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

Application of San Pablo Bay Pipeline Company LLC for Approval of Tariffs for the San Joaquin Valley Crude Oil Pipeline.	Application 08-09-024 (Filed September 30, 2008)
And Related Matters	Case 08-03-021 Case 09-02-007 Case 09-03-027

CHEVRON PRODUCTS COMPANY'S REPLY COMMENTS ON PROPOSED DECISION SETTING RATES FOR TRANSPORTATION OF CRUDE OIL BETWEEN THE SAN JOAQUIN VALLEY AND THE SAN FRANCISCO BAY AREA, ORDERING REFUNDS AND ADOPTING TARIFFS FOR HEATED SERVICE

JOSEPH M. MALKIN
NIKKA N. RAPKIN
DONALD A. SNEAD
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105-2669
Telephone: (415) 773-5505
Fax: (415) 773-5759
E-mail: jmalkin@orrick.com

Attorneys for Protestant and Complainant
CHEVRON PRODUCTS COMPANY

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The criticisms of ALJ Karl Bemesderfer's PD leveled by SPBPC and STUSCO reflect two propositions that are at odds with fundamental regulatory principles:

- SPBPC argues the PD "departs from Commission precedent" by refusing to reward the Pipeline with an inflated ratebase for the years it spent evading regulation by use of "buy/sell" agreements to disguise the transportation service it was providing and for the two years it litigated Chevron's C.05-12-004 that ultimately led the Commission to declare that the Pipeline had been operating as a public utility since at least 1996.
- STUSCO claims it is "unlawful discrimination" to deny it the affiliate preferences – higher quality service, preferential access to certain Pipeline facilities, and the ability to pass off low-quality OCS crude as higher value SJV Heavy[1] – it has enjoyed for years.[2]

Five pages are not sufficient to detail all the errors in SPBPC's and STUSCO's comments, so this reply only addresses some of them.

1. <u>$1.34 per barrel is the appropriate rate</u>.

The Commission has a "long-established practice that utility assets are to be valued at depreciated original cost at the time such assets are first dedicated to public service." *Application of Red and White Fleet, Inc.*, D.97-06-066, 1997 Cal. PUC LEXIS 229 at *47.

Despite this long-established practice, SPBPC asserts that "Commission precedent and policy establish[] that FMV is the measure of rate base in cases involving the conversion of proprietary assets to public utility status." (SPBPC Comments at 5-6.) Thus, SPBPC claims to be entitled to a ratebase methodology the Commission allowed certain pipelines that <u>voluntarily</u> submitted to regulation <u>with the concurrence of their shippers</u>. What SPBPC wants would reward the Pipeline for its past illegal conduct and, thus, is contrary to all sound regulatory

[1] The Pipeline's mixing of STUSCO's OCS crude with SJV Heavy has the effect of increasing the value of the OCS by about $5 per barrel – at the expense of Tesoro and Valero. From 2005 through the first quarter of 2009, 7 million barrels of OCS were passed off as SJV Heavy, increasing the value of the OCS to STUSCO by about $35 million. (Grimmer/Tesoro, Tr. 1416:14-16.) As STUSCO acknowledges, under the adopted tariff, "OCS crude does not gain the economic benefit of the price of the comingled [SJV Heavy] stream at Avon." (STUSCO Comments at 11-12.)

[2] STUSCO claims the higher pipeline loss allowance ("PLA") for crudes other than SJV Heavy is discriminatory because "[t]here is no evidentiary basis for differential treatment in the level of the PLA deduction." (STUSCO Comments at 17.) This is not true. The only evidence in the record is that losses associated with the highly viscous, lower API gravity SJV Heavy crude are substantially less than those associated with higher API gravity crudes, such as the SJV Blend. (Lee, Ex. Chevron-46 at 25.)

principles. (*See* Chevron Comments at 6-8.) D.07-07-021, as modified by D.12-12-040, did not even hint – let alone hold – that the Pipeline's assets were first dedicated to public service on the effective date of the decision. Rather, based on evidence of past conduct, the Commission found the Pipeline had dedicated its assets and had been operating as a public utility since at least 1996.

The PD rightly concludes that Chevron's witness O'Loughlin's original costs analysis is the only one that is consistent with Commission ratemaking principles and D.07-07-021 (PD, pp. 18-24), and SPBPC does not contend the $1.34 per barrel is incorrectly calculated on this basis.

2. <u>The refund period and amount are proper</u>.

Even if the two-year statute of limitations of Public Utilities Code § 735 were applicable, it does not bar Chevron's claim for refunds back to April 1, 2005. The filing of Chevron's original complaint, C.05-12-004, in December 2005, equitably tolled the statute of limitations.[3] (Chevron Comments at 13 n35.)

