

Decision No. 88640 MAR 21 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
Motion into the rates, rules, charges,)
operations, business practices, corpo-)
ration, individual, partnership, joint)
venture or other entity which operates)
any pipeline for the transportation of)
crude or refined petroleum products)
within the state of California.)

Case No. 9893

INTERIM OPINION ADOPTING STIPULATION AND
AGREEMENT REGARDING ATLANTIC RICHFIELD COMPANY

On April 1, 1975, the Commission issued an Order Instituting Investigation (OII) to determine whether certain pipelines transporting petroleum in California were common carriers. On October 28, 1975, the OII was amended to delete reference to "common carriers" and to inquire whether the pipelines were owned by transportation companies or public utilities. One of the respondents named in both the original and amended OII's was Atlantic Richfield Company (ARCO).

On June 24, 1976, ARCO first approached the Commission Staff (Staff) about settling the investigation. Negotiation proceeded on a variety of issues until an agreement was reached between Staff and ARCO, subject to the Commission's approval. The agreement was reduced to the form of a stipulation, which included a proposed order.

In substance, the proposed order called for ARCO to transfer to a subsidiary corporation virtually all of its crude oil pipelines and most of its products pipelines in California. The subsidiary would operate the pipelines as a public utility subject to the jurisdiction of the Commission. Since certain pipelines owned by the subsidiary would be interstate in operation, the subsidiary would also be subject to the jurisdiction of the Interstate Commerce Commission (ICC).^{1/}

1/ These regulatory functions of the ICC have been subsequently transferred to the Federal Energy Regulatory Commission. (FERC).

In return for the submission to Commission jurisdiction over the pipelines, Staff would be directed to cease any inquiry questioning whether ARCO's pipelines had been dedicated to a public use by any action taken before the effective date of the order. This, of course, would not bind the Staff as to anything ARCO might do after the effective date of the order.

There were two major areas of compromise in the settlement. The first had to do with rates and rate base, the second with the omissions of certain lines from the stipulation.

RATES AND RATE BASE

A major issue in the negotiations was the appropriate rate base. Had Staff proved that the lines have, since their construction, been dedicated to a public use, the appropriate rate base would have been the depreciated book value of the pipelines, which ARCO states is approximately \$1.5 million. If ARCO were correct in its position that these lines have never been dedicated to a public use, the appropriate rate base would be the fair market value of the assets upon their initial dedication. This latter figure, however, is difficult to determine, since the transfer to a subsidiary may not yield the same values as an arm's-length transaction.^{2/}

The Staff and ARCO reached an accord that the Commission would accept as an initial rate base the book value of the assets as determined by the ICC. At the time, it was anticipated that the ICC would allow a book value of \$8.5 million, which, with the addition of \$1 million in working capital, would form the rate base for Commission purposes. To the extent the FERC lowers the book value, the Commission rate base would be lowered; however, the \$9.5 million would be a ceiling rate base for Commission rates in ratemaking purposes.

^{2/} By a pleading filed March 13, 1978, ARCO stated that the subsidiary, Four Corners Pipeline Company, would pay \$6,744,776 in cash for the public utility assets, which with \$1 million in working cash, comes to a rate base of \$7,744,766.

The only outside sources which have determined the value of the pipelines are the California State Board of Equalization and the County Assessors' offices. The staff of the State Board of Equalization recently assessed ARCO's 185 miles of intercounty lines (all of which are to be included in the 601 total miles of pipelines to be subject to CPUC jurisdiction) and three related pump stations, at \$10,060,000 market value. The State Board of Equalization revised this assessment upward to \$20,000,000. ARCO, which agreed to the Staff assessment, has paid taxes based on the Board's assessment, subject to protest, and may later contest the Board's assessment.

Similarly, the County Assessors have assessed ARCO's intracounty lines at \$9,731,000. Approximately 73% of these lines will be included in the public utility system. Thus, the counties' assessments of the intracounty public utility lines would be about \$7,104,000. Adding this to the more conservative Board of Equalization staff assessment, the combined assessed value would be \$17,164,000. In light of this, we cannot say that the compromise rate base is unreasonable.^{3/}

The stipulation included a proposed tariff. If the Commission enters the order and if ARCO files the tariff, the Staff would not challenge the tariff. If, however, ARCO filed a tariff different from that in the stipulation, or if any third party challenged the tariff (nothing in the stipulation or proposed order precludes a third-party challenge), Staff would be free to act as it thinks justified.

