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Decision 82 01 30 JAN 19 1982 ORIGINAL TD-20

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of FOUR CORNERS PIPE LINE COMPANY, Delaware Corporation, (1) for authority to file a tariff change pursuant to Section 491 of the Public Utility (sic) Code, or in the alternative, (2) for authority to increase transportation rates for crude petroleum pursuant to section 454 of the Public Utility (sic) Code.	Application 60600 (Filed May 29, 1981)

Jeffrey R. Pendergraft, Attorney at Law, for Four Corners Pipe Line Company, applicant.
Damrell, Damrell & Nelson, by David G. Vander Wall and Peter R. McEnroe, Attorneys at Law, for Pacific Refining and Western Fuel; and Michael Steele, Attorney at Law, for Coastal Petroleum, Century Resources, and Petrotex; protestants.
Henry F. Lippitt, 2nd, Attorney at at Law, and Walter I. Weed, Jr., for Powerine Oil Company; Robert N. Cimbalo and Robert S. Roth, Attorney at Law, for Sunland Refining Corp.; and Pillsbury, Madison and Sutro, by Dudley A. Zinke, Attorney at Law, for Chevron U.S.A. Inc.; interested parties;
Alvin S. Pak, Attorney at Law, and Mark Wetzell, for the Commission staff.

OPINION

By its application, Four Corners Pipe Line Company (Four Corners) seeks authority to increase from 3 cents to 17 cents per barrel per API[1] degree its California intrastate gravity bank differential applicable to Four Corners' Line 63. Further, Four Corners requests authority to increase its tariff interest rate on late payments of transportation charges and on gravity bank

[1] American Petroleum Institute.

adjustments from 6% per annum to 125% of the prime rate of interest charged by Citibank N.A. of New York, or the maximum rate allowed by law, whichever is less.

Background

Four Corners provides common carrier and public utility pipeline services for interstate and intrastate crude oil and petroleum product shipments originating in California's San Joaquin Valley. A portion of intrastate movements are conducted over Line 63.

Line 63 is a combination of trunk and gathering lines running between Coles Levee and points south. Crude oil of varying gravities[2] from various shippers are transported over Line 63. Although certain shipments of higher gravity crudes are segregated or batched to prevent any diminution of gravity during shipment, most shipments are sent through a common commingled stream. As a result of commingling, certain shippers tendering high gravity crude oils, through the in-transit blending of disparate gravity crudes, will receive a crude at the point of delivery of lower gravity than originally tendered. Concomitantly, other shippers of lesser gravity crude oils will receive at the point of delivery a higher gravity crude oil compared to the crude they tendered for shipment.

In order to compensate shippers for any diminution in the value of their crude occurring due to commingling and to prevent other shippers from being unduly enriched in the process, Four Corners administers a gravity bank.

Gravity Bank

Four Corners administers a gravity bank not only for California intrastate shipments through Line 63, but also administers

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2 Crude oil gravity is measured in API degrees. The crude oils commingled in Line 63 have gravities ranging from 13° API to 35° API.

a bank for interstate shipments moving through that line. The interstate pipeline service is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).

A gravity bank is intended to prevent windfalls and penalties by requiring shippers receiving higher gravity crude than that which they deliver to pay money into the bank and by entitling shippers receiving lower gravity crude than that which they deliver to receive money from the bank. The bank is operated so that payments into it and from it are equal.

In order for a gravity bank to operate equitably by eliminating such windfalls and penalties to the maximum extent practicable, the gravity bank differential (measured in cents per barrel per API degree) must be as nearly equal as possible to the difference in values per barrel per API degree of different crude oils shipped through the pipeline. If the differential is less than the difference in crude oil values per API degree, shippers receiving a higher gravity crude than they deliver receive unearned windfalls at the expense of those receiving lower gravity crude than they deliver. If the differential is more than the difference in values per API degree, the opposite is true.

Tariff Filings

Based upon shipper complaints to Four Corners about the inadequacy of the existing 3 cents per degree per barrel gravity bank differential, Four Corners employed The Pace Company of Houston, Texas, to determine and recommend what the gravity bank differential should be, as applied to Four Corners' California intrastate Line 63. The study was completed in October 1980. In February 1981, Four Corners filed intrastate and interstate tariff changes with us and with FERC seeking to put the new 17-cent differential into effect. FERC accepted the Four Corners interstate filing and permitted the new 17-cent differential to be made effective on April 1, 1981. On February 5, 1981, the Commission staff (staff) rejected the filing on the grounds that it involved a rate increase under Public Utilities Code § 454 instead of a tariff change § 491. On May 29, 1981, Four Corners filed its formal application.

