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Shell Pipeline Co.
Order on Rehearing
104 FERC ¶ 61,021 (2003)

Shell Pipeline Company (Shell) filed tariffs designed to implement the Commission's Order on Remand addressing the Commission's indexing methodology. (Five-Year Review of Oil Pipeline Pricing Index, 102 FERC ¶ 61,195 (2003)). Orion Refining Corporation (Orion) protested the filing, claiming that Shell's rate increase was unjust and unreasonable. The Commission rejected the protest on standing grounds and on the merits; Orion requested a rehearing.

The Commission denied rehearing on the standing grounds, finding that Orion did not provide sufficient evidence that it had a "substantial economic interest" in the tariff as required by Commission regulations. (18 C.F.R. § 342.3(b) (2001)). In order to have standing, a party must be either the shipper of record or the party that pays the transportation bills at the time of the protest. The substantial economic interest standard is "intended to assure that parties protesting a filing have sufficient interest in the matter to warrant the commitment of agency and pipeline resources to a review of the merits." (at 61,052).

The Commission also denied rehearing on the merits. Orion claimed that since Shell's costs decreased between 2000 and 2001 (the period to which the index was being applied), it should not have been permitted to use the Commission's indexing methodology to increase its rates. When protesting a rate increase made pursuant to the Commission's index, the protesting party must do more than simply allege that a pipeline's costs may have declined. As § 343.2(c)(1) states, it must be shown "that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable." The Commission ruled that "[t]he increase resulting from application of the index would not lead to the resulting rate being unjust and unreasonable, even when the pipeline's costs decrease or are constant, in those instances where the pipeline would not be recovering its costs." (Id. at 61,053). Here, despite the indexing increase, Shell still would not be recovering its costs.

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COMM-OPINION-ORDER, 104 FERC ¶61,021, Shell Pipeline Company LP, Docket No. IS03-150-005, (July 2, 2003)

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Shell Pipeline Company LP, Docket No. IS03-150-005

[61,051]

[¶61,021]

Shell Pipeline Company LP, Docket No. IS03-150-005

Order on Rehearing

(Issued July 2, 2003)

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

1. On March 31, 2003, the Commission issued an order[1] accepting certain tariff sheets that Shell Pipe Line Company (Shell) filed on February 28, 2003 to implement the Commission's Order on Remand addressing the Commission's indexing methodology.[2] Orion Refining Corporation (Orion) filed a protest asserting that the increase Shell sought resulted in rates that were not just and reasonable. The Commission rejected Orion's protest both on standing grounds and on the merits. Orion filed a request for rehearing on both points. Shell filed a motion to answer the request for rehearing and Orion filed a response to that motion. The Commission denies rehearing on the standing issue, and alternatively, on the merits.

The Standing Issue

2. In the March 31 Order the Commission concluded that Orion had not established that it has a substantial economic interest in the tariffs Shell filed on February 28, 2003.[3] In reaching this conclusion, the Commission reviewed Orion's protest and Shell's answer to the protest, and concluded based on an affidavit submitted by Shell that Orion had not shipped under the tariffs at issue during the two years proceeding the tariff filing. Shell's answer and affidavit contained specific information related to the Orion's alleged shipping patterns while Orion's protest did not. Orion did not make any additional filings during the suspension phase that contested Shell's affidavit.[4]

[61,052]

3. On rehearing, Orion filed an affidavit stating that while it was not the shipper of record, it was the party that paid the bills under its contract with a major customer. In the same affidavit Orion identified the two specific tariffs moving petroleum to and from its facility (S-73 and S-75) and the recent volumes. It also stated that Shell was aware during the protest phase of this proceeding that Orion was the real party in interest for shipments to and from Orion's refinery at Norco, Louisiana. Shell filed a motion for leave to answer the rehearing request in light of the additional factual assertions made by Orion. Orion filed a response requesting that Shell's motion be denied.

4. The instant proceeding is before the Commission on rehearing, which is a matter of right. However, neither Shell's motion to answer nor Orion's reply to that motion provide information or arguments helpful to the standing matter at issue here. Thus, the supplemental pleadings are rejected.

5. On review, Orion's rehearing request contains a sworn affidavit containing information that might well establish standing if that information had been submitted at the suspension phase of this proceeding, as is

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required by the Commission's regulations. However, it was not. Orion's protest asserted merely that it shipped or would ship under the tariffs which Shell proposed to index. However, Orion did not state with any specificity which tariffs it actually shipped under, the volumes and the time frames, nor did it adequately assert that it was the real economic party in interest. It also failed to respond to Shell's answer during the suspension phase. The purpose of rehearing is to permit the Commission to correct errors in its prior ruling. Given the information before the Commission in the suspension phase, no error occurred.