Having decided that the Independent Shippers are entitled to refunds from April 1, 2005, the PD had to determine the just and reasonable rate for the Pipeline's transportation service until the $1.34 rate is effective. Chevron pointed out that, when it increased its rate from $1.09 to $1.69 per barrel on April 1, 2005 and then to $1.90 per barrel on January 1, 2006, the Pipeline failed to follow Public Utilities Code § 454, which requires all public utilities to obtain Commission approval prior to increasing rates.[4] The Commission could hold that failure to follow the Code limits the Pipeline to the $1.09 per barrel rate for the entire refund period. *E.g.*, *Ortega v. AT&T Communications*, D.98-10-023, 1998 Cal. PUC LEXIS 673 at *7 ("Because the rate increase reflected in AL 254 was not approved by the Commission, and is therefore invalid, charging such a rate is unreasonable, thus enabling the Commission to order reparations . . . .").

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[3] In any event, since SPBPC admits that the rates it has been charging are not set forth in any tariff (Comments at 10), that establishes a *per se* violation of Public Utilities Code § 494. Without a tariff on file, the Pipeline was by definition charging a rate other than that reflected in its filed tariff. Thus, the three-year statue of limitations of Public Utilities Code § 736 applies.

[4] The only exception to § 454 stems from § 455.3, which allows pipeline utilities, upon 30 days' written notice to the Commission, to increase rates up to 10% annually without prior Commission approval. The increase from $1.09 to $1.69 was 55%, and the increase from $1.69 to $1.90 was the second in 8 months.

While ordering refunds based on a $1.09 per barrel rate is reasonable and justified, so is the PD's "compromise" findings of the reasonable past rates. The PD uses the "negotiated" rate between the Pipeline and its affiliate, STUSCO, as the proxy for a reasonable rate from April 1, 2005 to the effective date of the $1.34 per barrel rate. (PD, pp. 17-18.) SPBPC points out (Comments at 11) that the STUSCO rate varied from month to month because the Pipeline and STUSCO agreed to adjust the rate to reflect the variable amounts of SJV Heavy and SJV Light STUSCO shipped each month. Similarly adjusting the rate for the Independent Shippers makes no sense. The Independent Shippers only ship SJV Heavy, so there is no logical basis to adjust the rate to reflect the different relative monthly quantities of SJV Heavy and SJV Light shipped by STUSCO. Using the STUSCO rate at the start of both parts of the refund period (April 1, 2005, when the Chevron rate was increased to $1.69, and January 1, 2006, when the Chevron rate was increased to $1.90), as the PD does, is the sensible way to address the refunds.

SPBPC further claims the Commission should add two cost elements to the "market" rate negotiated between the Pipeline and STUSCO. Adding cost elements to a market rate is nonsensical as those costs are already embedded in the rate. Since the Pipeline takes title to all crude oil while in transit, the Pipeline provides line fill to STUSCO and that is accounted for in STUSCO's rate.[5] Similarly, SPBPC wants to add the "cost" of "heat" to a rate that already includes the higher heated rate in its determination. The PD rightly does not allow SPBPC to "have its cake, and eat it too."

3. <u>The "invasion of management" rationale relied on by SPBPC to try to justify the affiliate preferences in its tariff has been rejected</u>.

Citing *Pacific Tel. & Tel. Co. v. PUC*, 34 Cal. 2d 822 (1950), SPBPC argues that rejection of its proposed tariff in favor of one that treats all shippers equally is an "improper"

[5] Even if it were proper, SPBPC overstates the cost of "line fill." (SPBPC Comments at 11-12.) SPBPC wants the benefit of current high market prices for the line fill, but on an original cost basis, the per-barrel cost would be $0.0459. (O'Loughlin, Ex. Chevron-50, MPO_93, p. 1.) SPBPC's claimed $0.23 per barrel is derived from Ex. SP-52 (SPBPC Comments at 12 n31). This exhibit was not sponsored by any witness and should be given no weight. The only evidence regarding this exhibit is the testimony of O'Loughlin that it is unreasonable. (O'Loughlin/Chevron, Tr. 1202:13-1203:27.)

interference with management. (SPBPC Comments at 12-16.) Thirty years ago, the Supreme Court limited the 60-year-old "invasion of management" doctrine in *General Telephone v. Public Utilities Commission*, 34 Cal. 3d 817 (1983). And, the Commission has stated, "The 'invasion of management rational is wholly discredited . . . ." *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanism for Generation Procurement and Renewable Resource Development*, 2001 Cal. PUC LEXIS 1216, at *26.

