140 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Mobil Pipe Line Company | Docket No. IS12-553-000

ORDER ACCEPTING TARIFF

(Issued September 27, 2012)

1. This order accepts effective October 1, 2012, Mobil Pipe Line Company's (Mobil) tariff filing to implement market-based rates for transportation on its Pegasus pipeline system.

Background

2. Mobil's filing in the instant docket arises from Mobil's application for market-based rates in Docket No. OR07-21-000. On August 24, 2007, in Docket No. OR07-21-000, Mobil filed an application for a market power determination seeking authority to charge market-based rates on its existing Pegasus pipeline system for the transportation of crude oil from Pegasus' origin at Patoka, Illinois, to its destination at Nederland, Texas. The filing was protested and the Commission set the issues for hearing.[1] On August 5, 2009, the Presiding Administrative Law Judge (ALJ) issued an initial decision finding that Mobil had not established that it lacked significant market power and recommending that the application for market-based rates be denied.[2] On December 1, 2010, the Commission issued an order affirming the initial decision.[3] On January 28, 2011, Mobil filed a petition for review of the Commission's order with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

---

[1] *Mobil Pipe Line Company,* 121 FERC ¶ 61,268 (2007).

[2] *Mobil Pipe Line Company,* 128 FERC ¶ 63,008 (2009).

[3] *Mobil Pipe Line Company,* 133 FERC ¶ 61,192 (2010).

3. On April 17, 2012, the D.C. Circuit issued an opinion in *Mobil Pipe Line Company v. Federal Energy Regulatory Commission (Mobil v. FERC)*.[4] The court granted Mobil's petition for review, vacated the Commission's order, and remanded to the Commission for further proceedings consistent with the opinion. On June 1, 2012, the Canadian Association of Petroleum Producers, and Canadian Natural Resources Limited and Suncor Energy Marketing Inc., who were parties to the Commission proceeding and intervenors in the appeal, filed petitions for rehearing *en banc* of the court's opinion. The petitions were denied by the court in a *per curiam* decision issued June 11, 2012.

4. In the *Mobil v. FERC* opinion, the court "conclude[d] that the Commission's decision was unreasonable in light of the record evidence. The record shows that producers and shippers of Western Canadian crude oil have numerous competitive alternatives to Pegasus for transporting and selling their crude oil. *Pegasus does not possess market power*."[5] Given these findings of the court, on remand the Commission granted Mobil's application for market-based rates for its Pegasus pipeline system.[6]

Mobil's Tariff

5. On August 28, 2012, Mobil filed FERC Tariff No. A-1210.3.0, to be effective October 1, 2012. The tariff provides for the transportation of crude petroleum from Patoka, Illinois into Mobil Pipe Line Company's 20-inch pipeline for delivery into Nederland, Texas. Mobil states that the tariff rate is market-based pursuant to the Commission Order on Remand in Docket No. OR07-21-001, issued August 3, 2012. The proposed tariff increases the rate from $1.571 per barrel to $5.0791 per barrel for crude oil transportation from the origin at Patoka Station, Marion County, Illinois to the destination at Sunoco's Marine Terminal, Jefferson County, Texas.

Interventions, Protests and Mobil's Answer

6. A motion to intervene was filed by Marathon Petroleum Company L.P. Motions to intervene and protests were filed by Cenovus Energy Marketing Services, Ltd. and Nexen Energy Marketing U.S.A., Inc. (jointly); Suncor Energy

[4] 676 F.3d 1098 (2012).

[5] *Mobil v. FERC*, 676 F.3d at 1099 (Emphasis added).

[6] *Mobil Pipe Line Company,* 140 FERC ¶ 61,104 (2012) (Order on Remand).

Marketing Inc., Canadian Natural Resources Limited, Husky Marketing and Supply Company, and Valero Marketing and Supply Company (jointly); and the Canadian Association of Petroleum Producers. The protesters assert that they are past, present, and future shippers on the Pegasus system and therefore have a substantial economic interest in the proceeding.

