Further, the assets and the costs associated with the line are not included in the calculation of the rate for transportation service between the San Joaquin Valley and the Bay Area. As a result, no other shippers will be affected, and thus, neither Tesoro nor Valero has an interest in the proposed rate. We find the negotiated rate and PLA to be a reasonable rate at the present time given the circumstances. This rate could be changed in the future.

Tesoro/Valero assert that: (1)the proposed rate was not authorized as part of D.11-05-026; (2) the July 1, 2011 effective date is incorrect since the rate was not approved in D.11-05-026 and the requirement, under Section 491 of the Public Utilities (P.U.) Code, for 30 days advance notice of new rates and services

⁸ Shell Trading (US) Company (STUSCO) previously shipped on the line. STUSCO does not currently ship to the refinery.

was not met; and, (3) the rate is not supported by documentation as required by General Order (GO) 96-B concerning new rates. Additionally, the joint protest references P.U. Code 494 which states that a utility cannot charge or receive a different compensation than the applicable rates and charges specified in its schedules filed and in effect at the time without Commission approval.

Although AL 1 omitted mentioning that it included a rate for a *new* service, we agree with SPBPC that it can file a rate for a pipeline segment not previously in utility service using an Advice Letter, even though no rate for that service was authorized by D.11-05-026. The segment between Station 36 and the SJ Refinery, for which AL 1 proposes a rate, was first offered for utility service when AL 1 was filed. GO 96-B, Energy Industry Rule 5.1 (6) specifically authorizes the use of a Tier 1 advice letter to file “[i]nitial tariffs for a new service by an oil pipeline, including service on a pipeline segment commencing Utility service”.

Further, neither Valero nor Tesoro currently use the service and the proposed rate has no effect on the rates charged for the services that they do use. SJR is the only shipper on the line and neither of the protesting parties has expressed any intent to ship on the line. In response to a request from Energy Division Staff (Staff), Valero stated that it is not currently a shipper and does not intend to become a shipper to the SJ Refinery. Similarly, Tesoro states that it is not a current shipper and it is possible but unknown whether it will become one in the future. SPBPC confirmed that neither Tesoro nor Valero currently ship to the SJ Refinery via Route 11 (the route connecting Station 36 of the SPBPC mainline and the SJ Refinery) of the Tariff and that neither has expressed any intent to ship on Route 11. Additionally, a Staff review of the cost-of-service analysis in A.08-09-024, Exhibits Nos. 78, 81 and 90, used to establish the transportation rate of \$1.34/bbl. confirms that neither expenses nor assets associated with service between Station 36 and the SJ Refinery were included. As such, the rates charged for service to the SJ Refinery will not impact the rates charged to the protesting parties for the service that they actually use. The rate is the result of a negotiation between the only two parties with an interest in the service – SPBPC and SJR. D.11-05-026 noted that SPBPC and SJR were in negotiations regarding a rate for service to the SJ Refinery. Both SPBPC and SJR, the only shipper on the line, note that the rate of \$.030/bbl. and a PLA of 0.10% represent the outcome of those negotiations.

The proposed rate for initial utility service from Station 36 to the SJ Refinery was properly filed in a Tier 1 Advice Letter per GO-96 B, Energy Industry Rule 5.1(6).

Contrary to Tesoro/Valero assertions, 30 days advance notice is not required for the initial rate. The protest references Cal P.U.C Section 491 as requiring 30 days notice for new rates. However, Section 491 concerns changes to existing rates and schedules where the “new” rate is the rate resulting from the change. Specifically it states that “no *change* shall be made...except after 30 days’ notice to the Commission and to the public. Notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the *changes to be made in the schedule or schedules then in force...*” (emphasis added). Similarly, Tesoro/Valero references Cal P.U.C. Section 494. However, as with Section 491, this section concerns receiving a “*different compensation...than the applicable rates, fares and charges specified in its schedules filed and in effect at the time...*” (emphasis added). As an initial service on a pipeline segment commencing Utility service there was no prior schedule filed and/or in force. Since the rate is applied to a pipeline segment commencing Utility service, per Energy Industry Rule 5.1(6), it is effective pending disposition when filed.

