

Decision 12-08-018

August 2, 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 DENYING REHEARING
OF DECISION (D.) 12-04-050

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”). In that decision, the Commission resolved, among other things, three complaints filed by Independent Shippers¹ against SPBPC and Shell Trading US Company (“STUSCO”)² and ordered refunds for past overcharges for transportation of oil over the Pipeline from April 1, 2005 to the effective date of D.11-05-026.

¹ “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.)

² 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.)

SPBPC and STUSCO timely filed separate applications for rehearing of D.11-05-026. In that decision, in determining a just and reasonable rate for the refund period, and in order to even the playing field for all shippers, we used the STUSCO market based rate as a proxy to calculate refunds. (D.11-05-026, p. 18.) This was the rate SPBPC's witness swore the pipeline "negotiated" with its affiliate STUSCO for transportation charges of San Joaquin Valley Heavy Blend to the Shell Martinez Refinery ("SMR Rate")) during the relevant period. (D.11-05-026, p. 18 [COL 6-9;] RT. 650, Vol.4, pp. 6-651:24 (LaBorne/SPBPC).) In its rehearing application, SPBPC alleged, *inter alia*, that the refund calculation was unlawful, because our use of the SMR Rate as a proxy for a just and reasonable rate for the refund period should be based on actual monthly variations in the transportation charges for deliveries of oil on the Pipeline, and not, as the decision determined, on two, single monthly invoices (one from April 2005 and one from January 2006). (SPBPC's Application for Rehearing of D.11-05-026, pp. 24-28.)

In D.12-02-038, we granted limited rehearing of D.11-05-026 on the issue of the calculation of the refunds because we concluded that our prior decision appeared arbitrary in that it provided no reasonable explanation for fixing the rates for the entire refund period on two single monthly invoices. (D.12-02-038, p. 24 (slip op.).)³ Pending the outcome of the limited rehearing, we did not modify the decision's determination that the STUSCO proxy rate was the correct measure, and limited the rehearing to determine the calculation of the refunds based on the monthly rate variations during the refund period. (*Id.*)

On March 19, 2012, the Independent Shippers jointly filed an application for rehearing of D.12-02-038. This rehearing application focused on the issue of the refund calculation. (Independent Shippers' Application for Rehearing of D.12-02-038,

³ There is a pending court challenge of D.11-05-026 and D.12-02-038. (*San Pablo Pipeline Company LLC, et al v. Public Utilities Commission of the State of California*, California Court of Appeal, Fifth Appellate District, Case No. F064501).

pp. 2 & 19.) They alleged the following errors: (1) the decision contained no supporting evidence from the record for its refund calculation method, contrary to Public Utilities Code Section 1757(a),⁴ (2) the decision's refund rate calculation exceeds just and reasonable rates contrary to section 451; and (3) 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 D.12-04-050, we granted, *inter alia*, limited rehearing on all issues involving the refund calculations and the correct methodology for determining the refund amount. (D.12-04-050, pp. 4-5 (slip op.).) We modified D.12-02-038 to clarify the limited rehearing of D.11-05-026 that was granted by D.12-02-038, and consolidated the two limited hearings.

Based on our review of the Independent Shippers' rehearing application of D.12-02-038, we concluded that further consideration was necessary and warranted on all the issues surrounding the refund methodology and calculation. We explained that D.12-02-038 was unclear as to the scope of the limited rehearing granted of D.11-05-026 on these issues, and that the language in D.12-02-038 may have been too restrictive. Thus, we granted limited rehearing so that further proceedings could be held on the correct methodology and calculations of the refund, based on the record. We further noted that our review of the evidentiary record indicated that there may not be a complete record on the correct refund calculation methodology, and thus, we granted limited rehearing of D.12-02-038 to give the parties notice and an opportunity to be heard on our consideration of the correct methodology and calculation.⁵ Moreover, we

⁴ All subsequent section references are to the Public Utilities Code.

⁵ The Commission also ordered reconsideration of the statute of limitations issues, since they were interrelated with the calculation issues. Thus, the issues for rehearing were clarified and expanded. However, SPBPC does not challenge the lawfulness of the reconsideration of the statute of limitations issues in this rehearing application.

stated that in order to avoid any prejudgment, we would not address the merits of the issues specifically raised in the application for rehearing of D.12-02-038, because these issues were to be considered during the consolidated limited rehearing proceedings. (D.12-04-050, pp. 4-5 (slip op.).)

On May 21, 2012, SPBPC timely filed the instant rehearing application, alleging that in D.12-04-050, we did not proceed in a manner required by law because we may not reopen for consideration our determination in D.11-05-026 that refunds are to be calculated based upon the market rate charged by SPBPC to STUSCO (the “SMR Rate,” which it alleges is final and non-appealable) through an order for rehearing of D.12-02-038. (SPBPC’s Application for Rehearing of D.12-04-050 (“SPBPC Rehr. App”), p. 4.)

We have reviewed each and every issue raised in the application for rehearing of D.12-04-050, and are of the opinion that good cause for rehearing has not been demonstrated. Accordingly, we deny the application for rehearing of D.12-04-050.

