

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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

A.08-09-024
(Filed September 30, 2008)

Chevron Products Company,
Complainant,

vs.

Equilon Enterprises LLC, doing business
as Shell Oil Products US; and Shell
Trading (US) Company,

C.08-03-021
(Filed March 27, 2008)

Defendants.

Tesoro Refining and Marketing Company,
Complainant,

vs.

Equilon Enterprises, L.L.C., doing business
as Shell Oil Products (US); Shell Trading
(US) Company; and San Pablo Bay
Pipeline Company LLC,

C.09-02-007
(Filed February 13, 2009)

Defendants.

Valero Marketing and Supply Company,
Complainant,

vs.

Equilon Enterprises, LLC, doing business
as Shell Oil Products (US); Shell Trading
(US) Company; and San Pablo Bay
Pipeline Company LLC,

C.09-03-027
(Filed March 23, 2009)

Defendants.

JOINT INDEPENDENT SHIPPERS' REPLY BRIEF

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JOINT INDEPENDENT SHIPPERS' REPLY BRIEF

I. INTRODUCTION

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, the Scoping Memo and Ruling of Assigned Commissioner issued on April 27, 2009 and the direction of the Presiding Administrative Law Judge ("ALJ") (Karl Bemederfer) at the close of the hearings in

this matter, Chevron Products Company (“Chevron”), Tesoro Refining and Marketing Company (“Tesoro”) and Valero Marketing and Supply Company (“Valero”) (collectively, “Independent Shippers”) hereby respectfully submit the following Joint Independent Shippers' Reply Brief. This Joint Reply Brief only addresses issues related to the Independent Shippers’ Joint Tariff (“Joint Tariff”) and related operational issues. Each Independent Shipper has concurrently submitted an individual reply brief on other issues.

II. BACKGROUND

As noted in the Opening Briefs of the Independent Shippers, this proceeding concerns the application of a regulated, heated crude oil pipeline¹ that extends from the San Joaquin Valley ("SJV") to the San Francisco Bay Area, and is owned and operated by two Royal Dutch Shell entities.² The application proposes to: (1) transfer ownership of part of Shell Pipeline’s SJV Pipeline assets to an inactive subsidiary, San Pablo Bay Pipeline Company, LLC (“San Pablo Bay”), (2) exclude certain SJV Pipeline assets as “proprietary” for the exclusive use by a trading affiliate (Shell Trading (US) Company, “STUSCO”) and other affiliates, (3) establish initial rates in the form of market-based rates without ever establishing a cost-of-service rate, and (4) establish an initial tariff with rules and regulations for system operations. This matter is also consolidated with several complaints for refunds of excessive charges for service provided by Shell Pipeline on the SJV Pipeline from 2005 until the date this Commission establishes just and reasonable rates.

This Joint Reply Brief is sponsored by *all* the unaffiliated shippers on the system and is directed exclusively to the Opening Briefs of San Pablo Bay (*i.e.*, referred to herein as “Shell Pipeline” for ease of reference) and STUSCO as to the form of an appropriate tariff for the San

¹ The pipeline itself that extends from the San Joaquin Valley to the San Francisco Bay Area is referred to herein as the “SJV Pipeline.” The pipeline company is referred to for ease of reference as “Shell Pipeline.”

² *Opening Brief of Tesoro Refining and Marketing Company*, filed June 21, 2010 ("Tesoro Opening Brief"), p. 2; Chevron Products Company’s *Opening Brief*, filed June 21, 2010 ("Chevron Opening Brief") at pp. 1-5; *Opening Brief of Valero Marketing and Supply Company*, filed June 21, 2010 ("Valero Opening Brief"), p. 1. For ease of reference, the generic term “Shell” is used throughout herein to refer to multiple Shell entities, or where there is confusion about which of the numerous Shell entities may be most accurately referenced.

Pablo Bay system and how the pipeline assets and operations are managed within the context of the tariff.

Shell Pipeline filed a proposed tariff as part of its direct case (the “Shell Pipeline proposed tariff”). The Shell Pipeline proposed tariff was sponsored by the prepared testimony of Ms. Robbie Ralph who identified the individual items of the tariff but did not explain or attempt to justify the tariff items.³ STUSCO did not submit any testimony, or present any witnesses in this matter. The Independent Shippers, in contrast, each independently provided reply testimony as to the Shell Pipeline proposed tariff. Further, in response to the criticisms of the position of the Independent Shipper witnesses in the rebuttal testimony of Shell Pipeline, and as a result of mediations on tariff issues, the Independent Shippers collectively submitted the Joint Tariff with supporting testimony.⁴

The Joint Tariff was developed by all the shippers not affiliated with the pipeline. It is detailed and tailored to *this* pipeline, and is based to the greatest extent possible on the text and format proposed by Shell Pipeline. Unlike the Shell Pipeline proposed tariff, the prepared testimony that sponsored the Joint Tariff was presented by four witnesses who explained in detail each of the changes from the Shell Pipeline framework, the need for the changes, and the redline from the Shell draft reflecting the changes made.

The Joint Tariff was modified to reflect concerns that Shell Pipeline expressed after the Joint Tariff was initially served. Many of the subsequent changes were potentially detrimental to the Independent Shippers but addressed Shell Pipeline’s concerns, in a way that the Independent Shippers believed was objectively fair to all shippers and Shell Pipeline. Subsequently, unlike Shell Pipeline, the Independent Shippers presented four witnesses—Messrs. Ralph Grimmer of Tesoro, Douglas Miller of Tesoro, David Lee of Chevron, and Dennis Dominic of Valero—who

³ See SP Exh. 20, Rebuttal Testimony of Robbie Ralph on Behalf of San Pablo Bay Pipeline Company LLC, dated February 8, 2010 ("Ralph Rebuttal").

⁴ See IS Exh. 1, Prepared Joint Testimony of Independent Shippers Tesoro Refining and Marketing Company, Chevron Products Company, and Valero Marketing and Supply Company, dated April 16, 2010 ("Independent Shipper Testimony")

were cross-examined in detail as to the Joint Tariff.⁵ By contrast, the most current proposed tariff of Shell Pipeline was presented at hearings with no sponsoring witness, seemingly only to reflect areas of agreement and disagreement between Shell Pipeline and the Independent Shippers.

The Joint Tariff was opposed only by the two Shell entities that filed briefs in this case. In its Opening Brief, Shell Pipeline divided the Joint Tariff provisions into three “categories.” Category One consists of provisions with which Shell Pipeline could agree; Category Two consists of provisions that Shell Pipeline could accept with modification; and, Category Three consists of provisions which Shell Pipeline opposes.⁶ The majority of the provisions fall into Category One but the most important issues and provisions in the Joint Tariff are opposed by Shell Pipeline.

STUSCO also submitted limited comments opposed to select tariff provisions, argued for the continuation of certain provisions that solely benefit it, and opposed any inclusion of pipeline assets that it wishes to retain as “proprietary”.⁷ STUSCO and Shell Pipeline submitted *no* tariff changes that would equalize the treatment of all shippers and remove preferential treatment of pipeline affiliates, or address current or future operating issues.

III. SUMMARY OF ARGUMENT

In adopting a tariff, the Commission must consider the detail and the fairness of the tariff, as to all shippers and the specific pipeline. In this regard, the Joint Tariff is clearly well-thought out compared to the Shell Pipeline proposed tariff, as the Joint Tariff has been explained in prepared testimony, and defended section-by-section by four experienced executives in the crude oil business. The Joint Tariff alone addresses the major issues on the system in a fair and even-

⁵ See IS Exh. 1, Independent Shipper Testimony, and RT 1380 – 1503 (Joint Panel/Independent Shippers).

⁶ *Concurrent Opening Brief of San Pablo Bay Pipeline Company LLC [Public Version]*, filed June 21, 2010 (“San Pablo Bay Opening Brief”), p. 88, Attachment A.

⁷ *Opening Brief of Shell Trading (US) Company*, filed June 21, 2010 (“STUSCO Opening Brief”), pp. 6-19.

handed way that will allow the pipeline to continue in successful and profitable operation for years to come.

In contrast, the Shell Pipeline proposed tariff fails in many respects, as it merely shifts significant burdens to shippers and preserves the advantages that exist for Shell entities. In effect, the Shell Pipeline proposed tariff continues preferential treatment of Shell affiliates as if the pipeline is proprietary—a clear example of Shell’s continued resistance to this Commission’s regulation of the Shell Pipeline system. Indeed, Shell Pipeline’s position in this case rests solely on the assertion that this Commission should provide Shell Pipeline with unfettered discretion to operate its pipeline on its own terms, without the input of the Commission or the pipeline’s ratepayers. Effectively, Shell Pipeline actively seeks to keep regulation out of its business practices. Shell Pipeline challenges the law of the case—the Commission’s findings that the pipeline is a monopoly, with the demonstrated power to harm its shippers and competitors.

Generally, it is Commission practice for the applicant pipeline to submit its Rules and Regulations Tariff and for the intervenors to then comment upon it. However, the tariff proposed by the Shell Pipeline is so flawed and so prone to perpetuate affiliate abuse, and Shell’s collective conduct in this regard so clearly obstructionist, that the Independent Shippers felt compelled to propose their own Joint Tariff to provide this Commission with a fair and objective option.⁸ The Shell Pipeline’s proposed tariff is supported by prepared testimony that says little more than “we changed this provision” or “we believe we can work this out,”⁹ but its conduct belies even those statements.

On the critical issues of nominations and the maintenance of heated service for the undiluted San Joaquin Valley Heavy (“SJVH”) crude oil, Shell Pipeline’s testimony merely “acknowledges that various issues . . . remain,” and that they “present challenges to both the carrier and shippers.”¹⁰ Nothing in that testimony justifies either the deviations from typical

⁸ See IS Exh. 1, Independent Shipper Testimony, Attachment B.

⁹ SP Exh. 20, Ralph Rebuttal, pp. 4-6, 9-10, 12-13.

¹⁰ *Id.* at 9, 13.

pipeline practice the Independent Shippers tariff panel identified in the Shell Pipeline's proposed tariff, or allowing the ambiguities and loopholes contained therein.¹¹

The Shell Pipeline proposes extraordinary and draconian solutions such as purging the pipeline for three months if heated service is shut down, charging only the Independent Shippers for the extraordinary costs to purge, and bring the system back on line; a protracted, convoluted and discriminatory nomination process; as well as an alarming lack of adequate management of quality of crude in the pipeline through selective entry and inadequate crude oil quality controls.¹²

Thus, the Commission should find that only the Joint Tariff provides just and reasonable terms and conditions of service on the Shell Pipeline.¹³ Contrary to the Shell Pipeline's skewed effort, the Joint Tariff is fair and balanced. There are several fundamental principles that underlie the Joint Tariff that compel the Commission to adopt it without modification:

1. **All shippers** on the Shell Pipeline should be on an **equal** footing, receiving the same quality of service without any affiliate preferences;

2. The Shell Pipeline should proactively seek ways to reduce the minimum volume requirements on the pipeline to maintain service to all shippers, with the **cooperation of all shippers**, and with costs collected in utility rates; and,

3. The Shell Pipeline should **protect the quality of the crude** it ships while maximizing its opportunities to add volumes.

¹¹ RT 1482:28-1483:19 (Joint Panel/Independent Shippers).

¹² See SP Exh. 20, Ralph Rebuttal, Attachment A.

¹³ The Commission has the authority, after hearing, to set the rules and conditions of service for any public utility. Pub. Util. Code § 761 provides in relevant part:

Whenever the commission, after a hearing, finds that the rules, practices, equipment, appliances, facilities, or service of any public utility . . . are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine and, by order or rule, fix the rules, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed. The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

IV. ARGUMENT

A. The Tariff Provisions That Remain In Dispute Provide Additional Reasons To Adopt The Joint Tariff.

As demonstrated throughout this proceeding, Shell Pipeline's motives must be continually questioned, given its exercise of market power against its competitors and its preferential treatment of its affiliate, STUSCO. In the course of this proceeding, Shell Pipeline and STUSCO have argued against any tariff condition that could allegedly restrict blended service for STUSCO and argued for the ability of the pipeline to shut down only heated service when nominations fall to a level below that allegedly needed for continuous operations.¹⁴ However, if the Shell Pipeline were operating as an independent pipeline, it would undoubtedly seek to maximize revenue by shipping the greatest possible volume.