In summary: (1) The proposed rate for initial utility service from Station 36 to the SJ Refinery was properly filed as a Tier 1 Advice Letter per GO 96-B, Energy Industry Rule 5.1 (6). (2) The costs of this segment were not considered in setting any other rates. (3) The protesting parties do not use the service and are not impacted in any way by the rates charged for the service. (4) The proposed rate is the result of negotiations between the only parties, SPBPC and SJR, with an interest in the rate. (5) As an initial rate it does not require 30 days notice in order to be effective. As a result, the rate was properly filed and noticed and, based on the facts presented in the Advice Letter and supplements, is just and reasonable as the outcome of a successful negotiation between the only two concerned parties.

Because the approved rates were arrived at by negotiation between the only parties now concerned, and because service on this segment is now a utility service available to any party, should another party initiate service on the segment and find the rate not just and reasonable, that shipper may file a complaint alleging so and asking the Commission to set just and reasonable rates to take effect upon the Commission’s approval of a decision in that proceeding. Whether or not any other shipper commences to use this segment, or complains

about the rates on it, we will require SPBPC to include the costs of this segment, and proposed rates for it, in any new rate case.

The effective date for the rate should be July 18, 2011, not the date of July 1, 2011 as shown on the Tariff No. 2.

Under P.U. Code Section 494 a common carrier (which includes an oil pipeline)⁹ cannot, without Commission approval, charge or receive a different compensation than the applicable rates and charges specified in its schedules filed and in effect at the time. The tariff including the rate for the pipeline segment from Station 36 to the SJ Refinery has an effective date of July 1, 2013 but was not filed with the Commission until July 18, 2011. Furthermore, D.11-05-026 only authorized a July 1, 2011 effective date for the \$1.34 rate and 0.10% PLA for transportation from the San Joaquin Valley to the Bay Area. Therefore, there was no Commission approval for an effective date for the transportation rate from Station 36 to the SJ Refinery on any date before the date of filing. Pursuant to GO 96-B, Energy Industry Rule 5.1 (6) “[i]nitial tariffs for a new service by an oil pipeline, including service on a pipeline segment commencing Utility service” may be filed as a Tier 1 advice letter, which means it can be made effective pending disposition. From this, it follows that the rate for the new service from Station 36 to the SJ Refinery was properly filed as an advice letter, and that it became effective on the date of filing, July 18, 2011, but not on the earlier date of July 1.

The filing of Tariff No. 2, on July 18, 2011 first made this pipeline segment available for Commission-regulated utility service. Accordingly, we express no views concerning what rate SPBPC could charge prior to making this line available for utility service.

Tariff No. 2’s Truck Rack Unloading Rate

P.U. Code Section 455.3 allows for annual increases in a rate of up to 10% without Commission approval. The change to the transportation rate of \$1.34/bbl., an additional \$0.15/bbl. charged to Shippers using the truck rack unloading service, exceeds 10% and the excess has not received Commission approval.

⁹ See P.U. Code section 211.

The Tesoro/Valero joint protest notes that the only rate approved by D.11-05-026 was a rate of \$1.34 /bbl. with a PLA of 0.10% for service from the San Joaquin Valley to the Bay Area refineries. The protest further contends that (i) the rate of \$1.34 /bbl., is based on a cost-of-service analysis that includes all of the costs of truck rack unloading and (ii) the advice letter contains no information supporting the truck rack unloading rate. Tesoro's supplement to the joint Tesoro/Valero protest and Tesoro's protest to AL 1-B repeat these arguments. SPBPC's AL 1-B notes that Attachment A to D.11-05-026 was proposed by the Independent Shippers, including Tesoro and Valero, and that as adopted by D.11-05-026 it specifically anticipates and expressly requires the provision of truck rack unloading service at a separate, albeit unspecified, rate. Furthermore, it asserts that the rate is a new rate, not a change to the San Joaquin Valley to San Francisco Bay Area transportation rate of \$1.34/bbl. SPBPC contends that, as a new rate, it is not subject to the rules governing changes in rates. SPBPC attempts to justify the specific rate of \$.15/bbl. by noting that it is the same rate it previously charged its affiliate STUSCO. It argues that this is consistent with the method D.11-05-026 relied on to establish reasonable transportation rates.

