



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

FILED

04-28-10
04:59 PM

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

A.08-09-024
C.08-03-021
C.09-02-007
C.09-03-027

**CHEVRON PRODUCTS COMPANY'S OPPOSITION TO MOTION OF SAN PABLO
BAY PIPELINE COMPANY LLC TO STRIKE REBUTTAL TESTIMONY**

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Date: April 28, 2010

I. Introduction

San Pablo Bay acknowledges that Chevron is entitled to “the ‘last’ word” with respect to its refund claim. (Mot. at 3.) Yet, with a broad claim that the testimony is “unrelated to any refund issue,” *id.*, San Pablo Bay now seeks to strike the majority of Chevron’s rebuttal testimony in support of refunds. Contrary to San Pablo Bay’s assertion, this testimony is relevant to establishing the Shell Pipeline’s overcharges from April 1, 2005, through the present (hereinafter, the “Refund Period”).

Each of the four Chevron rebuttal witnesses explicitly addresses the central questions in the refund case: Were the Shell Pipeline’s rates from April 1, 2005, to the present just and reasonable, and, if not, what was the appropriate rate the pipeline should have charged? By demonstrating that the Shell Pipeline possessed and exercised market power throughout the Refund Period, the rebuttal testimony of Dr. Cox, Mr. Lee, and Mr. Yoham establishes that the Shell Pipeline was not entitled to market-based rates and that reasonableness of the past rates charged must be evaluated on a cost-of-service basis. Dr. Vilbert’s rebuttal testimony is similarly relevant to Chevron’s refund claim. By calculating the appropriate cost of capital for the Shell Pipeline during the Refund Period, Dr. Vilbert provides an essential component of the testimony of Matthew O’Loughlin (which San Pablo Bay does not move to strike), which in turn demonstrates what the Shell Pipeline should have been allowed to charge, had it appropriately submitted itself to this Commission’s regulation as a public utility.

Taken together, Chevron’s rebuttal witnesses demonstrate that the Shell Pipeline overcharged Chevron throughout the period since April 1, 2005, entitling Chevron to a refund of those overcharges. San Pablo Bay’s motion to strike this testimony ignores both the obvious relationship of Shell Pipeline’s historic exercise of market power to Chevron’s refund case and

the rebuttal testimony's explicit attention to the Refund Period. Chevron's rebuttal testimony appropriately supports Chevron's refund claims and San Pablo Bay's motion should be denied in its entirety.

II. Discussion

San Pablo Bay's motion relies on the untenable premise that the Shell Pipeline's market power during the Refund Period and cost of capital are irrelevant to Chevron's refund claim. To the contrary, the Shell Pipeline's market power is essential to understanding how the Shell Pipeline could – and did – charge rates well in excess of what is just and reasonable. In short, Chevron's rebuttal testimony demonstrates that if the Shell Pipeline had, as it was required by law to do, submitted itself to the Commission's regulation as a public utility, it would have been entitled *only* to rates based on cost of service and not the purported "market" rates it actually charged. The rebuttal testimony of Chevron's witness, Dr. Vilbert, is relevant to demonstrating what that cost of service rate should have been in order as part of determining the appropriate refund.

As set forth in greater detail below, the rebuttal testimony of Dr. Cox, Mr. Lee, and Mr. Yoham demonstrates Chevron's lack of access to alternative means of shipping its SJV Heavy crude oil since at least April 1, 2005. As these witnesses testify, this lack of alternatives enabled the Shell Pipeline to charge rates well in excess of competitive levels; because SJV producers were dependent on the Shell Pipeline to transport their heavy crude production to customers and because Bay Area refiners required a steady supply of SJV Heavy to recoup their expensive investments in equipment to refine this crude, producers and refiners had no choice but to pay the Shell Pipeline's excessive rates during this period. Since pipelines possessing market power are not eligible to charge market rates, Chevron's rebuttal testimony establishing the Shell

Pipeline's market power is demonstrated that the reasonableness of the rates the Shell Pipeline charged during the Refund Period must be evaluated on a cost-of-service basis. *See City of Long Beach v. Unocal California Pipeline Co.* (Unocal II), D.94-05-022, 1994 Cal. PUC LEXIS 380 *33 (1994). An appropriate cost of service analysis, in turn, shows that Chevron is entitled to a refund of the charges that exceeded the reasonable cost of service rate the Shell Pipeline should have charged.