One can only conclude that the Shell Pipeline proposed tariff, which promotes reducing shipper volumes and thus total potential revenues, is not designed to benefit the pipeline operations but to benefit Shell's refining and trading arms. This is yet another example of affiliate preference that permeates the Shell Pipeline proposed tariff. Further, exclusion of assets, such as truck racks, to limit access to the system except to its affiliated marketer — exclusion of assets such as certain tankage for storage and blending that would otherwise allow pipeline flexibility for service to non-affiliated shippers—and requires nominations of minimum quantities only for heated service (exclusive to non-Shell Independent Shippers) are only a few of the myriad of affiliate preferences or loopholes sprinkled throughout the Shell Pipeline proposed tariff.

In effect, the Shell Pipeline proposed tariff, combined with market-based rates and exclusion of certain "proprietary" assets, would be the functional equivalent of finding that the Shell Pipeline is NOT a regulated provider of service. Thus, under no circumstances can the

¹⁴ STUSCO Opening Brief, pp. 6-14.

Shell Pipeline proposed tariff be found to be just and reasonable. Further, its categorization and criticisms of the Joint Tariff are inaccurate, misleading and unpersuasive.

1. Shell Pipeline Category Provisions

Shell Pipeline asserts there are substantial areas of agreement between the Joint Tariff and Shell Pipeline proposed tariff, yet acknowledges disagreement over the most significant provisions in the Joint Tariff.¹⁵ Specifically, the three categorical descriptors reflected in its Attachment A are identified as “Category 1”, indicating that the proposed tariff items are identical; “Category 2”, indicating that there are similarities but also differences that would affect the operation of the pipeline and/or the service provided to shippers; and “Category 3,” indicating that the two proposals have fundamental differences that would significantly affect the operation of the pipeline and/or the services provided to shippers, and are not reconcilable.¹⁶

2. The Tariff Items Identified In “Category 1” Are Not Identical.

Shell Pipeline claims that the parties agree with the terms of Tariff Items 25, 30, 35, 50, 60, 65, 70, 80, 85, 90, 95, 105, 115, 120, 125, 130, 135, 140, and 145. However, the provisions are not identical between the Joint Tariff and the Shell Pipeline’s proposed tariff, and the Independent Shippers do not support any specific provision in the Shell Pipeline tariff. In their effort to address the many deficiencies, from definitions to many material provisions, the Independent Shippers determined that the only way to present to the Commission an initial tariff the Commission could legally adopt was to present a new joint draft tariff incorporating the definitions and corresponding provisions necessary to ensure fair treatment of all shippers and Shell Pipeline. The Independent Shippers do not believe that amending and expanding the seriously flawed Shell Pipeline proposed tariff could ever ensure just and reasonable terms and rates for system operation. Thus, any agreement on specific provisions must be considered *only* in the context of the Joint Tariff provisions.

¹⁵ San Pablo Bay Opening Brief, pp. 88-89.

¹⁶ San Pablo Bay Opening Brief, pp. 88-89.

3. The “Category 2” Tariff Provisions Are Mere “Claw Back” Provisions That Fail To Address Concerns About Affiliate Preferences.

Shell Pipeline claims that the following Category 2 provisions are “most reflective of standard industry practice” and should be adopted as Shell Pipeline has proposed for. Tariff Items 5, 10, 15, 40, 45, 75, 100, 110, and 150.¹⁷ Shell Pipeline further dismissively refers to the Joint Tariff language for these Items as “the Independent Shippers’ biased perception of the affiliate relationship between San Pablo Bay and STUSCO.”¹⁸ As the record evidence makes evident, this is no speculative “bias.” Indeed, the overwhelming weight of the record evidence reflects the damage that Shell’s affiliate relationships have caused the Independent Shippers and the public, including threatened service shutdowns, unreasonable transportation charges, crude oil degrading, and discriminatory pricing between affiliate and non-affiliate shippers.¹⁹ Thus, it is imperative that these concerns are addressed, and the Joint Tariff is the only submitted tariff drafted with these concerns in mind.

In fact, Shell Pipeline's proposed provisions for the “Category 2” tariff items are not reflective of industry practice and amount to little more than “claw-back” provisions that provide the Shell Pipeline unfettered discretion to harm the Independent Shippers while retaining affiliate preferences.

Item 5 – Definitions Item 5 of the Joint Tariff contains numerous revised definitions that provide the construct, basis and general fairness of the Joint Tariff. Many of the changes to the definitions are intended to both track best industry practice and conform the tariff to more detailed and substantive later provisions. Shell Pipeline criticisms of the changes to this important section are cursory and lack substance. Indeed, Shell Pipeline dismissively refers to the key definitions in the Joint Tariff that address issues of affiliate preferences and discriminatory conduct, by stating, “There are six terms where definitions reflect fundamental

¹⁷ San Pablo Bay Opening Brief, pp. 88-89.

¹⁸ San Pablo Bay Opening Brief, p. 88.

¹⁹ Tesoro Opening Brief, pp. 11-31.

differences in the parties' views on pipeline operation or services provided."²⁰ In effect, Shell Pipeline suggests there are no changes worthy of discussion since all of the provisions in the Joint Tariff that differ from Shell Pipeline's proposed tariff will be rejected. Aside from the arrogance represented by this approach, it fails to address the changes at any level, and thus fails to provide any basis to reject the Joint Tariff, in whole or in any particular part.

Item 10 – Establishment of Quality As to Item 10, Shell Pipeline continues to propose an API Gravity range of 17 to 29 degrees for San Joaquin Valley Light ("SJVL") and incorrectly states that the Independent Shippers propose a range of 20 degrees to 40 degrees for SJVL.²¹ Shell Pipeline claims that its range should be adopted given that it "is based on and is consistent with past movements and current operating limits."²² It also states that if future requests are made to San Pablo Bay to ship crude outside of this range, "it would be reviewed and, if acceptable, this range would be modified through a tariff filing."²³

In fact, the Independent Shippers testified at hearings that they had changed the API Gravity range in the Joint Tariff to **17 degrees to 40 degrees** for SJVL.²⁴ As the Independent Shippers have testified, the gravity range specified in the Joint Tariff reflects identified current and future crude sources but excludes sources that diminish the value of the stream to an unacceptable level.²⁵ Further, based on demonstrated past practices, the Independent Shippers do not trust, and believe they cannot rely on, a vague promise of future action by Shell Pipeline in any matter.

The Joint Tariff includes a wide range of SJVL type crudes produced in the San Joaquin Valley that are outside of the API Gravity range of 17 to 29 degrees in the Shell Pipeline proposed tariff. However, the 40 degrees API ceiling is sufficiently low to exclude Indirect

²⁰ San Pablo Bay Opening Brief, p. 89.

²¹ San Pablo Bay Opening Brief, p. 89.

²² *Id.*

²³ *Id.*

²⁴ RT 1495:2-5 (Miller/Independent Shippers).

²⁵ *See, e.g.*, RT 1413 – 1414, 1484 – 1485 (Joint Panel/Independent Shippers).

Liquid Products as defined in Tariff Item 25 from the SJVL designation. For example, SJVL crudes such as Belridge Light (29.9 degrees API), Elk Hills 18G (33.9 degrees API), Cymric Field-9Z (34.4 degrees API), Lost Hills (37.0 degrees API), and Kettleman Mid Dome (37.5 degrees API) would be excluded from the pipeline under the Shell Pipeline proposed tariff Items 5 and Item 10. The Joint Tariff allows these crudes, and as indicated in Item 55.A of the Joint Tariff, the pipeline has full discretion to require shippers to blend SJVL crudes with SJVH crudes to meet the maximum operable API gravity requirements to allow for safe and reliable pipeline operations.

Item 15 – Common Stream Operation As to Item 15.A, Shell Pipeline quibbles over the definition of the liability of Shell Pipeline and states that it is defined in Item 85 and does not need to be included in this section.²⁶ This objection is ludicrous, given that it would benefit Shell Pipeline to include such a definition, even if reflected elsewhere in the tariff for purposes of clarity. The Joint Tariff provides that Shell Pipeline has no responsibility in, or for, any revaluations, administration, or settlement of quality degradation of the SJVH or SJVL common streams unless the quality degradation is caused at least in part by actions or inactions of the carrier. This balanced language reflects that the Shell Pipeline must be held accountable for its own actions, but excused from liability not caused by the pipeline. Shell Pipeline's language would insulate it from any responsibility or liability. The demonstrated history of Shell Pipeline having degraded the Independent Shippers' SJVH supply to benefit STUSCO illustrates why this insulation is inappropriate.

As to Item 15.D, Shell Pipeline objects to the Joint Tariff which would allow Shippers to declare a new crude oil to be SJVH or SJVL “by a simple majority vote.”²⁷ Shell Pipeline claims that its proposed tariff language provides that it will consider allowing new crudes to be injected into current common streams, but would only do so with the concurrence by all shippers of that

²⁶ San Pablo Bay Opening Brief, pp. 89-90.

²⁷ *Id.* at p. 89.

common stream.²⁸ However, Shell Pipeline's proposed tariff language is a platform for abuse of its affiliate relationship with STUSCO. As STUSCO is a shipper of both common streams (SJVL and SJVH), it could essentially block all new crudes from being injected into the SJVL and SJVH common streams.

In contrast, the Joint Tariff provides for cooperation between all shippers and Shell Pipeline for good reason. Using the standard of a majority vote of all shippers is not a unique practice. Other pipelines, such as the Kinder Morgan products pipelines, resolve issues by balloting shippers on an issue and providing resolution by a majority vote of the shippers. Moreover, like Item 10, Shell Pipeline's past and continuing conduct demonstrates that it cannot be trusted to either maximize its throughput or to add or blend crude types in a manner not harmful to the Independent Shippers.

Item 40 – Receipt Facilities Required Shell Pipeline claims it does not intend to include truck racks as part of the common carrier facilities as they “are not required for transportation of crude oil on the SJV Pipeline. Truck racks, similar to other locations such as producing fields and other LACT units, are simply another injection point.”²⁹ And, that is precisely why they should be included. By excluding such assets, the Shell Pipeline also restricts access. This Commission supports open access in a non-discriminatory fashion. The Shell Pipeline proposal is diametrically opposed to open access.

Shell Pipeline states inaccurately that the Independent Shippers “have not presented any evidence that the above-referenced tanks and truck racks have ever been held out for service to the public.”³⁰ Further, it claims there is “no evidence” the Shell Pipeline provided stand-alone storage service, which it says is not subject to Commission jurisdiction, to anyone other than an affiliated entity.³¹ Shell Pipeline claims that providing storage service to an affiliated entity does not convert the tanks used for such purpose to public utility status.³² However, under the “buy-

²⁸ San Pablo Bay Opening Brief, pp. 89-90.

²⁹ San Pablo Bay Opening Brief, p. 90.

³⁰ San Pablo Bay Opening Brief, p. 85.

³¹ San Pablo Bay Opening Brief, pp. 85-86.

³² STUSCO Opening Brief, pp. 14-17.

sell" arrangements, storage is provided to the parties through STUSCO under what this Commission has determined are mere "sham transactions".

Similarly, STUSCO asserts that Shell Pipeline need not dedicate ancillary facilities such as storage tanks and truck racks to its pipeline operation, as the Commission did not state or suggest that proprietary, ancillary facilities must be included as part of the regulated pipeline in D.07-12-021.³³ STUSCO further states:

Under the current proprietary asset structure, ancillary assets have been used to facilitate Shell's overall efforts to maximize its utilization of the pipeline assets. Shell entities have expended capital and incurred maintenance costs to connect small and independent producers to the SJV Pipeline system through the development of interconnection facilities and pipelines.³⁴

STUSCO further asserts that the Independent Shippers do not "demonstrate that the facilities have been held out for use by third parties or are necessary for public utility service."³⁵ STUSCO acknowledges that the evidence presented included examples of facilities, but states that they are not facilities that are necessary to provide crude oil transportation service on the SJV Pipeline because they go beyond what the shippers require in order to obtain access to the pipeline at the origin and delivery points on the Shell Pipeline.³⁶ In a reversal of the applicant's burden of proof, STUSCO claims that the Independent Shippers failed to present evidence to show that ancillary facilities are "an integral component of the SJV Pipeline's operation."³⁷ STUSCO states that the Independent Shippers have not demonstrated a need for facilities that extend beyond those facilities that provide access to the origin and delivery points on the pipeline, and therefore, the Independent Shippers are not entitled to access to interconnection facilities or additional private assets that have historically been used by Shell entities on a

³³ STUSCO Opening Brief, pp. 14-15.

³⁴ STUSCO Opening Brief, pp. 14-15.

³⁵ STUSCO Opening Brief, p. 16.

³⁶ STUSCO Opening Brief, p. 17.