Review of the cost-of-service analysis in A.08-09-024, contained in Exhibits Nos. 78, 81 and 90, used to establish the transportation rate of \$1.34/bbl., confirms the statement in the protest that both the assets and operating costs associated with the truck rack unloading service were included in determining the transportation service rate.

As of July 1, 2011, the only Commission approved rate was \$1.34/bbl. The truck rack unloading rate was not even filed until July 18, 2011, and, as explained below, did not become effective until August 17, 2011. Therefore, until the new truck rack rate became effective, the only rate that could be charged to a shipper using *both* the transportation service between the San Joaquin Valley and the San Francisco Bay area *and* the truck rack unloading service was the rate of \$1.34/bbl. As such, when SPBPC's new rate for the truck rack unloading service became effective, it increased the tariffed charge to be paid by users of the truck rack unloading service by an additional \$0.15. Under P.U. Code 455.3, after giving the Commission and all shippers 30 days' notice, SPBPC is permitted to change rates prior to Commission approval, unless suspended for a maximum of 30 days. However, any increase in a rate without prior Commission approval is

limited to 10% in a 12 month period.¹⁰ As AL 1 was not suspended, 30 days after filing and noticing AL 1, SPBPC could, without Commission approval, increase its approved rate of \$1.34/bbl. by 10%, i.e. by a maximum of \$0.134/bbl., resulting in a total charge to those shippers using both the transportation and truck rack unloading service of \$1.474/bbl.

Further, SPBPC's justification that it used the same rate as it previously charged is not persuasive. D.11-05-026's reliance on previous charges to establish reasonable rates applied to a specific situation, the calculation of refund amounts for service previously provided. Use of this method for the specific purpose of calculating refunds does not suggest that this is the appropriate method for establishing a truck rack unloading rate going forward.

Since SPBPC increased its rate before the 30 day notice period, the full amount of the increase, \$0.15/bbl., for charges made during those 30 days should be refunded. Since the increase was not approved and the amount of the increase exceeded 10%, the excess should also be refunded.

Interest on unpaid refund amounts will be computed at the three-month commercial paper rate published by the Federal Reserve Board and accruing from the date the rate was first charged.¹¹ Under P.U. Code section 455.3(b)(4), the amount of the increase not exceeding 10% remains subject to refund if the Commission ultimately disallows a portion of the increase.¹² Since the rate was protested, the Commission will determine the reasonable rate and whether any additional amounts should be refunded. As discussed below, the record before us under this informal advice letter process and in A.08-09-024 is insufficient to determine what a reasonable rate for the truck rack unloading service should be.

¹⁰ Energy Industry Rule 8.1 incorporates these provisions into GO 96-B.

¹¹ This is the same interest rate that applies to rate increases of less than 10% that are ultimately disallowed pursuant to P.U. Code Section 455.3(b)(4). See Energy Industry Rule 8.2.

¹² The transportation rate of \$1.34/bbl. is not subject to refund because: the Commission approved that rate in D.11-05-26 in A. 08-09-024; no one applied for rehearing of that aspect of D.11-05-026; and, unlike the situation with the truck rack unloading rate, there is no specific statutory authority for making the \$1.34 rate subject to refund.

There is an Apparent Ambiguity in D.11-05-026 Between the Method Used to Establish the San Joaquin Valley to San Francisco Bay Area Transportation Rate and the Requirement for a Separate Truck Rack Unloading Rate

There appears to be an ambiguity in D.11-05-026 regarding the rate of \$1.34/bbl. which D.11-05-026 adopted for SPBPC's transportation service between the San Joaquin Valley and the San Francisco Bay Area, and the requirement that an additional, separate rate be established for use of the truck rack unloading services. As discussed above, the D.11-05-026 transportation rate is derived from a cost-of-service analysis that already includes the truck rack assets and the operating expenses for the service.

