

Decision 12-04-050

April 19, 2012

**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

**ORDER GRANTING LIMITED REHEARING**  
**OF DECISION (D.) 12-02-038 ON ALL ISSUES RELATED TO**  
**THE REFUND CALCULATIONS, AND VACATING THE**  
**DETERMINATIONS OF THE STATUTE OF LIMITATIONS ISSUE**  
**MADE IN THE DECISION AND D.11-05-026**

**I. INTRODUCTION**

Decision (D.)11-05-026 involved Application (A.) 08-09-024, filed by San Pablo Bay Pipeline Company LLC (“SPBPC”) for approval of tariffs for the San Joaquin Valley Crude Oil Pipeline (“Pipeline”). The proceeding also involved several complaint cases: (Cases (C.) 08-03-021, C.09-02-007, and C.09-03-027. In D.11-05-026, we (1) denied SPBPC’s request to charge market-based rates for the transportation of heavy crude oil from the Pipeline; (2) set rates for the transportation of crude oil between the San Joaquin Valley and the San Francisco Bay Area at \$1.34 per barrel; (3) resolved complaints filed by Independent Shippers<sup>1</sup> against SPBPC and Shell Trading US

<sup>1</sup> “Independent Shippers” is the collective designation of Chevron Products Company (“Chevron”), Tesoro Refining and Marketing Company (“Tesoro”) and Valero Marketing and Supply Company (“Valero”) all of whom ship undiluted heavy crude oil on the Pipeline to their respective Bay Area refineries. (D.11-05-026, p. 3, fn. 1.)

Company (“STUSCO”)<sup>2</sup> and ordered refunds for past overcharges from April 1, 2005 to the effective date of D.11-05-026; (4) approved the transfer of physical assets from the Pipeline’s former owner to SPBPC; (5) denied SPBPC’s request to exclude certain tanks and truck racks from the assets transferred to it; and (6) adopted a tariff to govern the provision of heated oil transportation service by SPBPC.

SPBPC and STUSCO timely filed separate applications for rehearing of D.11-05-026. Each of the Independent Shippers (Chevron, Tesoro and Valero) filed timely responses that opposed the applications for rehearing.

In its rehearing application of D.11-05-026, SPBPC alleged the following errors: (1) The determination that refunds are due from April 2005 is not supported by the record, exceeds the Commission’s authority, and constitutes an abuse of discretion; (2) the refund calculation and the forward-going rate are unlawful; (3) the Commission adopted unlawful tariff terms and conditions; and (4) the determination of public utility status involving the private storage tanks and truck racks is unlawful.

In its rehearing application of D.11-05-026, STUSCO argued that (1) the determination to include private storage tanks and truck racks in SPBPC’s jurisdictional property constitutes an unlawful taking under federal and state constitutions; (2) the Decision adopted unduly discriminatory tariff terms and conditions without providing necessary analysis or findings of fact to support the tariff; and (3) the Commission exceeded its legal authority by ordering refunds, and by imposing refund liability on STUSCO.

In D.12-02-038, the Commission granted limited rehearing of D.11-05-026, on the issue of the calculation of the refunds, modified the decision, and denied rehearing of the decision, as modified.<sup>3</sup> We found no merit in the Shell Parties’ allegations

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

<sup>3</sup> In D.11-10-019, the Commission granted a motion for partial stay of D.11-05-026, pending the

*(footnote continued on next page)*

involving the Commission's jurisdiction to regulate SPBPC as a public utility, the status of the storage tanks and truck racks as utility property, the applicable statute of limitations for the refunds, the application of the rule against retroactive ratemaking, STUSCO's joint and several liability for the refunds, and other related legal challenges.<sup>4</sup>

On March 19, 2012, the Independent Shippers jointly filed an application for rehearing of D.12-02-038 on the issue of the refund calculation, and request that the Commission immediately lift the stay on payment of refunds. (*Joint Application of the Independent Shippers for rehearing of Decision 12-02-038 granting limited rehearing on the calculation of refunds*, pp. 2 and 19. ("Independent Shippers Rehr. App.") They allege the following errors: (1) that the decision contains no supporting evidence from the record for its refund calculation method, contrary to Public Utilities Code Section 1757(a),<sup>5</sup> 2) that the decision's refund rate calculation exceeds just and reasonable rates contrary to section 451; and (3) that the decision will reward Shell Pipeline for its abuses of market power contrary to Commission precedent and state and federal antitrust laws. SPBPC and STUSCO both filed responses opposing the Independent Shippers rehearing application.

In our review of the application for rehearing of D.12-02-038, we have come to the conclusion that good cause exists for the granting of a limited rehearing on the issues involving the refund calculations and the correct methodology for determining the

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Commission's disposition of the application for rehearing of D.11-05-026. (*Order Granting Motion for Partial Stay of Decision (D.) 11-05-026* [D.11-10-019] (2011) \_\_\_ Cal.P.U.C.3d \_\_\_, p. 3 (slip op.)). This partial stay involves the payment of the refunds ordered in D.11-05-026. In D.12-02-038, pp. 37-38, the Commission did not lift this partial stay, because limited rehearing was granted on the proper methodology to be used to determine the refunds.

<sup>4</sup> On March 16, 2012, SPBPC and STUSCO jointly filed a petition for writ of review, ("writ petition") challenging the lawfulness of D.11-05-026 and D.12-02-038. (*See San Pablo Bay Pipeline Company, et al v. Public Utilities Commission of the State of California*, California Court of Appeal, Fifth Appellate District, Case No. F064501.) In their writ petition, they allege, along with two other allegations of error that are not within the scope of this rehearing application, that the Commission applied the wrong statute of limitations, and then misapplied that statute to the Independent Shippers' refund claims.