Each of Chevron's rebuttal witnesses expressly relates his testimony to the Refund Period and each provides evidence relevant to establishing Chevron's claim for refunds. San Pablo Bay's motion to strike must therefore be denied.

A. Dr. Cox's Rebuttal Testimony

Dr. Cox's rebuttal provides a thorough and well-reasoned economic analysis of the Shell Pipeline's market power during the Refund Period to establish that the pipeline was not entitled to "market" rates and that the rates it charged were well in excess of what was just and reasonable during that period.¹ In particular, his rebuttal testimony demonstrates "that the Shell Pipeline had market power in the relevant markets and exercised that market power to raise rates above the competitive level during the Refund Period," which Dr. Cox defines as "the period for which I understand that Chevron is seeking refunds for the unjust and unreasonable rates, from April 1, 2005, until the effective date of the Shell Pipeline tariff." (Cox Rebuttal A5, n.1.)

¹ San Pablo Bay ignores Dr. Cox's 73-page Direct Testimony "Regarding Shell Pipeline's Market Power," claiming "Chevron did not respond to San Pablo Bay's market power study in the 14 months in which it had to prepare its response to San Pablo Bay's showing." (Mot. at 7.) To the contrary, Dr. Cox's November 16, 2009, testimony "described a rigorous economic analysis in which [he] applied widely accepted methods of economics, and competition practice to determine whether the Shell Pipeline, whose rates are at issue in this case, had market power in the market(s.) that it served." (Cox Rebuttal A3.)

As Dr. Cox explains, his testimony does not “address issues of whether, going forward from today, the Shell Pipeline has market power and will set prices above competitive levels,” except “to the extent that Shell witnesses, in their rebuttal testimony, have provided updated information that is relevant to the future.” (Cox Rebuttal at A6.) Rather, he explains, “my review of the evidence indicates that Shell Pipeline has had market power over the Refund Period and that the price increases that it has imposed for the transportation of undiluted San Joaquin Valley Heavy crude oil are the result of an exercise of that market power.” (Cox Rebuttal A9.) San Pablo Bay’s claim that Dr. Cox’s rebuttal testimony does not apply to the Refund Period is thus without basis.

Dr. Cox does respond to the rebuttal testimony of certain San Pablo Bay witnesses; in fact, Dr. Cox’s testimony establishes that “Dr. Webb fails to apply a methodology consistent with the *Merger Guidelines* or to provide any alternative methodology that would assist the Commission in determining whether sufficient competition existed in the markets in which the Shell Pipeline operated *during the Refund Period*.” (Cox Rebuttal A9.) This does not suggest, as San Pablo Bay argues, that Dr. Cox’s testimony fails to address the Refund Period; rather, it establishes that “the Shell Pipeline’s rates through the Refund Period have not been just and reasonable. Dr. Webb and other Shell witnesses have failed to establish why Shell’s purported market-based rates (which I have concluded have been set as the result of an exercise of market power) are necessary from the point of view of public policy.” (Cox Rebuttal A9.)

Taken independently, each of Dr. Cox’s principal rebuttal points is directed to establishing the Shell Pipeline’s market power during the Refund Period:

- Answers 10 - 19 show that why it is improper to include contractual “market adjustment fees” in the evaluation of a competitive rate for the pipeline “to determine a competitive rate of transportation over the Refund Period.” (Cox Rebuttal Q14.)