³⁷ *Id.*

proprietary basis.³⁸ Shell Pipeline and STUSCO are, however, clearly wrong as a matter of fact and by the evidence presented in this matter.

a. STUSCO's Assertions Are Wrong As A Matter Of Law.

The record evidence shows that Shell Pipeline's proposal to transfer assets to San Pablo Bay does not include all of the assets historically used to operate the pipeline.³⁹ Shell Pipeline's position in this regard is also contrary to law. As shown below, there is no legal or factual support that allows Shell to pick and choose which of its pipeline assets they may deign to allow to be used for utility service.

Shell Pipeline has been determined to be a public utility subject to this Commission's regulation. Public Utilities Code Section 851 requires public utilities to obtain Commission approval prior to divesting utility assets or removing them from service. Rule 3.6 of the Commission's Rules of Practice and Procedure sets forth the procedural requirements for seeking Section 851 approval. Rather than file an 851 application in compliance with Rule 3.6, Shell Pipeline is attempting to "backdoor" withdrawal of used and useful assets for the exclusive use of its shipper affiliate and to transfer the remaining utility assets to a shell company (a company with no employees). The Commission should deny both efforts and require Shell Pipeline, if it wishes to divest assets or withdraw them from service, to file an 851 application that complies with established Commission procedure and meets the required burden of proof.

Normally, when a public utility seeks to transfer assets, the utility files an application requesting authority to do so under Public Utilities Code Section 851. In this case, rather than have Shell Pipeline, the public utility, file its own application, *Equilon's shell subsidiary*, San Pablo Bay Pipeline, filed an application for approval of rates, rules and regulations, and included in that application a request for approval of a transfer of some, but not all, of the pipeline assets to itself. In the course of hearings, Shell Pipeline stripped still further assets from San Pablo

³⁸ STUSCO Opening Brief, p. 17.

³⁹ IS Exh. 1, Independent Shipper Testimony, pp. 12-13, Attachment B, Item 40.

Bay. Aside from being highly unusual, this approach fails to comply with Rule 3.6 as stated in full detail in Chevron's Opening Brief.⁴⁰

In any event, the Commission will only approve a transfer of public utility assets upon proof that the transfer is not adverse to the public interest, and may consider whether the transaction will affirmatively serve the public interest.⁴¹ Shell Pipeline has failed to meet its burden of proof under either test as it has failed to offer any evidence other than stating its desire that these assets be categorized as "proprietary."⁴²

b. The Exclusion Of Assets Used For Pipeline Transportation Is Discriminatory And Provides Affiliate Preferences.

As the record evidence shows, the assets excluded from public utility service include necessary facilities for pipeline operations, such as crude oil truck unloading facilities and tankage for storage.⁴³ The uncontested testimony of Mr. Georgen also makes clear that the Shell Pipeline was traditionally operated as a singular entity with all assets used by STUSCO and Shell Pipeline, both for buy/sell agreements for third parties and for transportation of Shell's own affiliated supply to its affiliated refinery.⁴⁴ Operating these assets outside of the regulated utility means they will be controlled by STUSCO, thus continuing the discriminatory and preferential treatment of Shell Pipeline's affiliated shipper. And, Shell Pipeline does not propose or describe any "code of conduct" as to transactions with its affiliated marketer, STUSCO, to provide any safeguards against abusive practices.⁴⁵

⁴⁰ Chevron Opening Brief, pp. 102-103.

⁴¹ D.05-08-006, *Ex Parte Application of NTI of California, LLC (f/k/a Highspeed Communications of California, LLC) (U-6102-C) pursuant to Public Utilities Code Section 854 for Approval of a Transfer of Control to Northwest Telephone, Inc.*, 2005 Cal. PUC LEXIS 659 at **10-11.

⁴² Shell Pipeline put forth no evidence in general and, specifically, no evidence regarding the impact of the proposed transfer on the public interest. The closest any of the Shell entities came was an unsupported statement by one of San Pablo Bay's outside witnesses that the transfer "will promote clear and transparent management and accounting." SP Exh. 38, Rebuttal Testimony of Robert G. Van Hoecke on Behalf of San Pablo Bay Pipeline Company LLC, dated February 8, 2010 ("Van Hoecke Rebuttal"), p. 30.

⁴³ IS Exh. 1, Independent Shipper Testimony, pp. 12-13; *see* Tesoro Exh. 17, Response No. 27 of San Pablo Bay to Chevron's Third Set of Data Requests and Attachment F ("Fixed Asset' Database"), dated April 21, 2009.

⁴⁴ *See* Tesoro Exh. 31, Prepared Testimony of Mark Georgen for Tesoro Refining and Marketing Company, November 16, 2009 ("Georgen Prepared"), pp. 5-6, 10-12.

⁴⁵ RT 823 (LaBorne/San Pablo Bay).

The entirety of the evidence in support of the claim that the assets are not used and useful is the testimony of Shell Pipeline witness Paul Smith that they were identified as not being required for public utility service.⁴⁶ Mr. Smith provided no explanation as to why they were not needed, how it was determined they were not needed, how they have been historically used or how they are expected to be used if held for Shell's private use. Shell Pipeline cannot meet its burden of proof simply by claiming, with no support or explanation, that assets are not necessary to utility service.

In addition, the evidence unequivocally demonstrates that the truck unloading facilities that are marked "private" on Exhibit Tesoro 6 (diagram of the pipeline's facilities), are operational and have been recently used to unload San Ardo crude for delivery by STUSCO into the commingled common stream of SJVH.⁴⁷ STUSCO uses the trucking facilities marked "private,"⁴⁸ and in effect, argues to retain this affiliate preference simply because it benefits exclusively from it, regardless of the principles of regulation which rest on the equal access of all shippers to facilities used to provide a utility service.

Shell Pipeline's position is inconsistent even with its own testimony. Mr. Dompke effectively supports the need for all tankage to be included in utility assets, as he testified during hearings that "[w]e need facilities where we can store crude, build batches to go north, for upsets on the pipeline, for differences in flow. . . ."⁴⁹ He stresses that tankage is needed to handle flow coming from several different sources,⁵⁰ to keep one supply in one tank if another is being shipped as "we typically only come out of one tank at any given time."⁵¹ and for the blending process to ship heavy or neat.⁵²

⁴⁶ SP Exh. 17, Direct Testimony of Paul Smith on Behalf of San Pablo Bay Pipeline Company LLC, dated September 30, 2008 ("Smith Direct"), pp. 5-10; SP Exh. 18, Rebuttal Testimony of Paul Smith on Behalf of San Pablo Bay Pipeline Company LLC, dated February 8, 2010 ("Smith Rebuttal"), pp. 3-4.

⁴⁷ Tesoro Exh. 31, Georgen Prepared, pp. 10-11.

⁴⁸ *Id.*

⁴⁹ RT 435:20-21 (Dompke/San Pablo Bay).

⁵⁰ RT 436 (Dompke/San Pablo Bay).

⁵¹ RT 438:25-26 (Dompke/San Pablo Bay).

⁵² RT 440 (Dompke/San Pablo Bay).

In addition, Mr. LaBorne testified that OCS was previously shipped in batches, but cannot be now, and he thus removed OCS from his supply analysis.⁵³ He stated that as the “system is configured today, we do not have facilities in place that are capable of moving segregated neat OCS crude oil.”⁵⁴ He conceded that this is because Shell Pipeline has removed the necessary tankage and other facilities from utility service.⁵⁵

During cross examination, Mr. Dompke confirmed that OCS volumes are inserted into the Shell Pipeline system after having first moved through a proprietary Shell line and then into *either* proprietary *or* utility tank storage, where they are blended into the common stream.⁵⁶ He admitted that for batch movement of OCS, an idled tank, retained as proprietary, would need to be returned to service.⁵⁷ He also cautioned that possibly more than one tank would be needed. Mr. Dompke's testimony demonstrates that utility service subsidizes Shell's private activities, not the least of which involves the “regrading” of inferior quality OCS supplies into SJVH, in a manner inconsistent with historical practice, open access operations and the proposed Joint Tariff. Such selective asset categorization and use is effectively corrected only in the Joint Tariff.

Item 45 – Destination Facilities Required As to Item 45.B, Shell Pipeline objects to the Independent Shippers' proposed tariff language with regard to “reasonable losses” should the carrier need to make arrangements for clearing the pipeline.⁵⁸ Shell Pipeline states that this item provides every opportunity for the shipper to make its own alternate arrangements prior to

⁵³ RT 833 (LaBorne/San Pablo Bay); *see also*, Tesoro Exh. 9, Response of San Pablo Bay to Tesoro's Seventh Set of Data Requests, dated April 1, 2010 (Data Response No. 260 of San Pablo Bay stating that there are no documents that explain Mr. Smith's "additional review" of pipeline assets at each location); Tesoro Exh. 16, Response Nos. 60, 63, 68 of San Pablo Bay to Tesoro Second Set of Discovery and Data Requests, dated March 17, 2009; and Tesoro Exh. 19, Attachment C (“Schematic - Pre-2006 Configuration”) to Chevron's Fourth Set of Data Requests, dated May 22, 2009 (confirming same).

⁵⁴ RT 851:15-17 (LaBorne/San Pablo Bay).

⁵⁵ RT 863 – 864 (LaBorne/San Pablo Bay).

⁵⁶ RT 463 – 470 (Dompke/San Pablo Bay).

⁵⁷ RT 477 (Dompke/San Pablo Bay).

⁵⁸ San Pablo Bay Opening Brief, p. 90.

the carrier intervening, and therefore, it is fair and reasonable for the shippers to incur all costs—reasonable or not—associated with their inability to accept delivery of their crude.⁵⁹

Unfortunately, the contrary is true. As Mr. Lee testified in hearings and was supported by Messrs. Grimmer and Miller, this provision, if not altered, would allow Shell Pipeline to create low cost purchasing opportunities for STUSCO by preventing shippers from using the reasonable available options.⁶⁰ Without a standard requiring Shell Pipeline to provide reasonable efforts to carry out a shipper’s alternate arrangements for the delivery of a batch of crude oil that is in the pipeline, the pipeline and its affiliated shipper would be in a position to work together to economically benefit from unreasonable and excessive discounting of crude that must be delivered to the Shell refinery to clear a batch of crude from the pipeline.

Thus, Joint Tariff Item 45 clearly states that the shipper is responsible for all additional costs borne by Shell Pipeline to carry out the reasonable arrangements, but also holding Shell Pipeline responsible for any unreasonable losses, simply provides the shippers with a vehicle to contest an unreasonable loss sustained due to affiliate preference or abuse. Shell Pipeline seeks to have no responsibility for its actions, regardless of the severity or reasonableness of the economic impacts. Such treatment would be patently unjust and unreasonable, but it is corrected in the Joint Tariff.

Item 75 – Gauging Testing and Deductions As to Item 75.C, Shell Pipeline objects to the Independent Shippers’ proposal for a Pipeline Loss Allowance (“PLA”) for SJVH of 0.10% versus a PLA of 0.15% for SJVL, SJVH, and segregated batches.⁶¹ Shell Pipeline states that this provision unfairly benefits the Independent Shippers because they currently do not ship these other crude types.⁶² Shell Pipeline incorrectly states that there is no industry tariff that applies different PLA deductions based on different crude characteristics, and that the differences asserted by the Independent Shippers have no supporting empirical evidence.⁶³ Shell Pipeline

⁵⁹ *Id.*

⁶⁰ RT 1495 – 1498 (Joint Panel/Independent Shippers).

⁶¹ San Pablo Bay Opening Brief, p. 90.

⁶² *Id.*

⁶³ *Id.*

claims it has studies showing SJVH crude is more subject to measurement uncertainty.⁶⁴ Putting aside the fact that measurement uncertainty is not the same as loss, Shell Pipeline cites nothing for this assertion because there is no such evidence in the record. On the contrary, the uncontroverted record evidence demonstrates that SJVH experiences substantially lower losses than SJVL or San Joaquin Valley Heavy Blend ("SJVB").⁶⁵ Mr. O'Loughlin calculated the PLA for *the system* to be 0.092%, such that a PLA of 0.10% would provide coverage and a cushion for SJVH.⁶⁶ If there is inherent measurement uncertainty, it should ultimately balance out evenly between high and low measurements. There can be no basis for providing Shell Pipeline with a one-sided loss allowance only when the measurement uncertainty fluctuates in a shipper's favor. When the uncertainty swings in favor of the pipeline, it will effectively double-dip.