Hearings

A duly noticed prehearing conference (PHC) and 3 days of public hearing were held before Administrative Law Judge J. J. Doran in Los Angeles. The PHC was held on August 6, 1981 and the hearing on October 5, 6, and 7, 1981. The matter was submitted on briefs filed October 23, 1981.

Testimony in support of the Four Corners' application was presented by Four Corners, Powerine Oil Company (Powerine) and Chevron U.S.A. Inc. (Chevron). Coastal Petroleum Refiners, Inc., Century Resources Development, Inc., and Petrotex (Coastal, Century,and Petrotex) presented testimony in opposition. Pacific Refining Company and Western Fuel Oil Company (Pacific and Western) participated in opposition and the staff participated to develop the record. Statements in support of the application were filed by Marion Corporation, Shell Oil Company, and Lunday Thagard Oil Company (shippers over Four Corners' Line 63). Briefs were filed by Powerine; Chevron; Coastal, Century, and Petrotex; Pacific and Western; and the staff.

Position of the Parties

Position of Four Corners

Four Corners seeks approval of its proposed tariff changes under § 491 or if that is not authorized, in the alternative under § 454.

It is Four Corners' position that the gravity bank is for the benefit of the shippers. A gravity bank is simply a mechanism which permits the shippers to make adjustments among themselves for the differing gravities of crude oil which are transported by Four Corners in a commingled stream. Although this gravity bank is administered by Four Corners for the benefit of its shippers, Four Corners does not derive any revenues from it. All funds collected under the gravity bank provisions of Four Corners' tariffs, and any interest, are paid by, held in the name of, and distributed to Four Corners' shippers.

Four Corners proposes a modification of the provision assessing interest charges on late payments of gravity bank adjustments and transportation charges. This change is proposed to encourage shippers to pay gravity bank and transportation charges promptly. Existing interest charges are insufficient to assure prompt payment and distribution of funds to the shippers has therefore occasionally been delayed.

Four Corners does not believe that these changes require Commission approval under § 454 but that they should be accepted merely as a tariff change under § 491.

Position of Powerine

It is Powerine's position that the requested increase from 3 cents to 17 cents in Four Corners' gravity bank differential has been long-delayed, and is fully justified. Whether the application is considered under § 491, or under § 454, the requested change or/increase is fully supported by the evidence. Further, it is Powerine's position that evidence shows that a 20-cent per degree per barrel gravity price differential more nearly reflects the current crude oil pricing situation. Accordingly, Powerine believes that a 20-cent per degree per barrel gravity price differential should be ordered into effect, instead of the 17-cent request. Powerine interposes no objection the imposition of the increased late payment charges. Powerine is a shipper in Pipeline 63, but withdrew from the pipeline during the hearings, presumably because of the low differential charge.

Position of Chevron

Chevron supports the increases proposed by Four Corners. Chevron states that it has not shipped its Elk Hills Naval Petroleum Reserve crude to its El Segundo refinery for several years, because the 3-cent gravity bank differential on Line 63 (the only economical method of transporting from Elk Hills to El Segundo) is so unreasonably low that it would lose money using the line.

Chevron is presently refining Elk Hills crude in California only at its Richmond and Bakersfield refineries. It also ships some of this crude to locations outside California on the Four Corners system. Chevron would like to refine Elk Hills crude at its El Segundo refinery in order to have greater refining flexibility.

Chevron also supports an increase in the intrastate gravity bank differential because of the penalty it presently incurs in shipping Elk Hills crude interstate. That crude oil is shipped part of the way by Line 63 and the balance of the way by other Four Corners' pipelines. The present 3-cent per barrel California intrastate gravity bank differential results in a penalty to interstate shippers who receive lower gravity crude from the pipeline than they put in.

Further, Chevron supports an increase in Four Corners' interest rate on late payments, because the present 6% rate is unrealistically low compared to the current cost of money and constitutes a powerful incentive for shippers to delay payments.

Position of Coastal, Century, and Petrotex

Protestants, Coastal, Century, and Petrotex (who entered a joint appearance) state that Four Corners failed to make an adequate showing for the changes in gravity differential and interest rate, but will not object to an increase in Four Corners' gravity differential which does not exceed 10 cents per degree API. The protestants argue that any change in the administration of the gravity bank falls within the broad definition of "rates" in § 210. The application is a request for a rate increase subject to § 454. Any change in the gravity bank differential should be under § 454 in order to allow sufficient public participation into the reasonableness of any change. Further, when late charges are assessed for transportation services, net revenue is derived.

Protestants state that federal tariffs should not be controlling, and that if an administrative burden exists, Four Corners may want to lower federal tariffs to the intrastate level.

Coastal, Century, and Petrotex withdrew their protests to the application, after submission, by letter dated December 23, 1981.

Position of Pacific and Western

Protestants Pacific and Western (who entered a joint appearance) argue that the application comes under § 454, that Four Corners has failed to meet the burden of proof to justify the gravity bank differential of 17 cents, and that the increase should not be authorized merely to conform to recent federal action. The protestants state that shippers of light crude could receive light crude by batching their shipments.

Further, the protestants state that historically, purchasers in the crude oil market have used a 10-cent differential and that this differential should be approved.

Position of Staff

The staff's position is that the application is a rate proceeding and it supports the requested increase in the gravity bank differential, noting that no superior alternative to Four Corners methodology was presented by the protestants. Staff believes it should be left to the shippers to advise Four Corners when the gravity differential should be adjusted in the future; that our Constitution precludes the proposed late payment fee; and that the late payment fee should be set as the maximum permitted by law.[3]

[3] Our staff's research shows that parties are permitted to contract for a rate in excess of 7% but not exceeding the greater of (a) 10% per annum or (b) 5% per annum plus the Federal Reserve Bank of San Francisco discount rate established on the 25th day of the month preceding the earlier of (i) the date service was rendered and invoices made or (ii) the date upon which the account becomes past due. (Art. 15, Section 1, Cal. Const.)

Discussion

We have fully considered the record in this proceeding and we will now address the issues.

§ 454 versus § 491

Four Corners stands alone in its request that its application should become effective under § 491 instead of § 454. All parties oppose using § 491 except that Powerine and Chevron did not take a position.

§ 454 states in part that: "No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon showing before the commission and a finding by the commission that such increase is justified..."

§ 210 states "'Rates' includes rates, fares, tolls, rentals, and charges, unless the context indicates otherwise".

§ 491 relates to tariff changes and not to rate increases.

The proposed increase in the gravity bank differential charge does not increase Four Corners' revenues, but it increases the charges to some shippers. These charges are banked for distribution to shippers transporting higher than average gravity crude oil. This charge is a condition of the tariffs; and the proposed increase in this charge is a technical increase in rates. A proposal to increase the gravity bank differential charge may not be filed under § 491 but requires a showing and finding that such increase is justified under § 454.

The proposed increase in the interest rate on late payments of transportation charges increases the revenues of Four Corners and is subject to § 454. The discussion in the above paragraph about increases in the gravity bank differential charge falling under § 454 is applicable to increases in the interest rate on late payments into the gravity bank.

Gravity Bank Differential

The gravity bank differential charge for transporting the lower crude shipments of Four Corners' shippers is technically a transportation rate because it is a mandatory charge associated with the services provided by Four Corners. The current Four Corners 3 cents per barrel API degree gravity bank differential charge is substantially less than the current market pricing differentials for crude oils in the Line 63 area.

All the parties to this proceeding recognize that the present 3-cent differential is too low under present market conditions. Four Corners had proposed an increase in the differential to 17 cents, which amount is supported by Powerine, Chevron, and the staff. Protestants do not contend that the present 3-cent gravity bank differential is adequate, but contend that 10 cents rather than 17 cents per barrel per API degree is a proper charge. Thus, the only differential issue appears to be the magnitude of the increase which should be authorized by the Commission.

Four Corners supported its proposed gravity bank differential of 17 cents by a study prepared by The Pace Company Consultants & Engineers, Inc. (Pace study) under the supervision of witness Tucker, a consulting engineer. Witness Tucker concluded that the best measure of market values of crude oils, based on available data, is the posted prices of refiners. To determine the difference in the values of crude oils of different gravities, the Pace study plotted all posted prices against posted gravities in effect on February 1, 1980 for those fields from which crude oil transported in Line 63 is produced. The Data showed an average gravity-price differential of 17.1 cents per barrel per API degree. Witness Tucker testified that 92-95% of the differential between crude oil values was attributable to gravity, that the 17.1 cents gravity-price differential accurately reflected the Line 63 market price area, and that 17 cents per barrel per API degree constituted a proper gravity bank differential. On cross-examination Tucker testified that July 1, 1981 posted price data show that the current gravity-price differential is about 20 centsper barrel per API degree.

Protestants presented witness McDonald who asserted that the Pace study erroneously relied upon posted prices. Witness Tucker, Pfaff of Powerine, and Wilbert of Chevron showed that standard industry practice is to use posted prices as a reference for determining crude oil value.

Witness McDonald questioned the Pace study's use of interfield gravity-price differentials and suggested that intrafield gravity-price differentials were a better measure of the value differences in fixing a gravity bank differential. His recommendation of a 10 cent-gravity differential was based in generalupon prices posted prior to the increases and effective prior to our October hearings. Other testimony showed that intrafield gravity-price adjustments of 20 cents per barrel per API degree for gravities between 20 degrees API and 34 degrees API and of 40 cents below 20 degrees API had been recently posted by Chevron and Mobil Oil Corporation. No conclusive evidence was presented to indicate that the fields should be weighted on the basis of the volumes of crude oil produced from such fields.

An interfield gravity differential better reflects the economic effects of the commingling process than does the intrafield gravity differential. Four Corners' proposed 17 cents per barrel per API degree gravity bank differential charge, which is based upon interfield pricing differentials, is reasonable and adopted. Through cross-examination it was suggested that it might be appropriate to make adjustment for differences in sulfur content, boiling point, viscosity, or other quality characteristics affecting the value of crude oil. Witness Tucker testified that the proposed gravity adjustment will account for approximately 92-95% of any value differential.

Witness Wilbert testified that gravity is the predominant factor in determining the value of crude oil produced in the San Joaquin Valley. It is not necessary and not practical to establish banks for these other quality characteristics of crude oil transported in Line 63.

When the intrastate and interstate gravity bank adjustments are different, the two banks cannot be administered jointly. Four Corners' witness Ziesenhenne testified that inequities result if the banks are not administered jointly.

Late Payment Interest Charge

Chevron and staff support the increase in the interest rate on late payments. No party opposes such increase. Four Corners' proposal is to increase the interest rate on late payments of transportation charges and on gravity bank charges from 6% per annum to 125% of the prime rate of interest charged by Citibank N.A. or N.Y. or to the maximum rate allowed by law, whichever is less.

Four Corners' controller and treasurer testified that the 6% present rate has been effective since 1978; that shippers have little incentive to pay gravity bank or transportation charge on time when they could take the money they have not paid into the gravity bank and invest it at current market rates (18 percent); and that shippers are delaying payment to the gravity bank and for transportation charges. The witness wishes to increase the interest rate to conform with its FERC tariffs.

The staff argues that parties are permitted to contract for a rate in excess of 7% but not exceeding the greater of (a) 10%per annum or (b) 5% per annum plus the Federal Reserve Bank of San Francisco discount rate established on the 25th day of the month preceding the earlier of (i) the date service was rendered and invoices made or (ii) the date upon which the account becomes past due. (Art. 15, Section 1, Cal. Const.) Further, since 125% of the Citibank prime lending rate will, with reasonable certainty, exceed the Federal Reserve discount rate by a margin in excess of 5%, the proposed tariff language referring to the former is superfluous and could be misleading to shippers. Therefore the staff recommends that such language be deleted in favor of a proviso that late payment fees shall be set as the maximum permitted by law.

Further the staff recommends that Four Corners' tariffs require all billings to carry a statement disclosing the actual rate of interest which would be assessed upon delinquency. The staff recommendation is reasonable and adopted.

Findings of Fact

1. The current Four Corners' 3 cents per barrel API degree gravity bank differential charge is substantially less than the current market pricing differentials for crude oils in the Line 63 area.

2. An interfield gravity differential better reflects the economic effects of the commingling process than does the intrafield gravity differential.

3. Four Corners' proposed 17 cents per barrel per API degree gravity bank differential charge, which is based upon interfield pricing differentials, is reasonable.

4. Four Corners' current 6% per annum late payment charge is unrealistically lower than the charge required to secure timely payments of transportation and gravity bank charges.

5. Four Corners' request to increase its late payment charge to 125% of the prime rate charged by the Citibank N.A. of N.Y. as of the due date, or the maximum rate allowed by law, whichever is less is reasonable.

Conclusions of Law

1. The gravity bank differential charge for transporting the lower gravity shipments of Four Corners' shippers is technically a transportation rate because it is a mandatory charge associated with the services provided by Four Corners.

2. The late payment charges authorized under Four Corners' tariffs are rates.

3. Four Corners should be authorized to increase its gravity bank differential and late payment charges as set forth in the following order.

4. The late payment charges should not be greater than the maximum rate allowed by law (Art. 15, Section 1, Cal. Const.).

5. Because of the delay since first attempting to file the tariffs, and because of the acceptance of similar tariffs by FERC, the effective date of this order should be today.

O R D E R

IT IS ORDERED that:

1. Four Corners Pipe Line Company (Four Corners) is authorized to file revised tariffs with an intrastate gravity bank differential of 17 cents per barrel per API degree gravity.

2. Four Corners is authorized to increase its transportation and gravity bank differential late payment charges to the maximum permitted by law.

3. Four Corners shall state on all billings the rate of interest to be assessed upon delinquency.

4. The revised tariffs shall be effective not less than 5 days after filing.

This order is effective today.

Dated JAN 19 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director