- Answers 20 - 28 respond to the claim that Dr. Cox “did not properly analyze competition in the market(s) in which the Shell Pipeline operated during the Refund Period.” (Cox Rebuttal Q20.) Dr. Cox explains, “I relied on a widely accepted methodology to define the relevant product and geographic markets in which the Shell Pipeline operated during the Refund Period and to measure the Shell Pipeline’s market power from 2005 to the present,” (Cox Rebuttal A20), and he concludes that “The relevant market at the origin of the Shell Pipeline during the Refund Period included refining at local refineries able to refine SJV Heavy crude and the transportation to Los Angeles on a pipeline owned by ExxonMobil.” (Cox Rebuttal A28.)
- In Answers 29 – 39, Dr. Cox establishes that the *Merger Guidelines* were the appropriate methodology “to determine whether the Shell Pipeline had market power since at least 2005.” (Cox Rebuttal Q31.)
- Answers 40 – 47 demonstrate that Dr. Webb does not provide “an economic model that an economist would use and that this Commission can rely upon in coming to a decision to determine whether the Shell Pipeline had market power since 2005” and that, as a result, Dr. Webb included alternatives in the market that “should not be included in the relevant market from 2005 to the present.” (Cox Rebuttal Q/A 42, 45.)
- In Answers 48 – 71, Dr. Cox explains why each supposed alternative should not be “included in the relevant market from 2005 to the present,” including Kern Oil (A48-50), Santa Maria Refinery (A51-52), KLM (A53-65), ConocoPhillips’ pipeline (A66), and Plains Line 2000 (A67-72).²
- Answers 72 – 75, explain Dr. Cox’s conclusions that “the Shell Pipeline possessed market power during the Refund Period” and that “Dr. Webb’s inclusion of non-economic alternatives results in an HHI that is too low for both the Refund Period and for the period going forward.” (Cox Rebuttal Q73, A75.)
- In Answers 76 – 83, Dr. Cox explains that “The costs associated with trucking or rail since 2005 were too high for shippers to use these alternatives in order to defeat an exercise of market power by the Shell Pipeline.” (Cox Rebuttal A77.)
- In Answers 84 –86, Dr. Cox describes how “the minimum volume requirements along various segments of the Shell Pipeline affected shippers’ ability to divert crude oil to alternatives over the Refund Period.” (Cox Rebuttal Q/A 85.)
- In Answers 87 – 91, Dr. Cox explains why “Shell has not made the case that its rates merely reflect the value of the pipeline during the Refund Period.” (Cox Rebuttal A87.)
- In Answers 92 – 99, Dr. Cox addresses various “additional factors” the Commission should take into account when considering whether the Shell Pipeline’s rates since 2005

² To the extent Dr. Cox addresses the Big West Refinery, it is to discuss new information that has emerged since San Pablo Bay filed its rebuttal testimony. (Cox Rebuttal A47.)

were just and reasonable,” explaining that “if the Shell Pipeline did have market power during the Refund Period and exercised that market power, there was a negative impact on the economy of California.” (Cox Rebuttal Q93, A99.)

- Answers 100 – 114 explain how Dr. Cox appropriately applied the holdings of the *Unocap* case to establish that the Shell Pipeline had market power during the Refund Period. In response to Dr. Webb’s claim that Dr. Cox’s “testimony on market power in this matter is inconsistent with [Dr. Cox’s] previous testimony,” Dr. Cox explains that there are “important difference[s] between 1993 and 2005” that help to explain why the Shell Pipeline possesses market power. (Cox Rebuttal A114.)

San Pablo Bay’s claim that “there is no pretense that the Chevron market power study has any relationship to Shippers’ claim for refund,” (Mot. at 7), is false. San Pablo Bay’s assertion that Chevron “made a tactical decision not to rebut San Pablo Bay’s market power showing upon submission of its testimony in November, 2009,” (*id.*), would have your Honor believe that Dr. Cox’s November 16, 2009 testimony on the Shell Pipeline’s market power does not exist. San Pablo Bay’s motion to strike Dr. Cox’s testimony is baseless, and should be denied. (*Id.*)

B. Mr. Lee’s Rebuttal Testimony

Despite conceding the appropriateness of most of Mr. Lee’s rebuttal testimony, San Pablo Bay seeks to strike Mr. Lee’s Answers 3-8, and 31-53 based on the claim that Mr. Lee’s testimony provides “no pretense that it is even obliquely related to rebuttal of San Pablo Bay’s testimony in response to Shippers’ initial November 19, 2009 refund case showing.” (Mot. at 8.) In so arguing, San Pablo Bay not only ignores Mr. Lee’s express discussions of the Refund Period, it once again ignores that the obvious relevance of the Shell Pipeline’s historic market power to Chevron’s refund case.