As to Item 75.F, with regard to meter error adjustments, Shell Pipeline baldly asserts that the Joint Tariff proposal that any adjustments must be made within six months of deliveries is not practical or acceptable as some measurement inaccuracies are not detectable within this time period.⁶⁷ Shell Pipeline claims that any meter error adjustments, once identified, should be corrected regardless of the time period and regardless whether the adjustment is in favor of or against either the shipper or the carrier.⁶⁸ However, given Shell Pipeline's conduct historically, the Independent Shippers do not believe that Shell Pipeline will make proper and timely adjustments. Indeed, Shell Pipeline fails to provide any factual basis as to why it cannot comply as requested. Moreover, the six month limit on adjustments to measurement in the Joint Tariff is intended to ensure adequate diligence in maintaining accurate measurement and prevent an open ended adjustment that could carry back for an indefinite period. The open ended adjustment period in the Shell Pipeline proposed tariff also does not provide an adequate standard of care in maintaining measurement accuracy.

⁶⁴ *Id.* at pp. 90-91.

⁶⁵ Tesoro Opening Brief, p. 51.

⁶⁶ Chevron Opening Brief, p. 79.

⁶⁷ San Pablo Bay Opening Brief, p. 91.

⁶⁸ San Pablo Bay Opening Brief, p. 91.

Item 100 – Payment of Transportation and Other Charges As to Item 100, Shell Pipeline claims that it has simply used language “consistent with industry standards” despite the Independent Shippers' belief that it is unreasonable for the carrier to have the discretion to determine when prepayment will be required.⁶⁹ In light of its market power and serious potential for affiliate abuse, the Independent Shippers believe that limited definition is needed to prevent discrimination. Further, other pipeline tariffs, such as the KLM pipeline tariff, do not grant the Carrier sole discretion in establishing pre-payment or payment guarantees.⁷⁰ In any event, Shell Pipeline seems to quibble over minor text and does not actually seem opposed to this provision.

Item 110 – Pipeage and Other Contracts As to Item 110, Shell Pipeline claims that its proposal is drawn from “boilerplate language of other California pipelines including Mobil (SP-77 Item 25), Crimson (SP-80 Item 105), and Valero (SP-81 Item 13).”⁷¹ Even if true, such a comment does not provide a basis to reject a reasonable provision drafted for *this* pipeline system. Indeed, Shell Pipeline has provided no basis for its objection, if any, to the Joint Tariff language in this provision, or any support for why the provision in the Joint Tariff is not superior.

Item 150 – Quality Bank As to Item 150, Shell Pipeline asserts that its proposal is similar in all respects to quality banks it administers elsewhere and is commonly applied across the industry in similar circumstances.⁷² Its sole complaint is that the Joint Tariff is “considerably more complex with regard to the development and approval of the differential tables,” which it believes causes concern for the administrative burden and the potential for disputes.⁷³ It states that it will revise the proposed differential tables once recommended and approved by all affected shippers through a process it objects to in other contexts.⁷⁴

⁶⁹ *Id.*

⁷⁰ Tesoro Exh. 25, Prepared Testimony of Ralph J. Grimmer for Tesoro Refining and Marketing Company, dated November 16, 2009, with Errata, dated January 22, 2010 (“Grimmer Prepared”), pp. 43-44.

⁷¹ San Pablo Bay Opening Brief, p. 91.

⁷² San Pablo Bay Opening Brief, p. 91.

⁷³ *Id.*

⁷⁴ *Id.*

As the Independent Shippers have stated throughout this proceeding, degradation of quality by actions of Shell entities through use of proprietary facilities or undisclosed "regrading" of OCS is a serious problem. The construction of the Quality Bank in the Joint Tariff, its tables and its operations are critically important for the future of this system. The Independent Shippers worked hard and long to develop a fair proposal for this system rather than relying on Shell's practices for pipelines elsewhere. Indeed, Shell Pipeline's generic proposal being merely plugged into a tariff cobbled from other entities without consideration of the facts of this pipeline mandates the rejection of the "plug" in favor of a specific procedure that even Shell Pipeline does not otherwise criticize.

The quality of the crude oil that will be delivered to the pipeline's shippers is a critical consideration, as has been noted throughout this proceeding. Shell Pipeline's proposed Tariff Item 150 failed to address this issue as initially proposed, as it provides for a Carrier-managed Quality Bank for only API gravity and only for the SJVH Common Stream.⁷⁵ As a result, there is no provision in the basic Shell Pipeline proposed tariff to compensate shippers if they receive a different quality of crude oil at the end of the common stream than they delivered to the pipeline, particularly due to sulfur content.⁷⁶

Unlike its originally proposed tariff, Shell Pipeline's revised proposed tariff⁷⁷ includes a gravity bank to adjust the value of the crude each shipper delivers into and receives from the pipeline for differences in gravity (high gravity crude being more valuable). While this was a step in the right direction, Shell Pipeline's proposal does nothing to adjust the crude values for sulfur content (higher sulfur crude being less valuable), and this tariff was not sponsored by a witness or supported in hearings.

In contrast, the Joint Tariff provides for adjustments for differences in two primary characteristics (API Gravity and sulfur content) of crude oil.⁷⁸ The Independent Shippers have

⁷⁵ IS Exh. 1, Independent Shipper Testimony, pp. 18-19.

⁷⁶ RT 1425 – 1426 (Joint Panel/Independent Shippers).

⁷⁷ SP Exh. 20, Ralph Rebuttal, Attachment. A.

⁷⁸ IS Exh. 1, Independent Shipper Testimony, pp. 18-19, Attachment B (Tariff Item 150).

proposed that SJVL be defined as a Common Stream, and thus the Quality Bank proposed in their tariff includes both SJVH and SJVL, despite Shell's affiliate STUSCO being the only current shipper of this type of crude.⁷⁹ This will restrict STUSCO from gaming the system to its sole benefit, as it has done in the past. Only the Joint Tariff addresses the abusive practice of "regrading" OCS crude as SJVH into the common stream, by providing a mechanism to protect the quality of the SJVH and SJVL common streams with provisions to ship OCS as a segregated batch and a sulfur bank to compensate shippers when higher sulfur crudes such as San Ardo are introduced into the SJVH common stream. In addition, the Joint Tariff provisions include a proposed sulfur value that compensates shippers for the difference in value of two relatively equivalent grades of SJVH crude that differ in sulfur content,⁸⁰ this value difference is based on a market value discount for crudes with dissimilar sulfur contents, and thus ensures that all shippers are fairly compensated for changes in API Gravity and sulfur content.⁸¹

Inasmuch as the San Ardo crude Shell Pipeline's affiliate, STUSCO, introduces into the SJV Heavy common stream has higher sulfur, Shell Pipeline's proposed tariff does not protect the Independent Shippers against degradation of the crude they receive. The Independent Shippers' tariff solves this issue by including a sulfur bank that will compensate shippers for differences in the sulfur content of the crude they deliver and the crude they receive.⁸² As a companion to the sulfur bank, the Independent Shippers' Joint Tariff expressly provides that San Ardo crude may continue to be a part of the SJVH common stream.⁸³

As Mr. Grimmer testified as part of the joint panel of Independent Shippers at hearings, "The intent of a quality bank is to keep all shippers as whole as best you can financially."⁸⁴ Only the Quality Bank proposed by the Joint Tariff ensures fair treatment of all shippers of the SJV pipeline.

⁷⁹ IS Exh. 1, Independent Shipper Testimony, pp. 18-19, Attachment B (Tariff Item 150).

⁸⁰ IS Exh. 1, Independent Shipper Testimony, pp. 18-19, Attachment B (Tariff Item 150).

⁸¹ IS Exh. 1, Independent Shipper Testimony, pp. 18-19, Attachment B (Tariff Item 150).

⁸² IS Exh. 1, Independent Shipper Testimony, pp. 18-19, Attachment B (Tariff Item 150, ¶¶ 10 et seq.)

⁸³ *Id.* (definition of "San Joaquin Valley Heavy").

⁸⁴ RT 1423 (Joint Panel/Independent Shippers).

4. The Shell Pipeline Tariff Provides Excessive Pipeline Discretion, Continues To Provide Affiliate Benefits, And Fails To Address Current And Future Problems.

Shell Pipeline’s proposed tariff creates two classes of shippers receiving two qualities of service. One class consists of the Shell Pipeline’s affiliate, STUSCO; the other, the three Independent Shippers. Under Shell Pipeline’s proposal, STUSCO will receive uninterrupted blended service; the Independent Shippers will receive heated service that is subject to interruption if the Shell Pipeline’s stated minimum volume requirements are not met.⁸⁵ “Thus,” Mr. Lee of Chevron testified, “one shipper, STUSCO, is in a different situation from the Independent Shippers and would have no incentive to work with the other shippers to ensure that minimum volumes are always met.”⁸⁶ Indeed, a review of STUSCO’s limited brief, its only public statement in this matter, demonstrates the thrust of Mr. Lee’s words. Further, Shell Pipeline does not propose to identify any specific "code of conduct" as to transactions and communications with its marketing affiliate, STUSCO.

The Joint Tariff eliminates affiliate preferences. As panel member Douglas Miller of Tesoro expressed it, “Our basis is to provide equal service to all shippers and to make sure that there’s not an affiliate preference as there had been in this case in the past.”⁸⁷

B. A Regulated Utility Service Provider Is Required As A Matter Of Law To Provide Equal Access, Non-Discriminatory Service, And Equal Treatment.

The principle that all shippers should receive non-discriminatory service on an equal footing is both an ordinary principle of public utility operation, Pub. Util. Code §§ 454(a) & (c), and a necessary corrective to the years of affiliate favoritism and abuse that have characterized the operation of this pipeline – including the three years since the Commission officially declared the Shell Pipeline to be a public utility in D.07-07-040.

⁸⁵ SP Exh. 20, Ralph Rebuttal, Attachment A, Tariff Item 55 at 11-12; *see also* Chevron Exh. 46, Direct Testimony of David R. Lee Regarding California Crude Oil Production and Transportation on behalf of Chevron Products Company, dated November 16, 2009 ("Lee Prepared"), p. 10.

⁸⁶ Chevron Exh. 46, Lee Prepared, p. 35.

⁸⁷ RT 1460:17-20 (Miller/Independent Shippers).

There is ample evidence in the record of Shell Pipeline's prior affiliate abuse.⁸⁸ In sum, this proceeding has shown among many other abuses, that:

(1) The Independent Shippers have paid higher rates than STUSCO for comparable transportation service.⁸⁹;

(2) The Independent Shippers have paid a higher pipeline loss allowance than STUSCO.⁹⁰;

(3) Shell Pipeline has blended inferior California OCS crude, shipped by STUSCO, and charged the Independent Shippers as if the resulting blend was all SJVH.⁹¹;

(4) Only the Independent Shippers have been required to ship minimum volumes.⁹²; and

(5) Shell Pipeline has threatened to discontinue heated pipeline service to the benefit of its affiliate and to the detriment of the Independent Shippers.

Unfortunately, Shell Pipeline's proposed tariff does nothing to remedy this history of affiliate abuse and neither proposes or identifies any "code of conduct" to guide utility transactions or communications with its marketing affiliate. The Joint Tariff corrects these affiliate abuses and guarantees that all shippers, affiliate or otherwise, will be treated the same.

1. The Joint Tariff Provisions In Category 3 Are Consistent With Legal Requirements, Unlike the Shell Pipeline Proposed Tariff.

The Joint Tariff addresses pipeline system issues and pipeline operations. All of these changes aim to *ensure that all shippers are treated fairly* and that Shell Pipeline does not exercise its market power to the detriment of its unaffiliated shippers. It is this category of provisions that Shell Pipeline most disagrees with, contrary to Public Utilities Code section 454.

⁸⁸ See, e.g., Valero Exh. 8, Rebuttal Testimony of Daniel WM. Fessler for Valero Marketing and Supply Company, dated April 16, 2010 ("Fessler Rebuttal"), pp. 27:1-8, 30:18 – 32:19.

⁸⁹ See Chevron Exh. 5-C, Shell Pipeline Invoices - 2009; see also RT 88:14-18, 89:3-27 (Webb/San Pablo Bay).

⁹⁰ See Chevron Exh. 46, Lee Prepared, pp. 23-24; Chevron Exh. 47-C, Prepared Rebuttal Testimony of David R. Lee Regarding California Crude Oil Production and Transportation, Confidential Version, dated April 16, 2010 ("Confidential Lee Rebuttal"), p. 19; see also RT 52:15-21, 64:8-12 (Webb/San Pablo Bay).

⁹¹ RT 67:1-23 (Webb/San Pablo Bay); see also Tesoro Exh. 31, Georgen Prepared, pp. 12-13.