Substantively, SPBPC's and STUSCO' complaint about the nomination provision of the adopted tariff is that it eliminates the preferred class of service STUSCO enjoys today from its affiliated Pipeline. (SPBPC Comments at 14-15; STUSCO Comments at 15-17.) Today, the Pipeline imposes minimum volume requirements only on the Independent Shippers. Even if the minimum volume for SJV Heavy is not met, the Pipeline will continue to ship blend for STUSCO while it interrupts service to the Independent Shippers. Not only is this affiliate favoritism, it eliminates any incentive on the part of the largest shipper on the Pipeline – STUSCO – to cooperate with other shippers to meet minimum volume requirements or to improve service on the Pipeline. Chevron's post-hearing brief detailed the potential for gaming and interruption of service to the Independent Shippers allowed by SPBPC's proposed tariff.[6] The adopted tariff puts all shippers on an equal footing by requiring them to nominate the actual grade of crude that enters the Pipeline, a nomination process that the uncontested evidence showed has been used in the past.[7]

The Commission should recognize the criticisms for what they are: an attempt to maintain "business as usual" under Commission regulation with STUSCO continuing to benefit from all the preferences it has enjoyed to date.

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[6] Chevron. Op. Br. at 92-95. While STUSCO makes creative arguments about the purported "harms" this will cause the refinery owned by Equilon, which is also the Pipeline's owner (STUSCO Comments at 13-17), STUSCO presented no evidence in the hearings and cites none for these points in its comments.

[7] Miller/Tesoro, Tr. 1409:13-15.

4. **<u>Tesoro's proposed change to Ordering Paragraph 4 is unjustified and would involve the Commission in contractual issues</u>.**

Although not discussed in its comments, Tesoro slipped into its proposed change to Ordering Paragraph 4 language that purports to require refunds to be paid "to the party determined to be the customer for whom the transportation service was actually provided and who was ultimately responsible for the transportation rate . . ." Without any context, this language is almost incomprehensible. What Tesoro is trying to do with this vague language is to embroil the Commission in the interpretation of the crude oil sales contracts between Chevron and Tesoro.

The Commission has long held it has no jurisdiction to adjudicate contract disputes between private parties, and thus no basis to order either the Pipeline or Chevron to give any portion of Chevron's refunds to Tesoro.[8] *E.g.*, *Windmill v. Alco Transportation Co.*, D.86-05-044, 1986 Cal. PUC LEXIS 321 at *9 ("The Commission has no jurisdiction to hear and determine contract disputes."). The Commission should not adopt Tesoro's proposed change to Ordering Paragraph 4.

<u>Conclusion</u>

The PD rightly finds SPBPC failed to carry its burden to prove its proposed rates, terms and conditions are just and reasonable. The "errors" SPBPC claims boil down to SPBPC's belief that its arguments should have been credited more than the expert testimony and evidence of Chevron and the other Independent Shippers. None of them provide a basis to reject or modify the PD. The Commission should adopt the PD with the technical corrections and changes proposed by Chevron.

Dated: April 13, 2011

Respectfully submitted,

By: /s/ Joseph M. Malkin
JOSEPH M. MALKIN
Attorneys for Protestant and Complainant
CHEVRON PRODUCTS COMPANY

[8] In fact, if Chevron had purported to assign its refund claim to Tesoro, the Commission would be precluded from recognizing the claim. *See* Pub. Util. Code § 734.

CERTIFICATE OF SERVICE BY E-MAIL

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, California 94105-2669. On April 13, 2011, I served the following document:

CHEVRON PRODUCTS COMPANY'S REPLY COMMENTS ON PROPOSED DECISION SETTING RATES FOR TRANSPORTATION OF CRUDE OIL BETWEEN THE SAN JOAQUIN VALLEY AND THE SAN FRANCISCO BAY AREA, ORDERING REFUNDS AND ADOPTING TARIFFS FOR HEATED SERVICE

on the interested parties in consolidated Dockets A.08-09-024, C.08-03-021, C.09-02-007 and C.09-03-027 in this action by electronic mail to the following:

jleslie@luce.com
barbara.hickl@shell.com
michael.hindus@pillsburylaw.com
jmalkin@orrick.com
epoole@adplaw.com
jsqueri@goodinmacbride.com
mgo@goodinmacbride.com
dhuard@manatt.com
jkarp@winston.com
cassandra.sweet@dowjones.com
judypau@dwt.com
mcorcoran@goldstein-law.com
kris.mira@shell.com
robbie.ralph@shell.com
tim.gehl@shell.com
andrew.dalton@valero.com
barron.w.dowling@tsocorp.com
marcie.milner@shell.com
jpmosher@aeraenergy.com
majidm@sjr.com
ddonabedian@luce.com
wesley.spowhn@pillsburylaw.com
bcragg@goodinmacbride.com
tkaushik@manatt.com
vidhyaprabhakaran@dwt.com
mday@goodinmacbride.com
tsolomon@winston.com

cem@newsdata.com
dcoh@chevron.com
rock@cipa.org
alf@cpuc.ca.gov
kjb@cpuc.ca.gov

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 13, 2011, at San Francisco, California.

/s/ Erica S. Andrada
Erica S. Andrada