San Pablo Bay argues that because Mr. Lee’s testimony “is rebutting the testimony of San Pablo Bay witnesses Verleger and LaBorne,” including their testimony relating to the impact of pipeline transportation on producer and refiner operating margins, it does not relate to the

Refund Period. Although Chevron agrees that “[t]here is no connection between testimony regarding production field economics and refiners’ margins and Shippers’ refund claims” (or anything having to do with the appropriate rates on the Shell Pipeline, whether forward looking *or* retrospective), it is Dr. Verleger and Mr. LaBorne who (wrongly) rely on claims about these matters to argue that the Shell Pipeline lacked market power and was entitled to market-based rates, an issue that is relevant to the excessiveness of the Shell Pipeline’s historic rates. (Mot. At 8.)

Whether the Shell Pipeline’s market power may impact its forward looking rates does not change the fact that the pipeline’s market power is relevant to the refund claims as well. Mr. Lee is entitled to respond to Dr. Verleger and Mr. LaBorne’s arguments that the Shell Pipeline lacked market power and was entitled to the purported “market” rates it charged during the Refund Period, regardless of whether this testimony also impacts the forward-looking analysis. As Mr. Lee testifies in A3, “Dr. Verleger’s and Mr. LaBorne’s testimony *underscores what is wrong with the Shell Pipeline’s past rates* as well as its demand for “market-based” rates . . . These witnesses’ suggestions further reinforce that the CPUC should award Chevron a substantial refund to compensate it for Shell’s past overcharges . . .” (Lee Rebuttal A3.) Mr. Lee explains, it is this very “approach of capturing a portion of the refiners’ and producers’ margins [that] underlay[s] what the Shell Pipeline did in 2005 when it raised the transportation rate from \$1.09 to \$1.90 per barrel.” (Lee Rebuttal A3.)

The other portion of Mr. Lee’s testimony that San Pablo Bay seeks to strike similarly addresses the Refund Period. In particular, Mr. Lee’s Answers 3 – 8, and 31 – 53 establish:

- The Shell Pipeline’s arguments for market-based rates are an attempt to use “its public utility status to try to siphon off a share of the profits its customers may make. As the testimony of Dr. Verleger and Mr. LaBorne make clear, that is exactly what the Shell Pipeline has done up until now . . .” (Lee Rebuttal A3.)

- “Chevron’s annual capital expenditures in its San Joaquin Valley fields are between \$500 million and \$1 billion” and “have been in that range since before 2005.” (Lee Rebuttal A7.)
- San Joaquin Valley crude producers historically faced a threat of shut in production due to a shutdown of heated service on the Shell Pipeline due to “the threatened discontinuation of the heated service due to the minimum volume requirements on the pipeline,” which exemplifies how the Shell Pipeline has been able to manipulate its market power to charge excessive rates through the Refund Period. (Lee Rebuttal A8.)
- The Shell Pipeline’s provision of line fill and gathering services do not justify the pipeline’s historic rates, even though these services will not be included in the pipeline rates moving forward. (Lee Rebuttal A33; LaBorne A.29.)
- Chevron is entitled to a refund of the excessive 0.25% PLA the Shell Pipeline charged through the Refund Period and “[t]he fact that the Shell Pipeline is now proposing to lower the going-forward PLA to 0.15% – the same PLA it has charged its affiliate, STUSCO, since at least 2005 – proves that Chevron is due a refund of a minimum of 0.10% PLA . . .” (Lee Rebuttal A35.)
- The Shell Pipeline has historically been the sole economic “means of shipping undiluted SJV Heavy crude oil to the Bay Area.” (Lee Rebuttal A38-50.)
- “Light crude for blending has been and remains in short supply and Chevron’s Bay Area customers did not want blended crude in lieu of the undiluted SJV Heavy that they had configured their refineries to process. The fact that KLM does not provide a comparable service moving undiluted SJV Heavy explains why Shell was able to charge so much more than KLM for transportation to the Bay Area even though KLM has not been operating at full capacity.” (Lee Rebuttal A41-42)
- “During the period since April 1, 2005” Chevron could not “have taken crude oil off the Shell pipeline and sold it to Kern Oil.” (Lee Rebuttal Q/A 51.)
- “During the period since April 1, 2005,” Chevron could not “have taken crude oil off the Shell line and moved it to the Santa Maria refinery.” (Lee Rebuttal Q/A52.)

