

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Calnev Pipe Line, L.L.C.

Docket No. IS05-259-000

ORDER ACCEPTING TARIFF

(Issued June 30, 2005)

1. On May 20, 2005, Calnev Pipe Line, L.L.C. (Calnev) filed FERC Tariff No. 19<sup>1</sup> pursuant to the Commission's indexing methodology adopted under Order No. 561<sup>2</sup> and set forth in section 342.3 of the Commission's regulations.<sup>3</sup> BP West Coast Products LLC (BP) and ExxonMobil Oil Corporation (jointly, Protesters) protested Calnev's filing. As discussed below, the Commission accepts the subject filing, accepts Calnev's proposed FERC Tariff No. 19, and allows the rates to become effective July 1, 2005, as requested by Calnev. This order benefits customers because it ensures that the increased rates reflected in Calnev's FERC Tariff No. 19 have been determined in accordance with the indexing methodology established by the Commission.

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<sup>1</sup> FERC Tariff No. 19 cancels FERC Tariff No. 17. Calnev also filed FERC Tariff No. 20, issued May 20, 2005, which cancels FERC Tariff No. 18 and which contains an index of all effective tariffs to which Calnev is a party, in accordance with 18 C.F.R. § 341.9 (2004).

<sup>2</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. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30, 985 (1993), 58 F.R. 58753 (Nov. 4, 1993); *order on reh'g*, Order 561-A, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,000 (1994), 59 F.R. 40242 (Aug. 8, 1994); *aff'd*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *aff'd Association of Oil Pipe Lines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002) *order on remand*, *Five-Year Review of Oil Pipeline Pricing Index*, 102 FERC ¶ 61,195 (2003).

<sup>3</sup> 18 C.F.R. § 342.3 (2004).

### **Description of the Filing, Protest, and Response**

2. Calnev asserts that its FERC Tariff No. 19 conforms its rates for petroleum products pipeline movements from Colton, California to McCarran Field and North Las Vegas, Nevada, and the Las Vegas terminal charge with the applicable revised ceiling level for the period from July 1, 2005 through June 30, 2006. Calnev's filing increases the present maximum ceiling level of 97.94 cents per barrel to 101.49 cents per barrel, as calculated in accordance with the Commission's indexing policy. Calnev requests that the proposed rates become effective July 1, 2005.

3. On June 6, 2005, Protesters filed the Motion to Intervene and Protest. Protesters argue that Calnev does not qualify for an index adjustment to its rates, or in the alternative, does not qualify for the full amount of the allowed index adjustments. First, Protesters contend that page 700 of Calnev's 2004 FERC Form 6 shows that Calnev is disqualified from any indexed rate increase. Specifically, Protesters claim that Calnev's cost of service increased by only 2.4 percent; therefore, the maximum indexed adjustment of 3.6288 percent<sup>4</sup> is impermissibly higher than the actual increase in Calnev's cost of service.

4. Protesters also challenge Calnev's claimed income tax allowance. They cite the Commission's *Policy Statement on Income Tax Allowances (Policy Statement)*,<sup>5</sup> which Protesters claim sets a policy that a "pass through" entity like Calnev, is entitled to a full income tax allowance if the pipeline can demonstrate that its owners have actual or potential income tax liability on any income flowed through to the partners or other form of owners. Protesters maintain that Calnev fails to make such a showing. Moreover, Protesters assert that shippers cannot determine what Calnev claims as its return on equity, in dollars, although Protesters acknowledge that Calnev is not obliged to furnish this information. Protesters attach an Offer of Proof to their protest expanding their tax arguments.

5. On June 13, 2005, Calnev filed a response to Protesters motion to intervene and protest. Calnev asserts that the protest breaches a previous agreement obligating BP not to protest or to assist any other person in protesting an indexing increase by Calnev, fails

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<sup>4</sup> See *Notice of Annual Change in the Producer Price Index for Finished Goods*, 111 FERC ¶ 61,226 (2005).

<sup>5</sup> 111 FERC ¶ 61,139 (2005).

to adhere to the Commission's standard for reviewing rate increases made via indexing, and appears to be a collateral attack on the *Policy Statement*.<sup>6</sup>

### **Discussion**

6. The Commission bases its index system on the annual change in the Producer Price Index for Finished Goods (PPI). The PPI index reflects year-to-year changes in oil industry costs in general and therefore, reflects the change in the "average" oil pipeline company's cost of service. The percent change in the PPI from 2003-2004 was 3.6288 percent. This is the percentage multiplier the Commission permits pipelines to use to increase their index ceiling levels that will apply from July 1, 2005, through June 30, 2006, and is the amount of increase sought by Calnev.