⁹² See, e.g., Tesoro Exh. 27, Prepared Testimony of Damon M. Van Zandt for Tesoro Refining and Marketing Company, dated November 26, 2009 ("Van Zandt Prepared"), p. 12, Attachments D, F.

In this regard, the Joint Tariff addresses long-term as well as current pipeline operation issues, such as the recognized decline in SJVH and SJVL crude production volumes. The future decline curve is subject to some dispute in this proceeding but the concept is not contested in general.⁹³ What is relevant from an operational standpoint is that future operations should be designed to allow San Pablo Bay to operate the pipeline as long as possible and that it be compensated fairly for doing so. Significantly, the Joint Tariff addresses the very items in that regard that remain in dispute with Shell Pipeline (Category 3 in Shell Pipeline's Opening Brief), including segregated batch operations, nominations by crude type, the nomination process, minimum flow requirements, and a process to address reductions in supply availability.⁹⁴

2. Segregated Batch Operations

Item 20 – Segregated Batch Operations As to Item 20.B, Shell Pipeline claims that there is no compelling logic to include any rules that would prevent it from accepting any volumes it can move.⁹⁵ However, Shell Pipeline has abused such discretion by secretly "regrading" more than 7.5 million barrels of OCS crude to degrade the crude quality of Independent Shipper crude supplies.⁹⁶ Item 20 and other provisions in the Joint Tariff *encourage*, not discourage, added volumes, but do so in a way to prevent harm to other shippers, which is consistent with the legal requirements of equal access and equal treatment. This Joint Tariff provision provides Shell Pipeline with operating flexibility to deliver the nominations of all shippers instead of simply providing preferential service to its marketing affiliate under all

⁹³ Mr. LaBorne makes the wholly illogical request that San Pablo Bay's rates be based on a volume that is thousands of barrels less than the minimum throughput imposed in its proposed tariff.⁹³ His 2010 volume projection—about 135,000 BPD—is also 20,000 BPD lower than the average for the first four months of 2010. *Compare* SP Exh. 23, Rebuttal Testimony of Kevin E. LaBorne on Behalf of San Pablo Bay Pipeline Company LLC, Public Version, dated February 8, 2010 ("LaBorne Rebuttal"), Attachment A to Chevron Exh. 32, Shell Monthly Shipper Data, dated April 2010, at 5.

⁹⁴ *See generally*, IS Exh. 1, Independent Shipper Testimony.

⁹⁵ San Pablo Bay Opening Brief, p. 92.

⁹⁶ *See* Tesoro Exh. 10, Response No. 355 of San Pablo Bay to Chevron's Thirteenth Set of Data Requests and Spreadsheet entitled Annual OCS Blend Volumes; *see* Tesoro Exh. 22, Shell Trading (US) Company Response to First Set of Discovery and Data Requests of Tesoro Refining and Marketing Company, September 4, 2009; *see also* Tesoro Exh. 23, Shell Trading (US) Company Supplemental Response to First Set of Discovery and Data Requests of Tesoro Refining and Marketing Company, October 5, 2009.

operating scenarios. In contrast, Shell Pipeline, in a pattern in its brief and elsewhere, seems to believe that any unsupported statement it has made, such as the statement that it should not be prevented from blending volumes of harmful OCS crude into the common stream crude, creates a binding presumption that magically overwhelms all other evidence. In fact, the criticisms thrown out by Shell Pipeline represent unsupported opinion at best, which is countered by detailed evidence from four witnesses supporting the Joint Tariff sponsored by *all* unaffiliated shippers.

3. Nomination Process

Item 55 – Nominations As to Item 55, Shell Pipeline asserts that there are no consequences if a shipper does not meet its Confirmed Nominations under the Joint Tariff, and that it penalizes shippers who ship more than 110% of their nominations.⁹⁷ In addition, Shell Pipeline claims the proposed penalties to be excessive and unreasonable and states its “concern” with the Joint Tariff requirement to rebate any penalties collected back to non-penalized shippers, which process it finds to be overly burdensome and likely “illegal.”⁹⁸ Shell Pipeline provides no support in evidence or law for either of these speculative scenarios.

Shell Pipeline dismisses the procedures in the Joint Tariff providing for a two-month rolling nominations cycle with the option of shutting down heated service after application to the Commission, as Shell Pipeline expects this Commission to ensure that it does not shut down heated service once a proposed tariff is approved and made effective. Shell disavows any interpretation of its proposed tariff that would allow it to shut down heated service without Commission approval, despite the lack of any provision requiring any approvals.⁹⁹

Shell Pipeline further states that its proposal for a complex monthly nominations process closely reflects the operation of the pipeline since it was re-configured, the monthly planning cycle of refiners, the basis for determining the crude slates that refiners will run and the

⁹⁷ San Pablo Bay Opening Brief, p. 92.

⁹⁸ *Id.* at pp. 92-93.

⁹⁹ San Pablo Bay Opening Brief, p. 93.

shipments via the SJV Pipeline.¹⁰⁰ It further asserts that it is not clear how the Joint Tariff's two-month nomination proposal would be applied to spot shippers who may not be shipping every month.¹⁰¹ Shell then somehow contends that the Joint Tariff could restrict the availability of SJVB, which accounts for the majority of shipments on the SJV Pipeline, and incorrectly states that the Joint Tariff would not allow SJVB service should Confirmed Nominations be less than the minimum operating requirements.¹⁰² Further, Shell Pipeline objects to the Joint Tariff proposal that SJVB shippers must make separate nominations of SJVH and SJVL to Coalinga and request SJVB deliveries to Avon when Confirmed Nominations are less than the minimum operating requirements. It claims that there have been no shipments of SJVL from Coalinga to Avon since the pipeline was reconfigured in late 2005 and, without any evidence or testimony, claims that the system cannot safely technically allow SJVL to be shipped to Avon.¹⁰³

a. The Joint Tariff Penalty Provisions Are Equally Applicable And Fair To All Shippers.

Unlike the Shell Pipeline proposed tariff, Joint Tariff Item 55 removes the potential for affiliate preferences, treats all shippers equally, provides each shipper with deliveries of the grade of crude nominated, provides a penalty for any shipper abusing the nomination process to the detriment of the other shippers, and provides the pipeline with broad discretion to meet all safe operating conditions while delivering nominated volumes to all shippers.

Shell Pipeline's assertions concerning the penalty provisions in the Joint Tariff are wrong and taken out of context. As outlined in Joint Tariff Item 55.C.7, the penalty provisions only apply to "Shipper A" when 1) Shipper A's final adjusted nomination is less than the Shipper A's actual average shipments over the three prior calendar months, AND 2) the sum of all Shippers' final adjusted nominations are less than the pipeline Minimum Operating Requirements for continuous flow, AND 3) Shipper A increases its nomination in excess of 110% of its final

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² San Pablo Bay Opening Brief, p. 94.

¹⁰³ San Pablo Bay Opening Brief, p. 94.

adjusted nomination. This penalty ensures that all Shippers provide realistic nominations to the pipeline for adequate planning and scheduling in providing service to all shippers. Any shipper that accurately nominates and ships up to 110% of the shipper's desired nomination will *never* be subject to the penalty. Shippers that make good faith nominations will not be negatively impacted by the penalty provision in the Joint Tariff. Conversely, a shipper that attempts to game the system to obtain an unfair advantage will risk a penalty if those games cause total pipeline nominations to fall short of the minimum operating requirements.

Given the potential for affiliate abuse, the penalties charged have to be credited to all shippers not subject to the penalty, rather than Shell Pipeline. If not, the penalty provision would not deter STUSCO from gaming the nominations since any penalty it paid would simply go to its affiliate and, ultimately, merely shift Shell's money from one pocket to another within the same pair of pants.¹⁰⁴ However, as STUSCO is the largest shipper on the pipeline, it would receive the greatest compensation if penalties were assessed against another shipper. Thus, the Joint Tariff ensures equal and fair treatment of all shippers including the Shell Pipeline affiliate shipper.

b. The Joint Tariff Nomination Process Is Fair To All Shippers And Ensures that Nominations Are Met.

The Shell Pipeline's assertions concerning the nomination process in the Joint Tariff are unsupported, speculative, and wholly without merit. The record evidence shows that the Joint Tariff modifies the onerous nomination process urged by Shell Pipeline to reflect *industry norms* as to times and processes, and removes provisions that penalize shippers or confer advantages on an affiliate shipper.¹⁰⁵ Specifically, the Joint Tariff provides that all supplies nominated into the pipeline be of either SJVH, SJVL, or segregated batches.¹⁰⁶ The purpose of the three categories is to allow the pipeline to determine the extent to which it can move SJVH consistent with its minimum operating requirements.¹⁰⁷ The changes to the nomination process, with this

¹⁰⁴ RT 210:26 – 211:51 (Webb/Ban Pablo Bay).

¹⁰⁵ IS Exh. 1, Independent Shipper Testimony, pp. 4, 13-14, and Attachment B, pp. 14-21.

¹⁰⁶ RT 1411 (Miller/Independent Shippers).

¹⁰⁷ IS Exh. 1, Independent Shipper Testimony, pp. 3-4, 5-9, 13-14, and Attachment B.

modification, will make the system more reliable and remove much of the uncertainty of shut down of operations included in the Shell Pipeline proposed tariff, as well as the embedded affiliate preferences. Further, and contrary to Shell Pipeline's assertion, the Joint Tariff more closely approximates pipeline operations and the needs of refiners.

In addition, the Joint Tariff proposes to change Shell Pipeline's quarterly nomination process to a rolling bimonthly process, which would ensure that shippers do not undernominate volumes, thereby disrupting pipeline scheduling and operations.¹⁰⁸ To further ensure reliability of heated service and prevent affiliate preferences, the Independent Shippers included a provision that Shell Pipeline will not discontinue heated service without Commission authorization.¹⁰⁹ Given the history of affiliate preferences in Shell Pipeline's operations, this provision is *essential* to level the playing field for all shippers, to ensure that Shell Pipeline provides a reliable and fair utility service to all customers, which is required as a matter of law.

Shell Pipeline ignores several critical operating realities of its system. The pipeline remains heated regardless of whether it is shipping only SJVH (which requires heated service), SJVL, or a blend thereof (SJVB).¹¹⁰ Shell Pipeline's tariff proposes 140,000 BPD as the minimum volume requirement for heated service.¹¹¹ If nominations are less than 140,000 BPD, Shell Pipeline can, under its proposed tariff, elect to shut down heated service, purge the pipe, and charge unaffiliated shippers for the costs of the shutdown, purging, and restarting (when nominations are sufficient to again support heated service).¹¹² Shell Pipeline's tariff does not

¹⁰⁸ IS Exh. 1, Independent Shipper Testimony, p. 14.

¹⁰⁹ IS Exh. 1, Independent Shipper Testimony, p. 14.

¹¹⁰ RT 415:18-20 (Dompke/San Pablo Bay).

¹¹¹ While the Independent Shippers require heated service for their shipments of neat, undiluted SJVH, Shell Pipeline's affiliate, STUSCO, likely will be taking mostly SJVL and SJVB which do not require heating to ship. The assigned ALJ in this proceeding discussed SPBPC's proposal to offer interruptible heated service on the Pipeline and concluded that, "[s]ince an affiliate of San Pablo is a crude shipper, acting together they could effectively deny service to Independent Shippers by withdrawing enough proprietary oil from the pipeline to force a shut down." *See Administrative Law Judge's Ruling Granting Motion To Extend Procedural Schedule*, filed July 15, 2009, p. 2. Thus, the ALJ has accurately determined the potential for Shell's affiliate abuse, which the Commission must not permit.

¹¹² SP Exh. 72, San Pablo Bay Pipeline Company LLC, Rules and Regulation Tariff, Apply on the Gathering and Transportation of Crude Petroleum by Pipeline, pp. 10-12; *see also* RT 1433:27 – 1434:18 (Grimmer/Independent Shippers).

discuss the mechanics of how it would ship unheated SJVL and SJVB in a purged pipeline, but the shutdown provisions apply only to heated service.

