

115 FERC ¶ 61, 387  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Calnev Pipeline L.L.C.

Docket No. IS06-296-000

ORDER ACCEPTING AND SUSPENDING TARIFFS,  
SUBJECT TO REFUND AND CONDITIONS, AND ESTABLISHING  
A HEARING AND SETTLEMENT PROCEDURES

(Issued June 29, 2006)

1. On May 22, 2006, Calnev Pipeline L.L.C. (Calnev) filed proposed FERC Tariff Nos. 21 and 22 pursuant to the Commission's oil pipeline rate indexing methodology (18 C.F.R. § 342.3) adopted under Order No. 561,<sup>1</sup> to become effective July 1, 2006. Under Calnev's new tariffs its indexed oil pipeline rates would increase by the maximum amount allowed, 6.1485 percent. ExxonMobil Oil Corporation (ExxonMobil) protested the tariff filing on June 6, 2006. As detailed below, the Commission accepts and suspends the tariffs to become effective July 1, 2006, subject to refund, and sets this matter for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

**Description of the Filing**

2. Calnev proposes to increase its rates by 6.1485 percent pursuant to the Commission's May 18, 2006 release of the Oil Index Multiplier for 2006-2007. Calnev states the proposed tariff rates for petroleum products pipeline movements from Colton, California, to McCarran International Airport and North Las Vegas, Nevada conform with the revised ceiling level for the period July 1, 2006 to June 30, 2007. Calnev requests that the proposed rates be made effective July 1, 2006.

**Protests**

3. On June 6, 2006, a motion to intervene and protest was filed by ExxonMobil. ExxonMobil alleges that Calnev is substantially over-recovering its cost of service under

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<sup>1</sup> 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.

its existing rates and that in light of this over-recovery it asserts that Calnev is not entitled to any upward adjustment in its rates based upon the increase in the index ceiling.

ExxonMobil states that Page 700 of Calnev's FERC Form No. 6 for 2005 indicates that Calnev's total cost of service has decreased from the 2004 total;<sup>2</sup> therefore, any increase would be "so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable." ExxonMobil further alleges that a 4.8 percent decrease in costs combined with the simultaneous increase in the proposed index rates of about 6.15 percent would allow almost an 11 percent rate revenue increase, thus violating the Commission's regulation that the pipeline's increased rates cannot exceed the index. ExxonMobil cites two Commission orders<sup>3</sup> for its position that in order to qualify for an index rate increase, the pipeline must show that its costs increased from year to year.

4. ExxonMobil contends that it has presented "reasonable grounds" to assert that Calnev's "rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable." ExxonMobil requests that Calnev's proposed increased rates be denied, or in the alternative, allowing the rates to go into effect, subject to refund, set the proceeding for hearing, and require Calnev to demonstrate the justness and reasonableness of its current rates and its entitlement to the claimed increased index rates.

### **Calnev's Response**

5. Calnev filed a response to ExxonMobil's protests on June 12, 2006. Calnev contends that its indexing increase is justified under the Commission's standard because its proposed indexing adjustment is not substantially in excess of its change in actual costs. Calnev notes that the index provides for an increase of about 6.15 percent, while its costs declined 4.8 percent between 2004 and 2005.

6. Calnev contends that ExxonMobil's claims lack merit. It rejects ExxonMobil's principal claim that because Calnev experienced a decrease in its cost of service between 2004 and 2005, it is not allowed to adjust its rates pursuant to the Commission's indexing system. It asserts this follows from an illogical reading of the Commission's regulations and is flatly contrary to the Commission's entire rationale and interpretation of the indexing system. Calnev objects to ExxonMobil's claim for two reasons.

7. First, Calnev takes exception with the two Commission orders cited by ExxonMobil to support its claim that in order to qualify for increased index rates a

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<sup>2</sup> Calnev's FERC Form No. 6 reports total cost of service for 2004 of \$41,800,732, and \$39,785,539 for 2005, approximately a 4.8 percent decrease.

<sup>3</sup> *Calnev Pipe Line LLC*, 95 FERC ¶ 61,491 (2001); *Calnev Pipe Line LLC*, 96 FERC ¶ 61,350 (2001).

pipeline must show that its costs increased from year to year. It argues that ExxonMobil misinterpreted the Commission's standard and that the cited orders reveal no holding that a pipeline is only eligible for indexing of its rates when its costs increase.