<sup>5</sup> All subsequent section references are to the Public Utilities Code.

refund amount. We will modify D.12-02-038 to clarify the limited rehearing of D.11-05-026 that was granted by D.12-02-038. Also, in our consideration of Independent Shippers' rehearing application, we are of the belief that all matters related to the refund issues should be considered together. One such matter is our determination on the statute of limitations issues in D.12-02-038 and D.11-05-026. Accordingly, we vacate the statute of limitations determinations in both of these decisions. These issues will be reconsidered as part of the limited rehearing of D.12-02-038 we are granting today. Further, we will consolidate this limited rehearing with the limited rehearing of D.11-05-026 that we granted in D.12-02-038.

## **II. DISCUSSION**

### **A. Limited Rehearing of D.12-02-038 is granted to consider all issues related to the refund methodology and calculation.**

Our review of the issues raised in the Independent Shippers' rehearing application of D.12-02-038 has led us to the conclusion that further consideration is necessary and warranted on all the issues surrounding the refund methodology and calculation.

From the issues raised in the rehearing application, it appears that the Commission was unclear as to its intent for limited rehearing of D.11-05-026 granted in D.12-02-038. It appears that the language in D.12-02-038 may have been too restrictive. The Commission did not intend to restrict the limited rehearing to one particular methodology, nor prevent other proposals from being considered. The intent was to grant limited rehearing so that the further proceedings could be held on the correct methodology and calculations of the refund, based on the record. Thus, we will modify D.12-02-038 to reflect this intent.

Further, our review of the parties' pleadings and the evidentiary record indicates that we may not have a complete record on the correct refund calculation methodology. Thus, limited rehearing of D.12-02-038 is granted to give the parties' notice and opportunity to be heard on our reconsideration of the correct methodology and

calculation. We emphasize that the parties' positions should be supported by either citations to the existing record, or provide additional evidence either through evidentiary hearings or comments, as appropriate.

In order to avoid any prejudgment, we note that we do not address the merits of the issues specifically raised in the application for rehearing of D.12-02-038. We believe that these issues are best considered during proceedings for the limited rehearing of D.12-02-038 and limited rehearing of D.11-05-026 that was granted in D.12-02-038. These two limited rehearings shall be consolidated, so all the issues may be considered in one setting.

**B. The determinations made in D.11-05-026 and D.12-02-038 regarding the statute of limitations issues are vacated, and are to be reconsidered during the limited rehearings.**

Our statute of limitations determinations are closely related to the refund issues. Since we have decided to grant limited rehearing on all the issues related to the methodology and calculation of the refund together in one consolidated proceeding, it makes sense for us to reconsider our determinations on these issues. Accordingly, we hereby vacate our statute of limitations determinations as set forth in the ordering paragraphs below.

**C. The stay on the refund payments will not be lifted at this time**

In D.11-10-019, we granted a partial stay of D.11-05-026. We stated the basis for the partial stay: "After a review of the pleadings for the motion, we conclude that a partial stay of the payment of the refunds is warranted and should be granted. We are persuaded that the amount of the refunds and the calculation of these refunds justify further review. In these circumstances, we believe that a partial stay should be granted." (*Order Granting Partial Stay of Decision* (D.) 11-05-026 [D.11-10-019] (2011) \_\_\_\_ Cal.P.U.C.3d \_\_\_\_, p. 3 (slip op.).)

We believe that a partial stay is still warranted, especially in light of the limited rehearings granted. Accordingly, the Independent Shippers' request that the stay on refund payments be lifted is denied.

However, we note that although the methodology and the calculation of the refund are being reconsidered, refunds have been ordered. We understand the amount of money is estimated at over \$100 million, and thus, we would suggest that the parties might consider placing a portion of the money into an escrow account or other such mechanism. Our suggestion is not intended to prejudice any issues in the limited rehearings.

### **III. CONCLUSION**

Based on the discussion above, D.12-02-038 is modified to clarify the limited rehearing of D.11-05-026 that was granted. A limited rehearing of D.12-02-038 is granted so that all issues related to the methodology and calculation of the refunds shall be reconsidered in one proceeding. We vacate the statute of limitations determinations in D.11-05-026 and D.12-02-038, so that the statute of limitations issues can be reconsidered as part of the limited rehearing of D.12-02-038 we are granting today. The proceedings for limited rehearing of D.12-02-038 and limited rehearing of D.11-05-026 shall be consolidated. The request for lifting the stay is denied.

#### **THEREFORE, IT IS ORDERED** that:

1. Ordering Paragraph Number 1 of D.12-02-038 is modified as follows:  
“Limited rehearing of D.11-05-026 is granted to consider what the correct methodology for calculating the refunds is, and to address any related issues involving the actual calculation.”
2. A limited rehearing of D.12-02-038, as modified, is granted so that all issues related to the methodology and calculation of the refunds shall be reconsidered in one proceeding.

3. The statute of limitations determinations set forth in Section 3 of D.11-05-026, pp. 13-14, are vacated, and those issues shall be reconsidered as part of the consolidated proceedings for the limited rehearings.

4. The discussion regarding the statute of limitations in Section II.C. of D.12-02-038, on pages 16-21, is vacated.

5. Ordering Paragraph Numbers 2, 3, 6, 7, 8, and 9 of D.12-02-038 are vacated.

6. The proceedings for the limited rehearing of D.12-02-038 and limited rehearing of D.11-05-026 shall be consolidated.

7. Issues discussed in D.12-02-038 regarding the statute of limitations involving the refund methodology and calculation are to be considered as part of the consolidated limited rehearings.

8. Within 10 days of the issuance of today's decision, the assigned Administrative Law Judge shall issue a ruling setting forth a prehearing conference.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners