

168 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Plains Pipeline, L.P.

Docket No. IS19-777-000

ORDER REJECTING TARIFF

(Issued September 27, 2019)

1. On August 30, 2019, Plains Pipeline, L.P. (Plains) filed FERC Tariff No. 71.12.0 (Tariff)¹ to cancel FERC Tariff No. 71.11.0 effective September 30, 2019. Plains states that the purpose of the filing is to establish a penalty (Penalty) for shippers that leave crude oil in Plains' pipeline system that is greater than a shipper's required *pro rata* share necessary to maintain pipeline and tankage fill (Required Inventory). Plains states that the primary purpose of this Penalty is to deter shippers from leaving excess crude oil in its system that adversely impacts the pipeline system's reliability and capacity.² On September 16, 2019, Marathon Oil Company (Marathon) filed a protest contending that the proposed Penalty is unjust and unreasonable. As discussed below, we reject FERC Tariff No. 71.12.0 without prejudice.

Description of the Filing

2. Plains states that its current Rules and Regulations tariff requires shippers to supply a *pro rata* share of Required Inventory for pipeline and tankage fill, which is necessary for the efficient operation of Plains' system.³ Plains states that it has experienced repeated instances of shippers exceeding their *pro rata* share of Required Inventory. Plains contends that this excess inventory results in shippers' effectively utilizing its pipeline system as storage.⁴ Plains claims that the excess crude oil that such

¹ Plains Pipeline, L.P., FERC Oil Tariff, Plains Pipeline, L.P. FERC tariff filings, Rules and Regulations, Plains FERC Tariff No. 71.12.0

² See Plains' Tariff Filing, FERC Tariff No. 71.12.0.

³ See Plains' FERC Tariff No. 71.12.0, Item No. 30.

⁴ Plains does not offer storage services on its system. *Id.* Item No. 140.

shippers leave on its system impairs its ability to schedule transportation service and adversely affects shippers. According to Plains, the proposed Penalty is necessary to deter shippers from leaving excess crude oil on its system and avoid adverse impacts on its system reliability and capacity.

3. Plains explains that the proposed Penalty will apply to shippers that leave at least 10 percent more (or less) than a shipper's Required Inventory for a given transportation month. Specifically, Plains states that a shipper will be assessed a penalty equal to the product of \$1.50 per barrel multiplied by the shipper's ending inventory for the transportation month less 110 percent of the shipper's Required Inventory for the transportation month. Plains states that the proposed Penalty will also apply to a shipper that provides only 90 (or lower than 90) percent of its Required Inventory. Plains explains that the Penalty will not be assessed if the barrel variance is less than 50,000 barrels.

4. Plains states that it is not seeking to create an additional source of revenue, but is seeking to encourage compliance with its tariff's delivery and receipt requirements. Plains contends that because a shipper can choose whether to leave more or less than 10 percent of its Required Inventory on the system, the decision whether to incur any Penalty assessment is within the control of each shipper. Plains states that the Penalty will benefit all shippers by eliminating incidents that impair Plains' ability to accept and deliver the full amount of crude oil nominated by shippers due to excess volumes on the system.

Protest

5. On September 16, 2019, Marathon filed a timely protest asking that we reject the filing as unjust and unreasonable. Marathon contends that the proposed Penalty is unnecessary and excessive, even if shown to be necessary.⁵ Marathon claims that a majority of Plains' transportation rates are lower than the Penalty rate, which could result in a shipper paying a Penalty charge that is more than it is paying for the actual service.

6. Marathon also contends that Plains' proposed Penalty is unnecessary, because the tariff already contains a demurrage charge if a shipper fails to take delivery of its crude oil after receiving notice from Plains that delivery has been scheduled.⁶ Marathon points out that Item No. 75 of Plains' Tariff already assesses a penalty (demurrage charge) if a shipper fails to take delivery of its crude oil at a destination point after receiving notice

⁵ See Protest at 5.

⁶ See Plains' FERC Tariff No. 71.12.0, Item No. 75.

from Plains that delivery has been scheduled.⁷ Marathon states that Item No. 75 also permits Plains to make arrangements to clear its system, at the shipper's expense, of any volumes remaining in its system if a shipper fails to take delivery. Marathon contends that a shipper that is unable to take delivery may now be assessed a penalty not only under the demurrage charge from existing Item No 75, but also under the proposed new Penalty. Marathon maintains that these provisions create an incentive for Plains to maintain an imbalance on the system. Marathon argues Plains would have undue discretion to decide whether to apply the demurrage charge in Item No. 75 or the new Penalty, or both.

Responses

7. On September 23, 2019, Plains filed a response to the protest. Plains argues that Marathon lacks standing to protest the Tariff because Marathon is not a current shipper on Plains' system and has not shipped barrels on its system (if at all) for an extended period. Plains asserts that Marathon lacks a substantial economic interest in the Tariff because Marathon is not affected by the operational disruptions Plains is attempting to remedy or the proposed Penalty. Plains states that the fact that Marathon may ship in the future on Plains' system should not afford it standing to protest Plains' attempt to address a current operational problem occurring on its system.⁸

8. Plains further argues that the Protest lacks merit and should be rejected. Plains argues that the proposed Penalty is reasonable and appropriate to address the harmful behavior it seeks to deter.⁹ Plains argues that the proposed Penalty is not excessive or discriminatory, and that Marathon's standard for evaluating the proposed Penalty is illogical and not consistent with Commission precedent.¹⁰ Plains explains that the proposed Penalty is not duplicative of Plains' existing Tariff provisions and does not incentivize Plains to maintain imbalances.¹¹

9. On September 25, 2019, Marathon filed a motion for leave to answer and an answer to Plains' answer.

⁷ *Id.*

⁸ Plains' Answer at 1-2, 4-6.

⁹ *Id.* at 6-13.

¹⁰ *Id.* at 14-18.

¹¹ *Id.* at 18-23.

Discussion

10. We find that Plains provided an insufficient explanation for the proposed Penalty in its transmittal letter. Plains did not present sufficient evidence to support the need for and level of the proposed Penalty in its transmittal letter.¹² For example, Plains claims in the transmittal letter that the proposed Penalty addresses “repeated instances” of shippers’ leaving crude oil in *excess* of their Required Inventory on the system, which Plains claims adversely impacts system reliability and capacity.¹³ However, the proposed Penalty also applies where a shipper’s ending inventory is *less* than the shipper’s Required Inventory.¹⁴ Plains also did not present any evidence in its transmittal letter to support the alleged repeated instances of violations.¹⁵ Further, regarding the exception to the proposed Penalty for a variance under 50,000 barrels, the transmittal letter does not explain how the barrel variance will be calculated, and it is difficult to evaluate the significance of this 50,000 barrel exception because neither the transmittal letter nor the Tariff describe how a shipper’s Required Inventory is determined.¹⁶ Although Plains provided additional support in its response to the protest,¹⁷ pipelines must explain their tariff changes in their transmittal letters, not subsequent responses.¹⁸ Because we find

¹² See *Enbridge Pipelines (North Dakota) LLC*, 138 FERC ¶ 61,087, at P 20 (2012).

¹³ Transmittal Letter at 1-2.

¹⁴ *Id.*

¹⁵ *Enbridge Pipelines (North Dakota)*, 138 FERC ¶ 61,087 at P 20 (rejecting proposed penalty where the pipeline had “not supplied evidence of a history of previous violations, showing the number of off-specification violations, the volumes involved, the resulting damage to the pipeline or to other shippers, the actual costs to the pipeline of such events, or any other pertinent facts”).

¹⁶ See Plains’ FERC Tariff No. 71.12.0, Item No. 30 (“Prior to delivering Barrels out of Carrier’s System, each Shipper will be required to supply a *pro rata* share of Crude Petroleum necessary for pipeline and tankage fill [N] (“Required Inventory”) to ensure efficient operation of Carrier’s System.”).

¹⁷ Plains’ response provides information in an attempt to demonstrate that the proposed Penalty is consistent with the Commission’s standards. See Plains’ Answer at 6-13. We fail to see why this information could not have been provided with the Tariff filing.

¹⁸ *Laurel Pipe Line Co. L.P.*, 167 FERC ¶ 61,210, at P 24 n.37 (2019) (“Oil pipelines have the burden to demonstrate that proposed rates are just and reasonable, and

that Plains failed to provide sufficient explanation to support the proposed Penalty in its transmittal letter, the Tariff is rejected. Our rejection is without prejudice to Plains' filing a fully-supported proposal resolving the deficiencies discussed above.

11. Because we are rejecting the Tariff based on the above deficiencies in the transmittal letter, we need not at this time address the merits of the issues raised by Marathon's protest, including standing, or Plains' response. Furthermore, Rule 213 of the Commission's Rules of Practice and Procedure prohibits answers to answers unless otherwise ordered by the decisional authority.¹⁹ We reject Marathon's answer as it did not provide information that assisted us in our decision-making process.

The Commission orders:

Plains Pipeline, L.P.'s FERC Tariff No. 71.12.0 is rejected without prejudice.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

they must provide sufficient explanatory information to meet that burden of proof in their transmittal letters rather than their answers.”); *Chaparral Pipeline Co.*, 152 FERC ¶ 61,068, at P 7 (2015) (failure to provide sufficient explanation and support for tariff changes in the transmittal letter “may result in the Commission rejecting such filings as patently deficient”); *Mars Oil Pipeline Co.*, 150 FERC ¶ 61,148, at P 7 n.7 (2015) (oil pipelines must provide “adequate explanation in their transmittal letters as opposed to waiting to justify a filing in an answer”); *ONEOK Elk Creek Pipeline, L.L.C.*, 167 FERC ¶ 61,277, at P 4 (2019).

¹⁹ 18 C.F.R. § 385.213(a)(2) (2019).