6. The Commission furthermore does not consider it appropriate in the circumstances to confer standing at this stage of the proceeding. The Energy Policy Act of 1992 directed the Commission to develop simplified procedures for regulating oil pipelines. The "substantial economic interest" standard is intended to assure that parties protesting a filing have sufficient interest in the matter to warrant the commitment of agency and pipeline resources to a review of the merits.[5] The Commission has therefore required that the persons wishing to protest a filing must plead their interest with specificity, not generality, in order to establish that they have a substantial economic interest in the tariff they are protesting.[6]

7. This is particularly appropriate, where as in *Equilon*, the threshold issues may be complex, but this is true also for a simpler case where the movements can be more readily identified on the basis of the point to point nature of oil pipeline tariffs and the ability to retrieve computer-generated billing records. The Commission therefore concludes that granting rehearing here would undercut the efficient administration contemplated by the regulation and reduce the incentives for compliance. While the Commission is denying Orion standing, even if standing were granted, as discussed below, the Commission would deny rehearing on the merits.

The Merits

8. The Commission's March 31 Order accepted Shell's filing to increase its rates by applying the revised index calculation authorized by the Commission's Remand Order. Orion asserts on rehearing that the Commission should not have permitted Shell to utilize the Commission's indexing methodology in light of the fact that Shell's costs did not increase, but actually declined between 2000 and 2001. This cost decline was reflected in Shell's Form No. 6 for those years. In addition, Orion asserts that because Shell has not filed its Form No. 6 for 2002 at the time that it made its index filing, there is no information to determine whether Shell's costs increased or decreased between 2001 and 2002. Given that Shell's costs decreased between 1990 and 1992, Orion asserts that, under Section 343(c)(1), the increases are so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable. The Commission denies rehearing.

9. The Commission's indexing procedure is intended to be a simplified method for recovery of carrier costs under the just and reasonable standard of the Interstate Commerce Act (ICA).[7] The indexing methodology is set forth in 18 C.F.R §342.3 of the Commission's regulations. Section 343.2(c)(1) of the Commission's regulations provides as follows:

A protest or complaint filed against a rate proposed or established pursuant to §342.3 of this chapter must allege reasonable ground for asserting that the rate violates the applicable ceiling level, or that the rate increase is so

[61,053]

substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable.[8]

Thus, while costs might decline, this does not necessarily mean that a rate increase resulting from the application of the index must be unjust and unreasonable. The increase resulting from application of the index would not lead to the resulting rate being unjust and unreasonable, even when the pipeline's costs decrease or are constant, in those instances where the pipeline would not be recovering its costs. In the instant case, Shell has experienced a decrease in its costs from 2000 to 2001, yet its rates were not sufficient to recover its cost of service in either 2000 or 2001.[9] The fact that Shell still would not be recovering its costs, even with the indexing increase, thus prohibits a finding that Shell's resulting rates are unjust and unreasonable.

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The Commission orders:

Rehearing is denied.

[1] *Shell Pipe Line Company*, 102 FERC ¶61,350 (2003).

[2] *Five-Year Review of Oil Pipeline Pricing Index*, 102 FERC ¶61,195 (2003).

[3] The substantial economic interest standard is contained in 18 C.F.R. §342.3(b) and provides:

Only persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the Interstate Commerce Act. Along with the protest, a verified statement that the protestor has a substantial economic interest in the tariff must be filed.

[4] The Commission's regulations also require, at 18 C.F.R. §343.3(a), that the protestant file a verified statement containing "a reasonably detailed description of the nature and substance of the protestant's substantial economic interest in the tariff filing."

[5] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Statutes and Regulations, Regulations Preambles, Janaury 1991-June 1996* ¶30,985, at pp. 30,961-62 (1993).

[6] *Equilon Pipeline Company LLC*, 91 FERC ¶61,210 (2000) (*Equilon*); *Rocky Mountain Pipeline System LLC*, 101 FERC ¶61,269 (2002).

[7] In Order No. 561, the Commission adopted a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶30,985 (1993), 58 *Fed. Reg.* 58753 (November 4, 1993); *order on reh'g*, Order No. 561-A, *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,000 (1994), 59 *Fed. Reg.* 40243 (August 8, 1994), *aff'd*, *Association of Oil Pipelines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[8] 18 C.F.R. §343.2(c)(1) (2001).

[9] Shell had stated in its answer to Orion's protest that based on numbers on Page 700 of its Form No. 6, the shortfall in its cost of service was $27 million or 6 percent in 1999, $77 million or 15 percent in 2000, and $57 million or 15 percent in 2001.

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