D.11-05-026 adopted a tariff proposed by the "Independent Parties", including Tesoro and Valero. As part of this tariff, Item 40.A. states: "A usage fee for each location established pursuant to a tariff duly filed with the CPUC, *in addition to the published Crude Petroleum pipeline transportation rate on file with the CPUC, will be applied to Crude Petroleum delivered into the pipeline via truck rack.*" (emphasis added). However, D.11-05-026, in approving a rate of \$1.34/bbl. for the transportation service, relied on a cost-of-service analysis calculated using all assets, including the truck racks as well as the expenses associated with the use of the truck racks.¹³ As a result, this \$1.34/bbl. rate has, incorporated in it, an amount to recover the costs of owning and operating the truck racks. These two required outcomes of D.11-05-026 – a transportation rate of \$1.34 and a separate, additional truck rack unloading service rate – appear to conflict.

In its Advice Letters SPBPC has attempted to comply with Ordering Paragraphs Nos. 6 and 7 of D. 11-05-026 by proposing a tariff with the D.11-05-026-adopted transportation rate and a separate rate for the truck rack unloading service. The protestants have correctly drawn into question the rate SPBPC has included in its Tariff No.2 for the truck rack unloading service.

¹³ D.11-05-026 adopted a rate base of \$110,487,187. This rate base was proposed by Chevron's witness O'Loughlin and is referenced as Exhibit Chevron 49, Attachment MPO-81, Table 3 titled "Return on Rate Base and Interest Expense Original Cost Rate Base Including Contested Assets." The contested assets are the truck racks that SPBPC sought to exclude from public service. D.11-05-026 determined that these assets should be included in rate base. A staff examination of the cost-of-service analysis confirmed that in addition to including the truck unloading rack assets, the expenses of operating the truck unloading racks were also included in the cost-of-service analysis used to calculate the transportation service rate.

It appears that the truck rack unloading costs are being recovered twice: once through the transportation rate, and again through the separate truck rack unloading rate. Therefore we are concerned that shippers not using the truck racks are paying for services they are not using, contrary to the apparent intent of D.11-05-026 to have only those using the truck racks pay for the cost of that service. Approving the proposed or any separate rate for truck rack unloading service as required by D.11-15-026, without adjusting the transportation rate, would result in double recovery of the truck rack costs.

Given the above concerns, two questions arise: how should the truck rack unloading rate be determined; and what should happen to the approved rate of \$1.34/bbl. for transportation service? There is insufficient information in the record to answer these questions. Therefore, the determination of reasonable rates for transportation and truck rack unloading service requires additional proceedings before an ALJ in order to obtain the required evidence. In the interim, the transportation service rate of \$1.34/bbl. increased by 4.1% to \$1.395 as approved by D.14-06-006, shall remain in effect and a truck rack unloading rate of \$0.134/bbl. may be collected subject to refund.

Because of the ambiguity discussed above, the determination of reasonable rates for transportation and truck rack unloading service requires proceedings before an Administrative Law Judge in order to obtain the required evidence.

That evidence will need to include an identification of (1) the assets/asset value, expenses and revenues attributable to the transportation service, excluding those attributable to the truck rack unloading rack service; and (2) the assets/asset value, expenses and revenues attributable to the truck unloading rack service. This evidence should relate to the period used in the cost-of-service analysis in D.11-05-026, and be consistent with the rate base adopted by the Commission and shown in Exhibit Chevron 49. Using this evidence the ALJ should determine what the future rate should be for transportation service on the SPBPC mainline, reflecting only those assets, costs and revenues attributable to the transportation service. Additionally, using the asset, cost and revenue information specific to the truck unloading, a cost-of-service based rate shall be determined and adopted as the just and reasonable rate for the truck unloading rack service. Finally, the decision will need to address whether the truck unloading rack rate of \$0.134 that is subject to refund should be refunded to those who paid it.

Given the concerns discussed above, SPBPC should charge a rate of \$1.395 to shippers using the transportation service only and a rate of \$1.529 for shippers using both the transportation service and the truck rack unloading services until such time as just and reasonable rates are determined.

The increase proposed in SPBPC's A.14-01-003, approved by D.14-06-006, and requested in AL 3, should be implemented and charged until a reasonable rate is determined as part of additional proceedings before an ALJ.

Therefore, in the interim SPBPC should continue to charge the transportation rate of **\$1.395/bbl. per D.14-06-006**, and a PLA of 0.10% for shippers not using the truck rack unloading service, until such time as a just and reasonable rate is determined. SPBPC should reduce the amount charged for shippers using both the transportation service and the truck unloading service from \$1.545, (that is, the sum of the transportation rate of \$1.395 plus the charge of \$0.15 for the truck rack unloading service) to a rate of \$1.529. This reduction of \$0.016/bbl. conforms the rate to the maximum allowable rate increase without prior Commission approval.