7. Section 343.2(c)(1) of the Commission's regulations provides in part as follows:

A protest or complaint filed against a rate proposed or established pursuant to [the indexing rules] must allege reasonable ground for asserting that the rate violates the applicable ceiling level, or 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....<sup>7</sup>

8. The list of tariff schedule changes attached to Calnev's filing demonstrates that Calnev's proposed indexed rates do not violate the applicable new ceiling levels. Section 343.2(c)(1) establishes the standard a party must meet if it is otherwise to make a successful challenge to indexed rates: the challenging party must show that the proposed indexed rate increase is so substantially in excess of the pipeline's actual cost increases that it renders the resulting rate unjust and unreasonable. As Calnev points out, the Commission previously applied this standard consistently in rejecting challenges to Calnev's previous indexed rates by, *inter alia*, Protesters.<sup>8</sup>

9. In this case, Protesters again fail to make the requisite showing. The revised index provides for an increase in rates of approximately 3.63 percent, while Calnev's actual cost of service increased by approximately 2.4 percent. The Commission rejects Protesters' contention that Calnev's claimed percentage increases of 2.4 percent would

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<sup>6</sup> Section 343.3(b) of the Commission's regulations (18 C.F.R. § 343.3(b) (2004)) permits a carrier to file a response to a protest no later than five days after the protest is filed.

<sup>7</sup> 18 C.F.R. § 343.2(c)(1) (2004).

<sup>8</sup> See, e.g., *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004); *SFPP, L.P.*, 102 FERC ¶ 61,344 (2003); *SFPP, L.P.*, 96 FERC ¶ 61,332 (2001).

have to increase by 50 percent in order to reach 3.63 percent and qualify for the indexed increase.<sup>9</sup> That argument fails to recognize the Commission's practice and previous holdings. Further, even if the Commission eliminated Calnev's tax allowance from its 2004 costs and Calnev's increase to its costs were reduced to .94 percent, as argued by Protesters, Calnev's proposed increase of 3.6288 percent still would not be substantially in excess of the increase in Calnev's costs.

10. In addition, Protesters' claim that Calnev is not entitled to an income tax allowance in 2004 would appear to be inconsistent with allowing the full tax allowance in 2003. If the Commission disallowed an allowance for 2004, the same tax allowance treatment also would have to apply retroactively for 2003 to accurately measure changes in costs from 2003 to 2004. This Protesters did not do and thus unfairly reduced their measure of the changes in Calnev's costs from 2003 to 2004. Accordingly, the Commission rejects the protest and will accept Calnev's filing.

11. Finally, in an Agreement in Satisfaction of Complaints in Docket No. OR01-8-000, *et al.*, BP agreed that it would not protest Calnev's rate increases resulting from application of the Commission's indexing regulations and would not encourage or assist any other person in filing a protest to a rate increase based on the indexing regulations.<sup>10</sup> BP's participation in the protest lodged in this proceeding violates and thus breaches that agreement. Accordingly, the Commission rejects BP's protest. The arguments otherwise made in the protest nonetheless fail to meet the standard for challenging indexed rate increases, and thus the Commission accepts Calnev's filing. The Commission also admonishes BP for failing to keep the bargain it agreed to in the Docket No. OR01-8-000, *et al.*, proceeding.

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<sup>9</sup> See, e.g., *Calnev Pipe Line, L.L.C.*, 95 FERC ¶ 61,491 (2001) at 62,736, where the Commission stated that "a challenge to an indexed rate increase must rest solely on a comparison of the changes in rates and costs from one year to the next." Here, costs changed by 2.4 percent and rates by 3.63 percent.

<sup>10</sup> Joint Motion for Dismissal of Complaints and Calnev Pipe Line L.L.C.'s Conditional Notice of Withdrawal of Petition, Agreement in Satisfaction of Complaints, Docket No. OR01-8-001, *et al.*, III.C.2.(a), IV.E (April 5, 2002).

The Commission orders:

Calnev's FERC Tariff Nos. 19 and 20 are accepted to become effective July 1, 2005.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.