While Shell Pipeline claims its proposal is neutral, in reality it permits the single biggest and affiliated shipper, STUSCO, to determine whether this common carrier pipeline will offer heated service to Shell’s refining and/or asphalt competitors, Valero and Tesoro. Under Shell Pipeline’s tariff, if nominations were not sufficient to support heated service, Valero and Tesoro will be deprived of the SJVH they need, while STUSCO would continue to receive SJVB. Shell Pipeline’s proposed tariff “contains nothing that would preclude Shell’s affiliate shipper from ‘gaming the system’ by undernominating crude . . . knowing this would shut down heated service and SJVH supply to the competitors of Shell’s refining affiliate.”¹¹³ This is because Shell Pipeline’s affiliate ships approximately 60% of the total volume on the SJV Pipeline.¹¹⁴

*In order to make sure that all customers are treated equally, the Independent Shippers have proposed a nomination procedure that guarantees no single shipper will be able to determine whether heated service is provided or not.*¹¹⁵ The Independent Shippers’ nomination process stipulates that nominations will be for SJVH, SJVL, and segregated batches, “with the intent of allowing SJVB blending and deliveries only after nominations have satisfied the Minimum Operating Requirements.”¹¹⁶ With this provision, all shippers have the same interest in seeing that the minimums are met.

c. The Joint Tariff Ensures Against Under-Nominations And System Gaming, Unlike The Shell Pipeline Proposed Tariff.

The record evidence shows that there is potential for “gaming” on the SJV Pipeline and how Shell Pipeline’s proposed nomination process makes the problem worse.¹¹⁷ Under the Shell Pipeline proposal, the largest shipper on the pipeline, STUSCO, would know it will be able to

¹¹³ IS Exh. 1, Independent Shipper Testimony, pp. 13:24 – 14:1.

¹¹⁴ RT 35:24-36:3 (Webb/San Pablo Bay).

¹¹⁵ See IS Exh. 1, Independent Shipper Testimony, Attachment B, Tariff Item 55.

¹¹⁶ IS Exh. 1, Independent Shipper Testimony, p. 13:20-24.

¹¹⁷ Chevron Exh. 46, Lee Prepared, pp. 35 – 36, 60.

ship its blended crude no matter what happens to the heated service. STUSCO, therefore, has no incentive to work with the Independent Shippers to help meet the minimum volumes. As Shell Pipeline's proposed nomination process would penalize shippers who deliver less crude than they nominate, but not those who deliver more crude than they nominate, ***STUSCO has an incentive to under-nominate***. Because the availability of heated service is based on the advance nominations, STUSCO could nominate less than it actually intends to ship, causing an interruption in heated service, and then still ship as much over its nomination as it wishes.

Accordingly, it is no surprise that STUSCO in its Opening Brief proposes that the nomination process of San Pablo Bay should be adopted. STUSCO asserts that a shipper should not be required to segregate its delivered crude oil quantities, nor should it be required to nominate SJVH on the pipeline before nominating any SJVB (blended) crude oil for delivery on the pipeline.¹¹⁸ In short, STUSCO advocates to maintain the status quo, where it ***exclusively*** benefits from a nomination process proposed by its affiliate, Shell Pipeline. Such an arrangement is contrary to law, as it fails to provide equal access and treatment for all shippers.

Shell Pipeline's revised February 2010 tariff and its Opening Brief contain no proposal to eliminate the opportunity for its affiliate, STUSCO, to game the nomination process to the detriment of the Independent Shippers.¹¹⁹ Instead, Shell Pipeline simply "acknowledges that various issues regarding proposed nomination procedures remain unresolved."¹²⁰ While Shell Pipeline suggests "such issues can be resolved through continued informal discussion with all of the shippers",¹²¹ discussions over many years have failed to achieve resolution. This is simply too important an issue for the Commission to adopt Shell Pipeline's proposed tariff in the hope that, once Shell Pipeline and STUSCO have what they want¹²², resolution of the nomination issue will get easier. It clearly has not gotten easier despite discussions, which have failed to produce any results on this issue to date.

¹¹⁸ See, e.g., STUSCO Opening Brief, p. 5.

¹¹⁹ SP Exh. 20, Ralph Rebuttal, Attachment A.

¹²⁰ Id. at 9.

¹²¹ SP Exh. 20, Ralph Rebuttal, Attachment A.

¹²² Id. (approved rates and tariffs)

As the record evidence has shown, the Independent Shippers' concern about the potential for STUSCO to game the nomination process is hardly hypothetical, given Shell Pipeline's threat to shut down heated service in October 2008. After notifying the shippers that nominations were sufficient for all service, Shell Pipeline reversed itself within days, telling the Independent Shippers that insufficient volumes had been nominated.¹²³ The Independent Shippers were given just 24-hours notice to increase shipments on the SJV Pipeline or face the complete shut down of heated service for their undiluted SJVH.¹²⁴

It turned out that STUSCO was the only shipper that had reduced its nominations, causing the threatened shutdown,¹²⁵ and STUSCO reversed itself and raised its nominations but only after reports were made to the Commission concerning the threatened shutdown.¹²⁶

Further, last summer, the Shell Martinez Refinery underwent scheduled maintenance, substantially reducing STUSCO's own demand for crude in the Bay Area for one to two months. The reductions placed the total volumes below the minimums. Shell Pipeline originally took the position that, if volumes were insufficient, it would shut down heated service and instead offer Tesoro and Chevron only blended service instead. When Tesoro declined to accept blended crude in lieu of the SJVH it had purchased, Shell Pipeline ultimately worked with the Independent Shippers. Using storage tanks and even leasing a barge for additional storage, Shell Pipeline took steps to ensure that minimum volumes were met.¹²⁷ There is no provision for such action in Shell Pipeline's proposed tariff and indeed, certain of the SJV Pipeline assets used to resolve the problem last year are proposed to be removed from utility service.

The only apparent reason Shell Pipeline took these steps to work with the Independent Shippers and maintain heated service is that it would have needed to obtain Commission approval before shutting down the heated service. When Shell Pipeline sought to stay this proceeding in November 2008, the Administrative Law Judge ordered it not to shut down heated

¹²³ Chevron Exh. 46, Lee Prepared, pp. 31.

¹²⁴ Chevron Exh. 46, Lee Prepared, pp. 31.

¹²⁵ RT 593:4-24 (Smith/San Pablo Bay).

¹²⁶ RT 1406:21-1407:8 (Lee/Chevron); RT 594:15-19 (Smith/San Pablo Bay).

¹²⁷ Chevron Exh. 46, Lee Prepared, pp. 33-34.

service without prior CPUC approval.¹²⁸ Without the order to not shut down heated service, this service would likely have been shut down. In addition to the financial cost this would have imposed on the Independent Shippers, a reduction of the supply of San Joaquin Valley crude oil would potentially have had significant impact on the market for refined petroleum products to the detriment of California businesses and consumers.¹²⁹

Shell Pipeline's proposed Rule 55 (Nominations) exacerbates this problem. It describes how heated service could be shut down, leaving the Independent Shippers with no means of moving undiluted SJVH to the Bay Area. In its proposed rule, Shell Pipeline need do nothing to work proactively to maintain its stated minimum volumes. All Shell Pipeline would do under its proposed rule is let the shippers know that the nominations do not meet the minimums and that heated service will be shut down if the nominations are not increased enough to meet the minimums.

Due to the potential for Shell Pipeline's affiliate, STUSCO, to game the nominations process to shut down heated service to the Independent Shippers and because under Shell Pipeline's proposed tariff, even legitimate refinery turnarounds could adversely affect the Independent Shippers who rely on the heated service, the Commission must reject Shell Pipeline's proposed tariff.¹³⁰

4. Nomination By Type

As reflected in the Joint Tariff, the Independent Shippers propose that crude oil should be nominated and shipped based on three types of crude oil: SJVL, SJVH, and segregated batches.¹³¹ This proposal secures the continued operation of the SJV Pipeline by separating SJVH from SJVL.¹³² It also establishes that blends of SJVH and SJVL are shipper-customized special

¹²⁸ *Administrative Law Judge's Ruling Granting Emergency Motions For Temporary Stay Of Proceedings*, filed November 10, 2008, p. 2.

¹²⁹ Chevron Exh. 46, Lee Prepared, p. 34.

¹³⁰ Chevron Exh. 46, Lee Prepared, pp. 59-60.

¹³¹ IS Exh. 1, Independent Shipper Testimony, p. 3.

¹³² IS Exh. 1, Independent Shipper Testimony, p. 3.

batches that will only be provided after the SJV Pipeline's minimum operating requirements are met.¹³³ Accordingly, the Independent Shippers have added definitions in their proposed tariff for SJVH, SJVL, and SJVB, to prevent Shell's affiliate shipper from injecting lower value crude into the SJVH common stream, which would cause significant economic harm to the Independent Shippers.¹³⁴ Any crude oil that does not meet these definitions could still be shipped as a segregated batch, however.¹³⁵ Shell Pipeline opposes the definitions as well as the proposed practice.

Foremost, the Independent Shippers' proposed tariff treats all shippers the same by providing they nominate for shipment the actual grades of crude petroleum that enter the pipeline – SJVH, SJVL, and segregated batches.¹³⁶ SJVB does not come into the pipeline as blend; it is produced synthetically by blending SJVH and SJVL.¹³⁷ Once the pipeline's minimum volume requirements have been met, any shipper can request that its SJVH and SJVL be blended in whatever proportions it desires for shipment north from Coalinga and delivery to its facilities.¹³⁸ As Tesoro's witness Mr. Miller explains, "There's nothing magical about the blend. At Coalinga, all the light barrels are light. All the heavy barrels are heavy. They just blend them into the pipeline as they go north."¹³⁹

As stated above, in the course of evidentiary hearings, it became clear that Shell Pipeline had blended a non-conforming supply of OCS crude oil into the common stream of SJVH delivered to refineries under STUSCO's "buy/sell" contracts.¹⁴⁰ OCS crude is produced in offshore California, not the San Joaquin Valley, and it has characteristics that differ considerably

¹³³ IS Exh. 1, Independent Shipper Testimony, p. 3.

¹³⁴ IS Exh. 1, Independent Shipper Testimony, pp. 7-9.

¹³⁵ RT 1408-1411 (Panel/Independent Shippers).

¹³⁶ IS Exh. 1, Independent Shipper Testimony, Attachment B, Tariff Item 55.A.

¹³⁷ RT 1448:20-22 (Grimmer/ Independent Shippers).

¹³⁸ Unlike the Shell Pipeline's proposed tariff, the Independent Shippers' tariff expressly includes the lower minimum volume requirement of 125,000 BPD the Pipeline has acknowledged it can currently run through noncontinuous operations. (IS Exh. 1, Independent Shipper Testimony, Attachment B, definition of "Minimum Operating Requirements"; *see also*, RT 1430:28 – 1432:8 (Miller/ Independent Shippers) (IS Exh. 1, Independent Shipper Testimony, Attachment B, Tariff Item 55.A; RT 1395:15-20 (Miller/ Independent Shippers).

¹³⁹ RT 1428:19-22 (Miller/ Independent Shippers); *see also*, RT 1420:14-16 (Miller/ Independent Shippers).

¹⁴⁰ *See, e.g.*, RT 923-924 (Van Zandt/Tesoro).

from those of SJVH crude. The introduction of such supplies allowed STUSCO to be paid more for its OCS crude oil due to its lighter API gravity, while not bearing any charge for its very high levels of sulfur— four times that of SJVH.¹⁴¹ Although the economic cost of processing crude oil with elevated sulfur content varies from refinery to refinery, higher sulfur content is never beneficial in the refining value of crude oil, and high sulfur crude always has a discounted value compared to crude oil with lower sulfur content.¹⁴² OCS crude is lighter than SJVH crude, but its high sulfur content and other characteristics reduce its market price to below that of SJVH crude. Indeed, the testimony establishes that OCS is valued by the open market at \$3.00 to \$5.00 a barrel less than SJVH, but through the buy/sell contracts, STUSCO actually received a price higher than SJVH.¹⁴³

As indicated in Mr. Georgen's testimony, historical OCS blending operations were performed at the Carneras station.¹⁴⁴ The "regrading" of OCS to SJVH at Carneras for the benefit of STUSCO occurred simultaneously as OCS was also being shipped in segregated batches up to the Avon station, and in such a way that ensured that none of the regraded OCS would reach the Shell Martinez Refinery. Thus, the economic refining penalty associated with regrading operations solely impacted the refineries of the Independent Shippers, while allowing STUSCO to sell its OCS crude as SJVH at an inflated price.

For these reasons, the Independent Shippers oppose the "regrading" or blending of OCS supplies, as it benefits STUSCO financially to the great detriment of the shippers of SJVH. The Independent Shippers do not wish to prevent the movement of the OCS supplies on the SJV Pipeline, but wish for it to be done in segregated batches with buffers, as had been done in prior years, such as in the Huntway contracts. Thus, the Joint Tariff provides for segregated movement of OCS crude but precludes the current harmful blending of OCS, which Shell Pipeline calls "regrading."¹⁴⁵ While Shell Pipeline argues that the regrading/blending has been

¹⁴¹ RT 923 – 924 (Van Zandt/Tesoro).