COMMENTS

Public Utilities Code section 311(g)(1) provides resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to SPBPC, protestants and all parties to A.08-09-024 for comment, and will be placed on the Commission's agenda no earlier than 30 days from the date of mailing.

On November 10, 2014 Tesoro provided comments in support of the Resolution.

SPBPC provided comments on November 10, 2014. The comments support the proposed tariff rules and regulations and the transportation rate of \$0.30 per barrel to the San Joaquin Refinery. However, the comments oppose further proceedings to resolve the ambiguity between the transportation rate and the separate truck rack unloading rate as discussed in the resolution.

SPBPC comments that it "does not believe that further analysis of the reasonableness of a separate truck rack unloading rate is likely to be fruitful" and that "further proceedings will resolve the ambiguity in D.11-05-026 in favor of a determination that truck rack unloading services are included and embedded in

the previously approved rate of \$1.34 and that there is no evidence supporting a separate, cost-based rate for such services.”¹⁴ Therefore SPBPC’s comments propose that it be allowed to withdraw its “request” for approval of a separate truck rack unloading rate, eliminate the current rate in its proposed tariff and refund charges collected for the truck rack unloading service. In essence it proposes that the separate rate for the service be eliminated since it is already imbedded in the rate for transportation services.

The SPBPC comments fail to recognize that the requirement for a truck rack unloading rate was not left to the discretion of the pipeline company. SPBPC was required in Ordering Paragraph 5 of D.11-05-026 to file this separate rate. That ordering paragraph required that SPBPC file an advice letter incorporating a tariff consistent with the decision and substantially in the form of Attachment A to D.11-05-026. That Attachment specifically required the establishment of a separate additional fee for the truck rack unloading rates. SPBPC’s requirement was to determine and propose a reasonable amount for that rate. There is no ambiguity, as SPBPC’s suggests, on the issue that there is to be a transportation service rate and a separate truck rack unloading rate or the reasonableness of having these two separate rates. The ambiguity concerns how those rate amounts were determined and set. Additionally, SPBPC’s proposal ignores the fact that the rate set for transportation service incorporates an amount for the truck unloading rack service that many shippers are not using and for which those shippers should not be charged.

FINDINGS

1. Decision (D.) 11-05-026 directed San Pablo Bay Pipeline Company (“SPBPC”) to file an Advice Letter with a tariff containing the rules and regulations governing transportation services on its crude oil pipeline, substantially in the form of Attachment A to D.11-05-026.
2. D.11-05-026 also directed SPBPC to file an advice letter containing the approved \$1.34 rate for the transportation service between the San Joaquin Valley and the San Francisco Bay Area and a separate, additional, unspecified rate for truck rack unloading services.

¹⁴ Comments of San Pablo Bay Pipeline Company LLC on draft Resolution O-0054. November 10, 2014, p. 2.