8. Calnev's second argument asserts that ExxonMobil's claim is contrary to the reasoning of the Commission in implementing its indexing policy. Calnev states that the indexing system established under Order No. 561 does not apply to the specific cost of any particular pipeline but instead uses the average costs of all pipelines to develop the index. As such, Calnev contends it will be natural for some divergence between cost of service and revenues for an individual pipeline to exist. Calnev contends that setting whether a pipeline's costs increased or decreased as an initial bar to eligibility for indexing of the pipeline's rates would be unreasonable, elevating form over substance and emphasizing an arbitrary threshold over the Commission's existing and proper focus on the substantiality of any divergence between the indexing change and change in the specific pipeline's costs. Calnev cites the example of *SFPP, L.P.*,<sup>4</sup> in which the Commission allowed SFPP to increase its rates by 3.6 percent when the pipeline's costs increased by 0.37 percent. Calnev argues that it would be unjust to treat differently another pipeline that experienced, for example, a cost decrease of 0.37 percent, which would result in a respective divergence between the rate and cost changes of 3.97 percent compared to SFPP's divergence of 3.23 percent.

### **Discussion**

9. ExxonMobil is incorrect that section 343.2(c)(1) of the Commission's regulations automatically precludes any index adjustment if a pipeline has not experienced a cost increase. Further, ExxonMobil's assertion that a pipeline's increased rates cannot exceed the index is incorrect. Section 343.2(c)(1) of the Commission's regulations provides that a protest or complaint filed against a rate proposed or established pursuant to section 342.3 (index rates) "must allege reasonable grounds for asserting 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."

10. Calnev cites a SFPP order permitting an index adjustment of 3.6 percent. In that proceeding, SFPP had an increase in its costs of 0.37 percent, which resulted in the rate increase exceeding its cost increases by 3.23 percent. Calnev then provides a hypothetical example applying the same index adjustment, but a decrease in the pipeline's costs of 0.37 percent, which results in a rate increase exceeding its cost decrease by 3.97 percent. Calnev concludes that it would be unreasonable setting whether a pipeline's costs increased or decreased as an initial bar to eligibility for

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<sup>4</sup> *SFPP, L.P.*, 113 FERC ¶ 61,253 (2005).

indexing of the pipeline's rates. Rather than the less than 4 percent differential between rates and costs provided in the above examples, Calnev's increased indexed rates in the case before us exceeds its cost decrease by almost 11 percent. The Commission concludes that the difference between Calnev's proposed increased index rates and its actual costs is too significant for the SFPP example to control here.

11. The Commission has reviewed Calnev's 2006 FERC Form No. 6 and notes that Calnev's revenues for 2005 (\$47,474,404) exceeded its cost of service (\$39,785,539) by \$7,688,865 or 19.33 percent.<sup>5</sup> Under these circumstances the Commission concludes that ExxonMobil has presented reasonable grounds to call into question whether Calnev's rate increase is so substantially in excess of the actual cost increases incurred that the rate is unjust and unreasonable. Thus we find that Calnev's proposed indexing increase may be so substantially in excess of its change in actual costs that the proposed rates are unjust and unreasonable and it is appropriate to establish a hearing to make such a determination.

12. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>6</sup> If the parties desire, they may, by the mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.<sup>7</sup> If a settlement cannot be reached, the instant docket will be set for hearing.

### **Suspension**

13. Based upon a review of the filing, the Commission finds that Calnev's FERC Tariff Nos. 21 and 22 include proposed rates that are substantially in excess of the decrease in costs incurred and may be unjust and unreasonable. Accordingly, the Commission will accept the tariff sheets for filing and suspend them, to be effective July 1, 2006, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

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<sup>5</sup>  $47,474,404 - 39,785,539 = 7,688,865 / 39,785,539 = 19.33$  percent.

<sup>6</sup> 18 C.F.R. § 385.603 (2005).

<sup>7</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 219-2500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at [www.ferc.gov/legal/oalj/bio/judges.htm](http://www.ferc.gov/legal/oalj/bio/judges.htm).

The Commission orders:

(A) Calnev's FERC Tariff Nos. 21 and 22 are accepted and suspended and made effective July 1, 2006, subject to refund, and further order of the Commission.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly sections 13(1) and 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by Calnev filing.

(C) Pursuant to the section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2005), the Chief Administrative Law Judge shall designate a presiding administrative law judge for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and to the Commission's Rules of Practice and Procedure.

(D) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(F) Within 30 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.