¹⁴² Tesoro Exh. 31, Georgen Prepared, pp. 8-9; Tesoro Exh. 25, Grimmer Prepared, p. 12.

¹⁴³ Tesoro Exh. 31, Georgen Prepared, pp. 12-13.

¹⁴⁴ Tesoro Exh. 31, Georgen Prepared, p. 9.

¹⁴⁵ RT 1411 – 1491 (Joint Panel/Independent Shippers).

minimal, the record shows, from Shell Pipeline's own internal invoices, that it moved a minimum of 7.5 million barrels of OCS into the stream north of Coalinga from 2005 to 2009.¹⁴⁶

The Independent Shippers welcome all new supplies that are within the quality specification limits that can be handled by the proposed Quality Bank, with its gravity and sulfur bank provisions, as provided in the Joint Tariff at Item 150.¹⁴⁷ As the Independent Shippers Tariff Panel testified, crude grades such as San Ardo and North Shafter can be accommodated into the SJVH common stream, as long as they are accompanied with quality bank financial compensation. Indeed, the Joint Tariff provides a mechanism to introduce new supplies with shipper consultation.¹⁴⁸ However, OCS is so far removed in quality from SJVH that it must be handled by segregated batches.

Through the questions it asked the tariff panel on cross-examination, STUSCO tried to create the impression that this nomination process would somehow discriminate against it. STUSCO's questions suggested it has always nominated SJVB and the inability to do so under the Independent Shippers' proposed tariff would disadvantage STUSCO.¹⁴⁹ STUSCO's questions also suggested that it has been "carrying" the Independent Shippers by its singular efforts to maintain the volumes necessary to allow the Independent Shippers to receive heated service on the SJV Pipeline.¹⁵⁰

In its opening brief, STUSCO claims, "The current nomination and scheduling protocol has worked effectively for decades..."¹⁵¹ In fact, the Shell Pipeline presented no evidence what the "current nomination and scheduling protocol" is and neither STUSCO nor Shell Pipeline cited any in briefs. On the contrary, the uncontroverted evidence is that Shell Pipeline used

¹⁴⁶ See Tesoro Exh. 10, Response No. 355 of San Pablo Bay to Chevron's Thirteenth Set of Data Requests and Spreadsheet entitled Annual OCS Blend Volumes; see Tesoro Exh. 22, Shell Trading (US) Company Response to First Set of Discovery and Data Requests of Tesoro Refining and Marketing Company, September 4, 2009; see also Tesoro Exh. 23, Shell Trading (US) Company Supplemental Response to First Set of Discovery and Data Requests of Tesoro Refining and Marketing Company, October 5, 2009.

¹⁴⁷ See IS Exh. 1, Independent Shipper Testimony, Attachment B, Tariff Item 150.

¹⁴⁸ RT 1392 – 1393 (Grimmer/Independent Shippers).

¹⁴⁹ See, e.g., Tesoro Exh. 7, Response of San Pablo Bay to Tesoro's Seventh Set of Data Requests, dated April 1, 2010; RT 1409:21 – 1411:11, 1420:20 – 1422:15, 1426:17-21 (Joint Panel/Independent Shippers).

¹⁵⁰ RT 1401:7-16, 1450:19 – 1451:5 (Grimmer/Independent Shippers).

¹⁵¹ STUSCO Opening Brief, pp. 5, 12.

separate nominations of SJVH and SJVL in the past—a fact uncontested in the record.¹⁵² Since Shell Pipeline and STUSCO have provided no transparency about how they operate their nomination process, they presented no evidence that it is not still being done this way today. The evidence from Shell Pipeline's own records, however, is that the only grades of crude petroleum shipped into Coalinga are either SJVH or SJVL, while SJVB is created in Coalinga and shipped north from there.¹⁵³

By providing that all shippers nominate either SJVH, SJVL or segregated batches (including the OCS the pipeline currently "regrades" as SJVH for STUSCO), and only receive SJVB once the minimum operating requirements have been met, the Independent Shippers' proposed nomination process puts an equal burden on all shippers to nominate sufficient total volumes to meet the minimum volume requirements. As Tesoro's witness Mr. Miller put it:

We're not asking for the pipeline to operate any different than it has. We're looking at it to accommodate the nominations of all shippers on an equal playing field to make sure that the barrels, all barrels that are nominated into this pipeline get delivered in the right qualities and quantities to those shippers that nominated the volume at the other end.¹⁵⁴

STUSCO tried to suggest that, since the Shell Pipeline proposed tariff did not contain any minimum volume requirement for the blended service STUSCO uses, the Independent Shippers' proposed nomination process will disadvantage STUSCO.¹⁵⁵ Although the Shell Pipeline proposed tariff¹⁵⁶ does not contain a minimum volume requirement for blended service, Shell Pipeline witness Mr. Dompke was very clear—there is a 100,000 BPD minimum volume requirement even for blended service alone.¹⁵⁷ Since STUSCO itself ships only about 90,000 –

¹⁵² RT 1409:13-15 (Miller/Independent Shippers).

¹⁵³ Chevron Exh. 30, San Joaquin Pipeline Segment Volumes - 2007, and Chevron Exh. 31, San Pablo Bay Discovery Response to 7th & 8th Request, 2008 Segment Spreadsheet Rev#1, 2009 Segment Spreadsheet Rev#2, dated October 9, 2009.

¹⁵⁴ RT 1451:26 – 1452:4 (Miller/Independent Shippers).

¹⁵⁵ RT 1395:26 – 1369:22 (Miller/Independent Shippers).

¹⁵⁶ SP Exh. 20, Ralph Rebuttal, Appendix A.

¹⁵⁷ Chevron Exh. 31, San Pablo Bay Discovery Response to 7th & 8th Request, 2008 Segment Spreadsheet Rev#1, 2009 Segment Spreadsheet Rev#2, dated October 9, 2009; SP Exh. 9, Rebuttal Testimony of John J. Dompke, dated February 8, 2010 ("Dompke Rebuttal"), p. 4.

95,000 BPD of SJVB, STUSCO needs the volumes of SJVH nominated by the Independent Shippers as much as the Independent Shippers need the volumes nominated by STUSCO to keep the SJV Pipeline flowing.¹⁵⁸ Thus, adopting a nomination process that explicitly puts all shippers on an equal footing is not only consistent with basic principles of public utility operation, it also comports with the reality of the operating requirements for the SJV Pipeline.

5. Minimum Volumes

Item 55.1 – Minimum Operating Requirements As to Item 55.1 in the Joint Tariff, Shell Pipeline makes the absurd claim that the Joint Tariff “strips the Carrier of its power to determine the most cost effective means for dealing with [minimum operating requirements] issues.”¹⁵⁹ It incorrectly claims that the SJV Pipeline can be compelled to fund any project that the shippers deem desirable, which would expose the SJV Pipeline to the operating risks of implementing a shipper-approved project and its adverse effect on the cost, safety or reliability of future service. Further, Shell Pipeline complains that it has no guarantee that the cost of the project can be fully recovered from Independent Shippers, as they are not required to make any commitments to make future shipments.¹⁶⁰

Shell Pipeline also asserts that since the Commission has oversight power and must approve any request to shut down heated SJVH service, it is “unnecessary and there is no rationale for the Independent Shippers to impose restrictions or obligations to ensure that San Pablo Bay manages and maintains heated SJVH service in a manner consistent with its best judgment.”¹⁶¹

Shell Pipeline stretches its logic even further in claiming that the Joint Tariff would “dilute or usurp San Pablo Bay’s management authority to make the decisions required to fulfill

¹⁵⁸ See, e.g., RT 1452:16 – 1453:18 (Grimmer/Independent Shippers).

¹⁵⁹ San Pablo Bay Opening Brief, p. 95.

¹⁶⁰ *Id.* at 95-96.

¹⁶¹ San Pablo Bay Opening Brief, p. 96.

its obligations to stakeholders.”¹⁶² Shell Pipeline then rolls out its unsupported "scare tactic" alleging the Joint Tariff provisions could result in an accident, interruption of service, adverse impact on the surrounding environment, or failure to comply with various safety or environmental regulations, and that its management would bear the consequences.¹⁶³ This sheer speculation has no support whatsoever, particularly in light of the Commission’s oversight of such issues as part of its regulation of this pipeline.

The issue of minimum operating requirements consistently has been a sticking point between Shell Pipeline and the Independent Shippers. Minimum operating requirements are defined as the minimum volumes that are required to keep the pipeline operating in either a continuous flow mode or a noncontinuous flow mode.¹⁶⁴ Shell Pipeline has insisted on a high minimum from its unaffiliated shippers, which if not met, could likely cause a shut down in SJVH service operations for three months at least, with a substantial cost borne exclusively by the Independent Shippers that receive SJVH.¹⁶⁵

STUSCO somehow assumes that under the Joint Tariff, Tesoro and Valero would be assured of the ability to deliver SJVH, but STUSCO would be precluded from delivering SJVB until the minimum operating requirements are met through separate nominations of SJVH and SJVL. STUSCO states that the Joint Tariff is designed to create conditions that would ensure that Chevron’s SJVH crude oil will flow on the SJV Pipeline.¹⁶⁶ The positions and statements of both Shell entities are without factual support and devoid of merit.

Tesoro’s Golden Eagle refinery and Valero’s Benicia refinery and asphalt plant are configured to process neat SJVH. Processing SJVH blended with SJVL carries a significant economic penalty to Tesoro and Valero, compared to processing neat SJVH, and Valero's asphalt

¹⁶² *Id.*

¹⁶³ San Pablo Bay Opening Brief, p. 97.

¹⁶⁴ RT 1391 (Panel/Independent Shippers).

¹⁶⁵ RT 415 – 416 (Dompke/San Pablo Bay), RT 580 – 582 (Smith/San Pablo Bay). Further, this position is not even supported by STUSCO, which argues, “A refiner (shipper) should not be subject to a minimum volume requirement.” STUSCO Opening Brief, p. 12.

¹⁶⁶ STUSCO Opening Brief, p. 14.

plant requires neat SJVH to make the variety of asphalt products that it currently produces.¹⁶⁷ Shell's refinery, however, is configured to process SJVB with no apparent economic penalty compared to receiving SJVL and neat SJVH separately. Since the minimum volume for SJVB is lower than the minimum volume for SJVH, Shell Pipeline's affiliate STUSCO has significant leverage over the Independent Shippers under the provisions of the tariff proposed in Shell Pipeline's rebuttal testimony.¹⁶⁸ The nominations process proposed by the Independent Shippers would justly eliminate much of the leverage that would otherwise continue to be enjoyed by STUSCO.

It seems that SJVL, controlled by STUSCO, also needs a significant amount of SJVH for the SJV Pipeline to move the SJVL. Thus, a blend of heated SJVH crude with the SJVL is also required for operations—but that fact is not reflected in the Shell Pipeline proposed tariff. Nor does Shell Pipeline's proposed tariff address any steps Shell Pipeline can take to reduce the pipeline's necessary minimum flow requirements. Indeed, the testimony of Paul Smith confirmed that the recent two instances in which Shell Pipeline threatened to shut down the pipeline's heated service were caused by STUSCO's insufficient nominations and renominations of volumes,¹⁶⁹ and Mr. Dompke identified at least six separate actions that Shell Pipeline can take that will dramatically reduce the pipeline's minimum required volumes, and which an independent company, EDM, described in a revised hydraulics study.¹⁷⁰

The Joint Tariff addresses these issues. By requiring that SJVH and SJVL be separately nominated, Shell Pipeline can determine what the SJV Pipeline can ship in any given month and allow shippers to modify nominations to increase the flow.¹⁷¹ This sharing of the burden by all shippers is fair. The separate nomination requirement sets balanced requirements and limits on shippers and Shell Pipeline, and it reflects an independent evaluation of hydraulic studies in a

¹⁶⁷ Valero Exh. 6, Rebuttal Testimony of Kevin M. Lassahn on Behalf of Valero Marketing and Supply Company, dated April 16, 2010 ("Lassahn Rebuttal"), pp. 5:1-7, 6:5-10, 8:14-24.

¹⁶⁸ SP Exh. 20, Ralph Rebuttal, Appendix A.

¹⁶⁹ RT 593 – 598 (Smith/San Pablo Bay).

¹⁷⁰ SP Ex. 9, Dompke Rebuttal, p. 6:11-18.