3. SPBPC filed AL 1 on July 18, 2011 providing Tariff Cal P.U.C. No. 1 (Tariff No. 1) incorporating rules and regulations for transportation services and Tariff Cal P.U.C. No. 2 (Tariff No. 2) providing a transportation service rate of \$1.34/bbl. and a PLA of 0.10% as adopted in D.11-05-026.
4. As directed, a separate charge for truck rack use was also included in proposed Tariff No. 2. The proposed charge is \$0.15/bbl. In addition, proposed Tariff No. 2 included a rate of \$0.30/bbl. and a 0.10% PLA for a new service between Station 36 and the San Joaquin Refinery (SJ Refinery).
5. Tariff No. 1 did not fully conform with Attachment A to D.11-05-026.
6. Tesoro and Valero filed a joint protest concerning textual differences between Attachment A of D.11-05-026 and Tariff No. 1, as well as opposing the truck rack unloading rate and the SJ Refinery service rate in Tariff No. 2. Chevron filed a separate protest limited to the differences between Attachment A and Tariff No. 1.
7. In response to the protests, SPBPC submitted a supplemental AL 1-A on August 25 which revised Tariff No. 1 to conform to Attachment A, with two exceptions.
 - (a) Attachment A included two different Pipeline Loss Allowances (PLAs), while the revised Tariff No. 1 contained only a single PLA of 0.10%. The text of D.11-05-026 approved only the uniform PLA of 0.10%. Tesoro, in a supplement to the joint Tesoro/Valero protest agreed that the use of the uniform PLA is correct, while neither Valero nor Chevron filed any supplemental views on this issue. Because it is consistent with Ordering Paragraph No. 7 of D.11-05-026, the PLA of 0.10% for the transportation service from the San Joaquin Valley to the San Francisco Bay Area is correct.
 - (b) Attachment A referenced ASTM D-1552, for testing sulfur content of the crude oil, while the revised Tariff No. 1 references ASTM D-4294. As ASTM D-1552 is a standard only for testing refined products, the substitution of ASTM D-4294, which is applicable to crude oil, is appropriate.
8. The transportation service rate of \$0.30/bbl. and PLA of 0.10% for transportation service between Station 36 and SJ Refinery are negotiated terms between SPBPC and the only shipper on this pipeline segment, SJR. SJR owns and operates the SJ Refinery and is the only shipper who has expressed any current interest in shipping on this pipeline segment. None of the assets or associated expenses of this pipeline are included in the

cost-of-service used to set the rate for service between the San Joaquin Valley and the San Francisco Bay Area, thus, none of the shippers using that service are affected.

9. Because the transportation service rate of \$0.30/bbl. and PLA of 0.10% for service to the SJ Refinery have been negotiated between the pipeline and the only shipper and do not affect the rates charged to shippers on the main pipeline segment, the rate of \$0.30/bbl. and PLA of 0.10% is reasonable and should be approved.
10. Because the transportation service rate between mainline Station 36 and the SJ Refinery is applied to a pipeline segment commencing Utility service, per Energy Industry Rule 5.1(6) it is effective pending disposition when filed. A thirty day notice period prior to the effective date is not required.
11. Because the Commission did not authorize the rate for service to the SJ Refinery to become effective before filing, the tariff for that service should be effective July 18, 2011, the date of the tariff filing.
12. Because Tariff No. 2 first made the pipeline segment to SJ Refinery available to any shipper, we express no views concerning what rate SPBPC could charge prior to dedicating this line to public use.
13. The costs for service between Station 36 and the SJ Refinery should be included in any new rate case. Furthermore, if any additional shipper on this segment believes that the rates are not just and reasonable, that shipper may file a complaint alleging so and asking the Commission to set just and reasonable rates to take effect upon the Commission's approval of a decision in that proceeding.
14. The rate for transportation service of \$1.34/bbl. and a PLA of 0.10% adopted by D.11-05-026 was based on a cost-of-service analysis which included the truck rack unloading facility assets in the rate base and the associated expenses in the rate determination. As such, the costs of the truck rack unloading service are being recovered through the transportation service rate.
15. Since the cost-of-service analysis incorporates the truck rack unloading assets and expenses in the determination of the transportation rate, the approved transportation service rate and the proposed truck rack unloading rate results in double counting. Shippers who do not use the truck rack unloading rate are paying, in their transportation service rate, for a service they do not use and, per D.11-05-026 which requires the separate truck rack unloading rate,

should not be charged for. Further, those using the truck rack unloading service are being charged twice.