Mr. Lee’s rebuttal testimony thus establishes the Shell Pipeline’s market power over the Refund Period and is relevant to explaining Chevron’s entitlement to refunds of the excessive rates the Shell Pipeline was able to charge as a result of that market power. San Pablo Bay’s motion should be denied.

C. Mr. Yoham's Rebuttal Testimony

San Pablo Bay argues that Mr. Yoham's "testimony makes no pretense that it has any connection to Shippers' refund complaints or that it deals in any way with claimed refunds." (Mot. at 9.) To the contrary, Mr. Yoham's rebuttal testimony responds "to statements by certain witnesses for San Pablo that transportation by truck or train would be a feasible alternative to using the Shell Pipeline to transport heavy crude oil from the San Joaquin Valley during the period from 2005 to the present." Mr. Yoham concludes that "[e]xcept in certain limited circumstances where pipelines do not exist and construction is not economically feasible, trucks and trains have not been an economic means of transporting heavy crude for long distances from the SJV throughout the period since 2005." (Yoham Rebuttal A3, A5.) Mr. Yoham's rebuttal testimony is thus relevant to demonstrating the Shell Pipeline's market power during the Refund Period in support of Chevron's claim for refunds.

The sole purpose of Mr. Yoham's rebuttal testimony is to establish the lack of alternatives to the Shell Pipeline during the Refund Period. His Answers 6 – 11, for example, establish that although there was some limited nationwide transportation of petroleum products by rail and truck, this does not demonstrate that rail or trucking has been an "available means of transporting SJV Heavy crude oil from the San Joaquin Valley since 2005." (Yoham Rebuttal Q6.) As Mr. Yoham explains:

- Railroad has not "been an available means of transporting SJV Heavy crude oil from the San Joaquin Valley since 2005" (Yoham Rebuttal Q/A6.)
- "[T]he fact that rail and truck are sometimes used to transport ethanol and liquefied petroleum gas" does not "demonstrate that rail and truck has been a feasible alternative for transporting SJV heavy crude oil since 2005." (Yoham Rebuttal Q/A7.)
- The North Dakota unit train raised by Mr. LaBorne does not "demonstrate that rail transport has been a feasible alternative to the Shell Pipeline during the period 2005 to the present." (Yoham Rebuttal Q/A9.)

- Tesoro’s contemplation of a unit train unloading facility for ethanol does not “show that refineries could economically construct facilities for transportation of SJV heavy crude oil by train from 2005 to the present.” (Yoham Rebuttal Q/A11.)

Similarly, Mr. Yoham’s Answers 12 – 20 demonstrate that producers in the San Joaquin Valley have not been feasibly able to transport their crude oil in lieu of using the Shell Pipeline since at least 2005:

- “Aside from Kern River, there are no functional rail lines near production fields in the San Joaquin Valley able to handle the heavy trains necessary to transport SJV Heavy, and have not been since at least 2005.” (Yoham Rebuttal A12.)
- “[D]uring the period 2005 to the present,” Kern River has “not been a viable location for shifting SJV Heavy crude oil shipments from the Shell Pipeline to rail.” (Yoham Rebuttal Q/A13.)
- “Since 2005,” there have not “been any alternate ways of getting crude oil to a rail line of the line isn’t adjacent to the production field.” (Yoham Rebuttal Q/A14.)
- There have not been “any existing pipelines that could have transported SJV Heavy from the Chevron production fields to a main rail line at any time since 2005.” (Yoham Rebuttal Q/A15.)
- The \$1.77 per barrel rate for shipment by unit train that Mr. LaBorne quotes “would not be accurate at any time during the period since 2005.” (Yoham Rebuttal A19.)
- The ethanol unit train facility Shell purportedly constructed in Los Angeles does not “mean that Chevron could have economically constructed the facilities needed to transport SJV Heavy by train at any time since 2005.” (Yoham Rebuttal Q/A20.)