7. The protesters assert that it may be premature to act on Mobil's filing because the order on remand is subject to rehearing. The protesters assert that Mobil's proposed rate represents a 221 percent increase over the current rate and is therefore not just and reasonable. The protesters assert that the Commission should suspend the tariff for seven months subject to refund and establish a hearing to investigate the justness and reasonableness of the proposed rate. The protesters assert that the Commission should investigate whether Mobil has market power under current conditions. The protesters claim that the record evidence is out of date and has been overtaken by recent developments. The protesters contend that the Commission should address whether Mobil can currently exercise market power with regard to (1) the current saturation of crude in the traditional Upper Midwest markets; (2) the significant shortage or lack of infrastructure to non-traditional markets in the West Coast where world pricing is still available; and (3) the current differentials in existence which are anticipated to be sustained, lengthy, and growing for an indefinite period of time.

8. Mobil filed an answer in response to the protests. Mobil contends that the protests are nothing more than an attempt to re-litigate a Commission proceeding that was definitively resolved in the D.C. Circuit's decision in *Mobil Pipe Line Co. v. FERC*, 676 F.3d 1098 (D.C. Cir. 2012) (*Mobil v. FERC*) and the Commission's August 3, 2012 decision granting Mobil market-based rate authority for the Pegasus pipeline. *See* Order on Remand, 140 FERC ¶ 61,104. Mobil asserts that in seeking to frustrate and delay Mobil's lawful market-based rate tariff filing, the protesters mischaracterize the legal standards for market-based rates, erroneously contend that new proceedings are warranted, and raise a host of unsupported and spurious claims. Mobil asserts that the protesters' arguments cannot be reconciled with the legal framework applicable to market-based rates, pursuant to which market-based rates are legally justified (and hence within the zone of reasonableness) by a showing that the pipeline lacks market power – a showing that Mobil has made. Mobil contends that the protesters' argument regarding price differentials is nothing more than an invitation for the Commission to consider the very type of evidence that the D.C. Circuit rejected in *Mobil v. FERC*. Mobil also submits that the pending rehearing request in Docket No. OR07-21 does not stay the order on remand.

Discussion

9. Pursuant to the Commission's August 3, 2012 Order on Remand in Docket No. OR07-21-001, Mobil has filed to establish market-based rates for transportation of crude oil on its Pegasus pipeline system from Patoka, Illinois to Nederland, Texas. The protesters argue that it may be premature to act on the filing because of the pending rehearing of the remand order. If the Commission acts on the filing, the parties argue that the rates should be suspended for seven months, subject to refund and investigation at a hearing.

10. The Commission finds that it is not premature to act on the filing. Rule 713(e) of the Commission Rules of Practice and Procedure (18 C.F.R. § 385.713(e) (2012)) states that "the filing of a request for rehearing does not stay the Commission decision or order." The Commission rejects the argument of certain protesters[7] that the findings of the court in *Mobil v. FERC* are not applicable here and that this is a separate proceeding requiring a new evidentiary record. Accepting such an argument would render the process for market-based rate applications a nullity because an oil pipeline must always make a separate tariff filing implementing market-based rates after a finding of a lack of market power, as Mobil has done here.

11. In the remand order, the Commission recognized that the court vacated the Commission's order on initial decision and determined that "The record shows that producers and shippers of Western Canadian crude oil have numerous competitive alternatives to Pegasus for transporting and selling their crude oil. *Pegasus does not possess market power*."[8] Given this finding of the court, on remand the market-based rate application was granted. Since Mobil is simply implementing market-based rates consistent with the Commission's order on remand, Mobil's proposed tariff is accepted. This acceptance should not be considered as prejudging the Commission's assessment and response to the arguments that have been raised on rehearing of the order on remand in this case. Those arguments will be addressed on their merits in the order on rehearing of the remand order.

---

[7] *See* Protest of Suncor Energy Marketing, *et al.* at 12-13.

[8] *Mobil v. FERC*, 676 F.3d at 1099 (Emphasis added).

The Commission orders:

Mobil's FERC Tariff No. A-1210.3.0 is accepted to be effective October 1, 2012.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.