16. There is insufficient information in the record related to the formal proceeding A.08-09-02, and the resulting D.11-05-026 and in the documentation accompanying Advice Letter 1; 1-A and 1-B to determine the proper truck rack unloading rate and whether the approved rate of \$1.34/bbl. for transportation service should be revised.
17. The determination of reasonable rates for transportation and truck rack unloading services requires additional proceedings before an Administrative Law Judge in order to obtain the required evidence.
18. The determination of a reasonable rate for transportation service requires a cost-of-service analysis based solely on assets and operating expenses associated with providing that service. Assets and operating expenses related to the truck rack unloading service are to be excluded from any determination of the transportation rate. The assets and expenses attributable to transportation service shall be identified as part of the proceedings before the Administrative Law Judge.
19. The assets and expenses attributable to the truck rack unloading service shall be identified as part of the proceedings before the Administrative Law Judge.
20. Decision (D.) 14-06-006 approved an increase of 4.1%, or, \$0.055, to the transportation rate of \$1.34. The new rate is \$1.395.
21. The \$1.395/bbl. rate for transportation service between the San Joaquin Valley and San Francisco Bay Area Refineries included in Tariff No. 2 should remain in effect until reasonable and just rates for transportation and truck rack unloading services are determined.
22. The truck rack unloading rate of \$0.15/bbl. represents an increase to the \$1.34/bbl. rate. Pursuant to Public Utilities Code Section 455.3, oil pipeline rate increases can be made effective 30 days after filing without prior Commission approval up to a maximum increase of 10% within a twelve month period, but remain subject to refund. Amounts in excess of 10% require prior Commission approval.
23. The truck rack unloading rack rate of \$0.15/bbl. exceeds the 10% maximum and was first charged on July 1, 2011, before the tariff filing date of July 18, 2011 and before the required 30 day period. All amounts charged before the end of the 30 day period, i.e., before August 17, 2011, should be refunded.

24. The truck rack unloading rate of \$.15/bbl. should be immediately reduced to the permissible increase amount of 10%, i.e. reduced to \$0.134/bbl. This will result in a rate of \$1.474/bbl. to shippers using both the transportation service and the truck rack unloading service. All amounts charged from August 18, 2011 forward in excess of \$0.134/bbl. for the truck rack unloading service should be refunded.
25. Until just and reasonable rates are determined, SPBPC should charge shippers using the truck rack unloading service a rate of \$0.134/bbl. for such service, subject to refund upon the determination of just and reasonable rates.

THEREFORE IT IS ORDERED THAT:

1. Tariff Cal P.U.C. No. 1, as revised in Advice Letter 1-A, is approved.
2. A rate of \$0.30/bbl. and a PLA of 0.10% for transportation service between Station 36 and the San Joaquin Refinery are approved, effective as of the date of filing, July 18, 2011.
3. The costs associated with transportation service between Station 36 and the San Joaquin Refinery shall be included in any new rate case submitted by SPBPC.
4. A.08-09-024 shall be reopened and an Administrative Law Judge shall hold proceedings to obtain the required information to determine reasonable rates and to ensure shippers are not double charged.
5. The Proceedings in Ordering Paragraph 4 shall (a) identify the assets and expenses attributed solely to providing transportation service and excluding any assets and/or expenses associated with the truck rack unloading service; (b) determine a reasonable rate for transportation service based on a cost-of-service analysis using only those assets and expenses identified as attributable to that service; (c) identify the assets and expenses attributed solely to providing truck rack unloading service and excluding any assets and/or expenses associated with transportation service; and, (d) determine a reasonable rate for truck rack unloading service based on a cost-of-service analysis using only those assets and expenses identified as attributable to that service.
6. In the interim, San Pablo Bay Pipeline Company shall charge a rate of \$1.395/bbl., per D.14-06-006, to shippers using the transportation service and an additional charge of \$0.134 to shippers also using the truck rack unloading service. Further:

(a) All charges for the truck rack unloading service performed before August 17, 2011 shall be refunded.

(b) The amount of the charges for truck rack unloading services performed from and after August 17, 2011, in excess of \$0.134/bbl. shall be refunded.

(c) Within 30 days of the date of this resolution, San Pablo Bay Pipeline Company shall file a refund program to comply with subparagraphs (a) and (b) of this Ordering Paragraph. This refund program shall be filed as a Tier 1 advice letter, and provide for interest computed at the Ninety Day AA Nonfinancial Commercial Paper Interest rate as reported by the Federal Reserve Board and accruing from the date the rate was first charged, and adjusted monthly until the refunds are made.

7. Within 30 days of the date of this resolution, San Pablo Bay Pipeline Company shall file a supplemental advice letter to AL 1-B revising its Tariff Cal. P.U.C. No. 2 to show a truck rack unloading rate of \$0.134 effective as of August 18, 2011, and a transportation service rate to the San Joaquin refinery effective as of July 18, 2011. This tariff filing shall not alter the effective date of the \$1.34/bbl. rate or the 0.10% Pipeline Loss Adjustment.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 20, 2014 the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director