Finally, Mr. Yoham’s answers to Questions 21 – 27 demonstrate that trucking crude oil has not been a feasible alternative to the Shell Pipeline since at least 2005:

- The fact that small volumes of “condensate” have been trucked from Utah “has no relevance to the economic feasibility of trucking heavy crude oil from the SJV since 2005.” (Yoham Rebuttal A21.)
- Chevron’s use of trucking as a “temporary stopgap method” when Shell shut down its gathering line in the SJV does not “show that trucking has historically been an economically viable option from the SJV at any time since 2005.” (Yoham Rebuttal Q/A22-24.)

- There have not “historically been available truck racks with capacity for shippers to unload trucks at pipelines in the SJV” sufficient for the Shell Pipeline’s shippers to shift their crude off the pipeline by trucking short distances. (Yoham Rebuttal Q/A 25-26.)
- Trucking for “shorter distances has not been economically feasible since at least 2005.” (Yoham Rebuttal Q/A27.)

Mr. Yoham’s testimony thus expressly relates to the Refund Period and San Pablo Bay’s motion to strike this testimony should be denied.

D. Dr. Vilbert’s Rebuttal Testimony

San Pablo’s motion to strike mischaracterizes Dr. Vilbert’s testimony as well as San Pablo’s own testimony. Dr. Vilbert’s testimony explicitly addresses the Refund Period:

Q3. What is the purpose of your rebuttal testimony in this proceeding?

A3. I have been asked by Orrick, Herrington & Sutcliffe LLP (“Orrick”), on behalf of Chevron Products Company (“Chevron”), to respond to the rebuttal testimony of Dr. David J. Teece (“Teece Rebuttal”) in which he challenges my recommendations in the Vilbert Direct regarding the appropriate cost of capital for the San Pablo Bay Pipeline Company LLC’s (“San Pablo Bay”) San Joaquin Valley Pipeline (“SJV Pipeline”) **during the complaint period (April 2005 through the effective date of San Pablo Bay’s tariff.)**

Despite this explicit tie to the Refund Period, San Pablo Bay argues that Dr. Vilbert’s testimony is improper because, according to San Pablo Bay, Dr. Teece, whose testimony Dr. Vilbert is rebutting, does not address the Refund Period. (Mot. at 9.) Though Dr. Teece does not specifically mention the “complaint” or “refund” period in his testimony, he clearly states that the purpose of his testimony is to respond to the December 8, 2009 testimony of Dr. Vilbert. (Teece Rebuttal A8.) Dr. Vilbert’s December 8 testimony addressed both the Refund Period and the going forward period.

Moreover, San Pablo witness Mr. Van Hoecke relies upon Dr. Teece's testimony in determining just "cost-based rates" for the Refund Period (what Mr. Van Hoecke refers to as the "locked-in period"). Specifically, on his Exhibit RGV-6, Schedule 3, Mr. Van Hoecke identifies the return on rate base for 2007, 2008 and 2009, all part of the Refund Period, and Exhibit RGV-6, Schedule 6 in turn shows that these calculations are derived using the capital structure and cost of capital recommended by Dr. Teece. Dr. Vilbert's rebuttal testimony, criticizing Dr. Teece's methodology and responding to Dr. Teece's criticism of Dr. Vilbert's approach, applies to the figures used by Mr. Van Hoecke in response of Chevron's refund claim. Dr. Vilbert's testimony is thus proper rebuttal relevant to the Refund Period.

III. Conclusion

Despite San Pablo Bay's mischaracterization of Chevron's rebuttal testimony, even a cursory examination of what the testimony actually covers – as opposed to what San Pablo Bay

PROOF 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 28, 2010, I served the following document:

- **CHEVRON PRODUCTS COMPANY'S OPPOSITION TO MOTION OF SAN PABLO BAY PIPELINE COMPANY LLC TO STRIKE REBUTTAL TESTIMONY**

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:

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

Executed on April 28, 2010, at San Francisco, California.

/s/ Nancy Lee-Ramos

Nancy Lee-Ramos