¹⁷¹ RT 1409-1411 (Panel/Independent Shippers).

process whereby the minimum requirement can be reduced by mutual agreement and funded by rates.¹⁷²

6. Throughput Decline

Mr. Dompke identified from the EMS hydraulic study the six steps that Shell Pipeline could take to reduce the pipeline's minimum flow obligation to well below 100,000 barrels per day.¹⁷³ He conceded declining volumes could be addressed in a number of ways: require minimum flows from ratepayers, take one or more of the six steps, or some combination of the two.¹⁷⁴ The six steps include (a) addition or reactivation of heaters, (b) alternate measurement technology (meter) near Avon, (c) utilizing a noncontinuous operating mode, (d) revised storage tank usage and adding proprietary storage back into the system, (e) "tight line operations", and (f) lowering the delivery temperature at Avon.¹⁷⁵ While Mr. Dompke did not support all of the six, he indicated that the range of costs was from \$0 to \$12 million. However, Shell Pipeline has not committed to take any steps whatsoever in this regard. One action alone, at the cost of only \$1.25 million, could reduce the minimum operating requirement to 100,000 barrels per day from Shell's proposed 140,000 barrels per day.¹⁷⁶

In fact, Shell Pipeline has not even committed to start the studies necessary to undertake the small capital projects that could alleviate the minimum flow bottlenecks on its pipeline, nor has it even contracted with anyone to do the studies.¹⁷⁷ The excuse, as stated by Mr. Dompke, is that the supply decline is not yet imminent and the pipeline is operating at above the minimum levels.¹⁷⁸ This position is in stark contrast to the doomsday predictions of Mr. LaBorne that are made to support the need to raise rates. It also ignores the recent incidents when Shell Pipeline threatened to shut down the pipeline based upon assertions of insufficient nominations to meet

¹⁷² IS Exh. 1, Independent Shipper Testimony, p. 3.

¹⁷³ SP Exh. 9, Dompke Rebuttal, p. 6:11-18.

¹⁷⁴ RT 472 (Dompke/San Pablo Bay).

¹⁷⁵ RT 472 – 474 (Dompke/San Pablo Bay).

¹⁷⁶ RT 448 – 449 (Dompke/San Pablo Bay).

¹⁷⁷ RT 475 – 476 (Dompke/San Pablo Bay); *see also*, Tesoro Exh. 7, Response of San Pablo Bay to Tesoro's Seventh Set of Data Requests, dated April 1, 2010.

¹⁷⁸ RT 476 (Dompke/San Pablo Bay).

minimum flow requirements. In the face of such intransigence and inconsistencies, Item 55.1 of the Independent Shipper joint tariff is crucial to provide for continuing but non-discriminatory service to all shippers.

Mr. LaBorne's prepared testimony of September 20, 2008 and February 8, 2009 both claimed Shell Pipeline "will consider" and is "willing" to propose incentive rates or other mechanisms to maintain and increase throughput.¹⁷⁹ Although it has been 19 months since Mr. LaBorne first made those statements, Shell Pipeline has taken no steps to propose any contract or tariff mechanisms for maintaining or increasing volumes shipped.¹⁸⁰

This area provides yet another reason to adopt the Joint Tariff in lieu of the cut-and-paste effort of Shell Pipeline and its affiliates. It is inconceivable that an independent utility would oppose a provision where the ratepayers are agreeing in advance to pay for operating changes and/or facility additions that enhance or maintain service, but that is apparently Shell Pipeline's position in this matter.

Rule 55.1 requires Shell Pipeline to be proactive in analyzing future throughput and the steps it can take to reduce the minimum volume requirements to ensure the SJV Pipeline can continue to provide service to all shippers as San Joaquin Valley crude production continues to decline.¹⁸¹ In this respect, Rule 55.1 does nothing more than remind Shell Pipeline of the requirements of the Public Utilities Code that every public utility must provide adequate facilities. Pub. Util. Code § 451.¹⁸² The principal elements of Rule 55.1 are as follows:

1. Within one month the pipeline, in conjunction with the shippers, will determine the minimum volume requirements for each pipeline segment "based on sound engineering and reasonable assumptions in hydraulic studies."¹⁸³

¹⁷⁹ SP Exh. 21, Direct Testimony of Kevin E. LaBorne on Behalf of San Pablo Bay Pipeline Company LLC, dated September 30, 2008 ("LaBorne Direct"), p. 12; SP Exh. 23, LaBorne Rebuttal, pp. 10, 12, 24.

¹⁸⁰ RT 721:21-25 (LaBorne/San Pablo Bay).

¹⁸¹ IS Exh. 1, Independent Shipper Testimony, p. 15; RT 1455:26 – 1456:3 (Miller/Independent Shippers).

¹⁸² CA Pub. Util. Code § 451 states "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

¹⁸³ IS Exh. 1, Independent Shipper Testimony, Tariff Item 55.1.A.

2. Within six months and at least every 12 months thereafter, the pipeline will develop options for further reducing the minimum volume requirements and present them to the shippers.

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3. The pipeline will organize a shippers' meeting at least once a year to discuss throughput forecasts and options to reduce minimum volume requirements.¹⁸⁵

4. Following this, the pipeline will determine what studies to conduct and communicate the results to the shippers.¹⁸⁶

5. A majority of the shippers may recommend projects, which are deemed to be in the public interest and consistent with the pipeline's obligation to serve. Thereafter, either Shell Pipeline files with the Commission to proceed with the shipper-recommended projects and include the costs in rates on an equal cents per barrel basis, or the shippers may file a complaint with the Commission.¹⁸⁷

Shell Pipeline's primary objection is to the concept that the shippers would have a substantial right to participate in its decision-making about capital projects to reduce minimum volume requirements.¹⁸⁸ Admittedly, such a tariff provision is not standard to the industry.¹⁸⁹ But here, the Commission is dealing with an unprecedented set of circumstances. It is unprecedented that a pipeline company would propose a tariff that favors its affiliate by providing the affiliate with a firmer class of service than that offered to the Independent Shippers and at lower rates. It is unprecedented that a pipeline company would claim to be so close to its minimum operating requirements that (a) it threatened to shut down heated service to the Independent Shippers in October 2008 and (b) its lead witness forecasted that this year the throughput would average less than the claimed minimum volume requirement, and yet want to

¹⁸⁴ IS Exh. 1, Independent Shipper Testimony, Tariff Item 55.1.B.

¹⁸⁵ IS Exh. 1, Independent Shipper Testimony, Tariff Item 55.1.D.

¹⁸⁶ IS Exh. 1, Independent Shipper Testimony, Tariff Item 55.1.E.

¹⁸⁷ IS Exh. 1, Independent Shipper Testimony, Tariff Item 55.1.F.

¹⁸⁸ See RT 1468:5 – 1469:20 (Miller/Independent Shippers).

¹⁸⁹ RT 1467:15-27, 1469:21 – 1470:28 (Lee/Independent Shippers); RT 1471:18-26 (Grimmer/Independent Shippers).

do nothing about it.¹⁹⁰ It is unprecedented that Shell Pipeline would do nothing on its own to reduce the minimum volume requirements to head off a shutdown of service to its non-affiliated shippers, and simply forego that lost revenue.¹⁹¹ Though Shell Pipeline's Mr. Dompke testified that a modest investment of \$1 – \$1.5 million to replace the meter at Avon would allow the Coalinga to Avon minimum volume requirement to be reduced to 100,000 BPD, Shell Pipeline has done nothing more than perform initial estimates and conceptual engineering review of the options.¹⁹² Chevron's David Lee summed up the Independent Shippers' concern as follows:

What concerned us, I guess, would be the testimony of Mr. LaBorne, who used in his forecast that we would be under a 140,000 barrels a day minimum this year. And if I was operating the pipeline, I would certainly want to be putting in some measures, working with the shippers letting them know that they were forecasting that. Each one of the shippers [doesn't] know what the volumes of the other ones are going to nominate. So we put in that provision just to be a little bit more proactive between the shippers and the pipeline.¹⁹³

As Tesoro's witness Ralph Grimmer testified, "We want to move to a lower minimum volume ASAP. In fact, it's us been pushing the pipeline rather than the other way around."¹⁹⁴

STUSCO created the impression through its questions of the Independent Shippers tariff panel that any proposal by Shell Pipeline that would provide economic incentives to shippers who commit to maintain or increase volumes would not be acceptable to the pipeline's affiliate. This begs the question whether—left to its own devices—Shell Pipeline would ever do anything to reduce minimum volumes or increase throughput, so long as it can continue to supply its refining and marketing affiliates.

¹⁹⁰ RT 688:21 – 690:16 ((LaBorne/San Pablo Bay).

¹⁹¹ *See, e.g.*, RT 1491:21-24 (Miller/Independent Shippers) ("there's been several investments identified that [would] lower the minimum and yet they have not been pursued or proactively developed"); RT 601:19 – 604:19 (Smith/San Pablo Bay).

¹⁹² RT 449:2-11 (Dompke/San Pablo Bay); Chevron Exh. 20, Shell Pipe Line Company-San Pablo Bay Pipeline Company - Hydraulic Capacity Study, EDM Services, Inc., Phase II, pp. 7-8.

¹⁹³ RT 1461:7-17 (Lee/Independent Shippers).

¹⁹⁴ RT 1450:1-3 (Grimmer/Independent Shippers).

With California San Joaquin Valley crude production continuing to decline, Shell Pipeline needs to consider and accept mechanisms that allow the pipeline to serve all customers, even if San Joaquin Valley crude volumes shipped on the SJV Pipeline decline.¹⁹⁵ It is important that Shell not be provided an opportunity to exploit the declining available supplies by using its monopoly control of the transportation of such supplies, to cut off its competitors' access. Decreasing the overall system minimum volumes equitably benefits all shippers, and all shippers would share in these costs under the proposal of the Independent Shippers.¹⁹⁶ In effect, Item 55.1 ensures the Shell Pipeline will work with its shippers to explore and implement mechanisms to allow the San Pablo Bay pipeline system to operate at lower minimum volumes.¹⁹⁷ As Mr. Grimmer testified as part of the joint panel of Independent Shippers:

The last thing the independent shippers want to do is see the pipeline go down. It's in our best interest for the pipeline to operate. Everything we've done is to try to shape and incent . . . all the shippers to be on a level playing field, and to all look for way to keep this pipeline operating at all times.¹⁹⁸

Clearly, the Independent Shippers seek to work with Shell Pipeline to ensure that the SJV Pipeline serves all shippers' interests and that it continues to provide a utility service to all of its customers.

Under cost-of-service regulation, the owner of a common carrier pipeline has an incentive to make prudent investments for the future benefit of the pipeline and its customers. These investments would be placed into the rate base of the pipeline and customers would support the investments through their rates. A pipeline company would thus have the proper incentive to invest in needed improvements. The needed improvements for the Shell Pipeline are those that will reduce the required throughput as the production of SJVH declines.

¹⁹⁵ IS Exh. 1, Independent Shipper Testimony, pp. 14-15, Attachment B, Tariff Item 55.1.

¹⁹⁶ IS Exh. 1, Independent Shipper Testimony, pp. 14-15, Attachment B, Tariff Item 55.1.

¹⁹⁷ *Id.*

¹⁹⁸ RT 1433 (Joint Panel/Independent Shippers).

If Shell Pipeline were acting as a prudent owner of a public utility, it would have proposed a process by which such improvements could be approved by this Commission and placed into the rate base. As Shell Pipeline has made no such proposal, the Commission should adopt Item 55.1 as part of the Joint Tariff.¹⁹⁹

V. CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the Independent Shippers respectfully request that the Commission adopt the proposed tariff jointly submitted by the Independent Shippers for the SJV Pipeline and order the operating changes proposed by the Independent Shippers in this proceeding as incorporated within the Joint Independent Shippers Tariff.

Dated: July 19, 2010

Respectfully submitted,

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¹⁹⁹ See IS Exh. 1, Independent Shipper Testimony, pp. 14:26-15:18, Attachment B, pp. 18-20.

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PROOF OF SERVICE

I, Kim O.T. Trinh, declare as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111-3719. On July 19, 2010, I served the within:

JOINT INDEPENDENT SHIPPERS' REPLY BRIEF

on the interested parties in this action addressed as follows:

See attached service list.

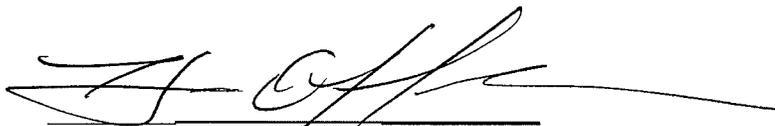


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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 19, 2010, at San Francisco, California.



Kim O.T. Trinh

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