II. DISCUSSION

A. The Commission has Authority to Order Rehearing on Issues Over Which it has Previously Denied Rehearing.

SPBPC alleges that we may not reopen for reconsideration our determination in D.11-05-026 to use the SMR Rate to calculate the refunds through an order for rehearing of D.12-02-038. (SPBPC Rehr. App., p. 4.) Specifically, SPBPC argues that we have not proceeded in a manner required by law by granting rehearing of the final and non-appealable determination in D.11-05-026 that refunds are to be calculated based upon the market rate charged by SPBPC to STUSCO, the SMR Rate. (SPBPC Rehr. App., p. 4.) SPBPC contends that because only SPBPC and STUSCO filed for rehearing of D.11-05-026 on the issue of using the SMR Rate for calculation of the refund, the Independent Shippers waived any challenge to that determination. (SPBPC Rehr. App. p. 6.) Consequently, SPBPC alleges that the Commission, like the parties, is estopped from now asserting that D.11-05-026 can be revised as part of its

consideration of an application for rehearing of D.12-02-038, to reflect adoption of a refund calculation based on a rate other than the SMR Rate. (SPBPC Rehr. App., p. 6.) They conclude that our rehearing order on this issue is unlawful because we are in effect granting an untimely rehearing of our determination in D.11-05-026 to use the SMR Rate, rather than a cost-of-service rate, as the basis for calculating refunds. (SPBPC Rehr. App., p. 8.) Essentially, SPBPC argues that we have no authority to *sua sponte* grant rehearing on issues over which we have previously denied rehearing. These allegations have no merit, and we reject them.

The Commission “is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers.” (*Wise v. Pacific Gas & Electric Company* (1999) 77 Cal.App.4th 287, 300; see also, *Southern California Edison Company v. Public Utilities Commission*, *supra*, 85 Cal.App.4th 1086, 1096.) The California Constitution and the Public Utilities Code confer broad authority to the Commission to regulate public utilities, including pipeline corporations such as SPBPC. (See generally, Cal. Const., art. XII, §§ 5 & 6; Pub. Util. Code, §§228 (pipeline corporation), 227 (oil pipelines), 216 (public utilities) & 211 (common carriers).) Furthermore, under section 701, the Commission “may supervise and regulate every public utility in the State and may do all things, whether specifically designated . . . , which are necessary and convenient in the exercise of such power and jurisdiction.” (Pub. Util. Code, §701.)

With this authority, we acted lawfully when we ordered rehearing on all issues related to the refund calculations, including use of the SMR Rate, in D.12-04-050. That rehearing order provides the parties with notice and an opportunity to be heard on all issues related to the calculation of the refunds, and to relitigate those issues without any prejudgment by us, and with all their due process rights intact. (See D.12-04-050, pp. 4 & 5 [Ordering Paragraph No. 3.]) SPBPC’s allegation that we had no authority to do so is simply wrong.

Furthermore, SPBPC’s argument that our denial of the rehearing of the SMR Rate in D.12-02-038 renders the use of the SMR Rate final and non-appealable,

and that we are consequently estopped from ordering rehearing on the issue, lacks any legal basis. SPBPC provides no law to support its claim that we are estopped from doing what we did. No statutes in the Public Utilities Code, including those involving judicial review, prohibit us from continuing our regulation of the matter, including ordering rehearing of determinations that we reasonably determined should be reconsidered because it is necessary as part of our regulatory authority.

Therefore, SPBPC cites to no law prohibiting us from clarifying, expanding and ordering a rehearing of a matter that is still pending before us. SPBPC's notion that the orders are now final and unappealable is untenable, and would thwart our ability to exercise our constitutional and statutory authority to do all things necessary and germane in our regulation of public utilities.

B. SPBPC's Due Process Assertions Have no Merit.

SPBPC asserts that, because our determination in D.11-05-026 to use the SMR Rate as the basis for calculating refunds is final and non-appealable, the issue is no longer the proper subject of a rehearing order. (SPBPC Rehr. App., p. 7.) It argues that our only authority to do what we did under these circumstances would be limited to section 1708, which we did not do. (SPBPC Rehr. App., p. 7.) We reject these assertions.

Section 1708 provides for notice and opportunity to be heard before the Commission modifies a prior decision, regardless of whether it is final or not. (Pub. Util. Code, §1708.) In D.12-04-050, we ordered a full rehearing of the refund calculation and methodology issues through the rehearing process. Thus, there was no need to invoke section 1708 when we ordered the rehearing for the purposes of clarification and expanding the rehearing issues that we had previously granted in D.12-02-038.

We believe that due process was met, because the granting of the consolidated rehearsings ordered in D.12-02-038 and D.12-04-050 provided parties with notice and an opportunity to be heard on the matter prior to our determination of a

correct methodology and calculation in a subsequent decision. Accordingly, SPBPC's due process assertions have no merit.

III. CONCLUSION

Based on the discussion above, SPBPC's application for rehearing of D.12-04-050 is denied, as no legal error has been demonstrated.

THEREFORE, IT IS ORDERED that:

1. SPBPC's application for rehearing of D.12-04-050 is denied.
2. The proceedings, Application 08-09-024, Case 08-03-021, Case 09-02-007, and Case 09-03-027, remain open to consider issues in the consolidated limited rehearings granted by D.12-02-038 and D.12-04-050.

This order is effective today.

Dated August 2, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners