

UNITED STATES OF AMERICA 103 FERC ¶ 61,108  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Rocky Mountain Pipeline System LLC

Docket No. OR02-11-000

ORDER ON APPLICATION FOR MARKET-BASED RATES  
AND ESTABLISHING A HEARING

(Issued May 2, 2003)

1. Rocky Mountain Pipeline System LLC (Rocky Mountain) filed an application on July 22, 2002, for a market power determination in order to charge market-based rates for the transportation of crude oil on its Western Corridor pipeline system. The shippers and Rocky Mountain have requested summary disposition of the application, but there are factual disputes over whether Rocky Mountain lacks market power in the markets served by its pipeline. Therefore, the Commission establishes a hearing before an Administrative Law Judge. Setting the matter for hearing will more efficiently produce a resolution of the issues involved for the benefit of the shippers.

**Background**

2. Rocky Mountain, a common carrier, transports crude oil subject to the Commission's jurisdiction under the Interstate Commerce Act. The Western Corridor pipeline system of Rocky Mountain has its northern terminus at the U.S.-Canadian Border and terminates in southeast Wyoming. Crude oil produced in Canada, Montana and Wyoming is transported to refineries in Montana, Wyoming, Utah and Colorado. Rocky Mountain acquired its interest in the Western Corridor system upon purchase from BP Pipelines in 2002, and all of the pipeline assets are jointly owned with Conoco Pipeline Company, which has its own tariffs and rates. This application does not include Rocky Mountain's pipeline from Guernsey, Wyoming to Salt Lake City, Utah.<sup>1</sup>

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<sup>1</sup>Rocky Mountain owns a 20.8 percent interest in Glacier Pipeline that runs from the Canadian Border to Billings, Montana and a 50 percent interest in the Beartooth Pipeline, which runs from Billings to Elk Basin, Wyoming, and a 57.6 percent interest in the Big Horn Pipeline, which runs from Elk Basin and Casper to Guernsey, Wyoming. Rocky Mountain also owns gathering pipelines in these areas.

### **Description of the Filing**

3. Rocky Mountain seeks market-based ratemaking authority for transportation of crude oil to the following destination markets: (1) Billings, Montana area consisting of Yellowstone, Big Horn, Treasure, Rosebud, Musselshell, Petroleum, Golden Valley, Stillwater and Carbon counties in Montana; and (2) Southeast Wyoming area consisting of Natrona, Carbon, Laramie, Albany, Platte and Goshen counties.

4. Rocky Mountain proposes market-based rates for the following origin markets: (1) The provinces of Alberta and Saskatchewan and the Northwest Territories in Western Canada; (2) the Big Horn, Wyoming market area defined as Big Horn, Fremont, Hot Springs, Park, Teton and Washakie counties in Wyoming; (3) the Powder River market consisting of Campbell, Converse, Crook, Johnson, Niobrara, Sheridan and Weston counties in Wyoming and Carter, Custer, Powder River, Rosebud and Treasure counties in Montana; and (4) the Southeastern Wyoming area consisting of Albany, Carbon, Goshen, Laramie, Natrona and Platte counties in Wyoming.

5. Rocky Mountain asserts that its application shows that it faces competition in these markets, and it submitted statistical analyses in support of its position that it lacks significant market power in these origin and destination markets.<sup>2</sup>

### **Interventions and Protests**

6. Chevron Products Company (Chevron), Sinclair Oil Corporation (Sinclair) and Tesoro Refining and Marketing Company (Tesoro) filed a joint motion to intervene and protest on September 20, 2002. They requested the Commission deny the application or set it for hearing. Protestors assert that they are refinery operators and shippers on Rocky Mountain's pipeline and will be adversely affected by the imposition of market-based rates. They also contest Rocky Mountain's assertion that it lacks significant market power so as to justify its request for market-based rate authority. Chevron, Sinclair and Tesoro assert that Rocky Mountain currently exercises market power in these markets. They claim this is shown by Rocky Mountain's rate of \$1.32 per bbl, as compared to Express Pipeline's rate of \$0.757 per bbl, for similar transportation services. Additionally, protestors assert that Rocky Mountain increased by 65 percent the rate that BP previously charged prior to Rocky Mountain's acquisition of the pipeline. These protestors assert Rocky Mountain's origin market of two million square miles of territory is too large a geographic origin market for competitive determinations. Protestors also

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<sup>2</sup>The affidavit of Dr. George R. Schink supports Rocky Mountain's position.

assert that all crude oils moved through Rocky Mountain are not substitutable because of refinery configurations, and these considerations greatly limit the ability of refineries to switch transporters.<sup>3</sup>

7. Phillips Petroleum Company (Phillips) filed a motion to intervene and request for discovery and hearing on September 20, 2002. Phillips asserts Rocky Mountain has failed to carry its burden of proof to justify its specific geographic markets, competitive alternatives and the impact of the type of crude oils transported on potential competition, and its claim that it lacks market power.<sup>4</sup>

### **Rocky Mountain's Motion to File Answer**

8. On December 6, 2002, Rocky Mountain filed a letter with the Commission stating it would request partial summary ruling in a forthcoming filing and answer to the interventions and protests of the refinery operator shippers. On December 9, 2002, protestors filed a letter opposing Rocky Mountain's suggested answer, as being outside the bounds of the Commission's market-based rate filing regulations.

9. Rocky Mountain filed a motion for leave to file an answer to the protests on December 13, 2002 (Answer). Rocky Mountain's motion objects to the request for a hearing because of its protracted process and costs. Rocky Mountain argues that the Commission has acted on market-based rate applications without the need for hearings.<sup>5</sup>

10. Rocky Mountain alleges in its Answer that it reduced its rate from \$1.7767 per bbl charged by BP to \$1.32 per bbl for transportation from the Canadian border to Casper, Wyoming, and similar reductions for transportation to other destinations. Rocky Mountain also claims it further reduced its rates to Montana and Wyoming destinations because of competition. Rocky Mountain objects particularly to the claim that its

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<sup>3</sup>Protestors filed affidavits of H.C. Ouzts, Kevin W. Brown, Ross B. Matthews, Marion B. Stewart, Brian F. Duff, and Douglas Koskie.

<sup>4</sup>Phillips submitted the affidavit of Dr. Robert C. Means in support of its positions.

<sup>5</sup>Rocky Mountain submitted the affidavits of Dr. Schink, C. Alan Stevens and Gary Zollinger in rebuttal to the protests.

application is deficient, given that it cannot obtain delivery-based market share data from its competitors.<sup>6</sup>

### **Shippers' Responses**

11. Chevron, Sinclair and Tesoro filed an answer on December 20, 2002 to Rocky Mountain's motion for leave to file an answer to the protests. They urge the Commission to deny the Answer because Rocky Mountain seeks to begin again the application process by filing 255 pages of new material with new issues and information not contained in its initial application, which if allowed, would require shippers to begin anew their protests but with only 15 days for a response, rather than the 60 days prescribed in the regulations. Accordingly, shippers argue that allowing the Answer would be unfair and a denial of due process.

12. Shippers also challenge the credibility of Rocky Mountain's witness, pointing to an alleged bias of the witness against shippers. Further, shippers assert that Rocky Mountain has a monopoly on shipment of Rangeland sweet crude oil, and therefore the Commission should summarily deny its application. Shippers disagree with Rocky Mountain's claims regarding the rates of other competitive pipelines in the area and the rate changes effected by Rocky Mountain after it purchased the pipelines from BP.

13. Phillips filed an answer to the motion of Rocky Mountain on January 6, 2003. Phillips argues that Rocky Mountain's motion and Answer are not allowed by the regulations<sup>7</sup> and emphasizes Rocky Mountain's failure to show good cause to waive the rule. Phillips claims that the Answer is nothing more than an attempt by Rocky Mountain to supplement a deficient application. Thus, Phillips concludes that the record shows disputed issues of fact which require discovery and an evidentiary hearing.

14. Phillips argues that Rocky Mountain improperly based its application on its asserted need to meet increased costs and added investment needs, and accordingly, the Commission should require Rocky Mountain to file a cost-of-service rate case. Additionally, Phillips points out that where material issues of fact exist, applications for

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<sup>6</sup>Rocky Mountain asserts that the Commission has recognized that competitive market data might not be available, yet permits applications for market-based rates to proceed on the basis of other data.

<sup>7</sup>18 C.F.R. § 385.213(a)(2)(2002).

market-based rates have been set for hearing.<sup>8</sup> Phillips sets forth its substantial disagreement with Rocky Mountain over the appropriate geographic market in which competition is to be measured, as well as product markets and origin markets and other issues such as competition, pipeline capacity, categories of crude oil, competitive alternatives, and Rocky Mountain's asserted availability of exchanges of crude oil.

### Discussion

15. We deny the request by the shippers and Rocky Mountain for summary disposition of this application as the record is insufficient and incomplete to resolve the issues of material fact. We also defer Phillips' request for discovery to the Administrative Law Judge (ALJ). This is the first instance of an application for authority to charge market-based rates for a crude oil pipeline and presents novel issues regarding transportation of various types of crude oil originating in Canada and deliveries to refineries in the U.S. Shippers have raised numerous issues of material fact which must be resolved in an evidentiary hearing.

16. Rocky Mountain's motion filed on December 13, 2003 to Answer the protests of the shippers is denied because it is not permitted by the regulations and good cause has not been shown to grant waiver of the regulations.

### The Commission orders:

(A) Pursuant to the Commission's authority under the Interstate Commerce Act and the Commission's rules and regulations, including 18 C.F.R. § 348.2(I) and 18 C.F.R. Subparts D and E, a public hearing shall be held in Docket No. OR02-11-000 for the purpose of defining the appropriate origin and destination markets and determining whether Rocky Mountain lacks significant market power in those markets as so defined.

(B) Rocky Mountain's motion to file an Answer to the protests is denied.

(C) Phillips' motion to conduct discovery is deferred for ruling by the ALJ.

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<sup>8</sup>Phillips cites Wolverine Pipeline, 92 FERC ¶ 61,277 (2000) and TE Products Pipeline Co., 92 FERC ¶ 61,121 (2000).

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(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge pursuant to 18 C.F.R § 375.304, shall convene a prehearing conference in this proceeding to be held within 15 days after the date of issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission in Washington, D. C. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and establishment by the ALJ of procedural dates necessary for the hearing. The ALJ is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Magalie R. Salas,  
Secretary.