In terms of the effect on rates of using the higher rate base, staff calculates that the cost of the agreed rate base would be in the neighborhood of an incremental 10¢ a barrel increase for transportation from the San Joaquin Valley to the Long Beach area. At today's prices this translates to an increase of 1.9% in the delivered price of lower-tier Cuyama 32° A.P.I. crude. For shorter hauls, the

^{3/} We wish to emphasize that the acceptance of a compromise rate base is tied to the factual dispute over the thorny issue of dedication. Such a compromise will not be applied to utilities already subject to our jurisdiction or to other potential utilities where the question of status as a utility rests on an issue other than dedication.

rate base would bring additional costs of about 1.4¢ per barrel, or an increase of 0.3% in the delivered cost of lower-tier Huntington Beach 22° A.P.I. crude.

In terms of increased cost to consumers of refined petroleum products, making the assumption least favorable to consumers, i.e., those which would maximize the additional cost, the amount available for pass-through would be in the neighborhood of 0.2 mills per gallon. This is de minimus. Additionally, indications from the gasoline and crude oil markets are that it is improbable that consumers would have the costs passed on to them.

OMITTED PIPELINES

In the negotiations ARCO insisted on keeping certain lines as proprietary. These included the lines from the Los Angeles Harbor to its refineries. ARCO insisted that these lines were necessary for the efficient operation of its refineries. Since we had no way of knowing the need of other refiners for these lines we invited public comment.

PUBLIC COMMENT

On August 22, 1977, a Proposed Report, which consisted of the Stipulated Proposed Order, and which appended the stipulation, a complete written description and map of the lines to be dedicated under the Proposed Order, and a map of the lines which would be maintained by ARCO as proprietary, was circulated for public comment. It was mailed to all refiners in the state, to the independent producers organization, to various state and local entities with an interest in oil production, and to the Oil Daily (a petroleum industry newspaper). At the same time, a letter was sent to the recipients of the proposed report, explaining the import of the settlement.

Only four comments were received. Two were from independent refiners in the Los Angeles Basin, Fletcher Oil and Refining Company and Lunday-Thagard Oil Company, both of which approved of the settlement and neither of which offered a negative comment. Both would be served by the public utility lines.

One adverse comment was received from another respondent, Standard Oil Company of California (Socal). Socal did not object to the substance of the settlement and offered no comment on the rates, the rate base, or the omission of any line. It complained only that the proposed order was deficient in failing to include findings of fact or conclusions of law. Socal suggested a finding that hitherto ARCO's pipelines had not been dedicated to a public use. This illustrates the reason for the initial omission of findings and conclusions. ARCO will not stipulate that the lines have always been so dedicated, nor will staff stipulate that they have never been so dedicated. This is the central dispute in the case and it is to avoid a statement on the issue that the settlement was entered.

Calif. Pub. Util. Code Sect., 1705 requires findings, "After the conclusion of a hearing...." The reason is to "afford a rational basis for judicial review." California Motor Transport Co. v. Public Util. Com., 59 Cal. 2d 270, 274 (1963). This has no application to a settlement where there is no hearing. For the same reason, settlements in civil cases are not burdened with the requirement of findings of fact. Continental Bldg. & Loan Ass'n. v. Woolf, 12 Cal. App. 725, 729 (1910); Magoon v. Heath, 79 Cal. App. 632, 634-35 (1926). Insofar as Socal has not complained about the substance of the settlement, it has no grounds for appeal other than the technical grounds stated. However, findings of fact on the reasonableness of the stipulation and conclusions of law appear hereafter.

Finally, the City of Los Angeles (City) has asked to intervene and requested hearings on the effect of the settlement. We grant the right of the City to intervene, but deny the motion for a hearing. The City's exceptions to the proposed report related to the issues of the rate base and the exclusion of the lines which are not to be dedicated. Initial rates and the rate base underlying them can be litigated when the tariffs are filed. The City's motion is premature. To the extent that it protests the omission of certain pipelines, the effect on consumers is so tenuous as to make the protest unreasonable, particularly in light of the lack of objection by those who are most directly concerned with the omission, the refiners and producers of crude oil.

As an independent test of our possible action herein we contracted with a consultant to review and comment on the proposed stipulation. His initial report, dated February 26, 1978, is received in evidence as Exhibit No. 1 and is available for public inspection. In essence the consultant believes the stipulation to be a reasonable compromise.

DISCUSSION

The decision whether to settle involves the balancing of several factors. In favor of settling are the elimination of the risk that the staff would be unable to prove its case, or that the Commission's decision would be reversed on appeal; the saving in time by having ARCO submit to jurisdiction immediately rather than after years of litigation and appeal; and the saving in the time of the Commission and Staff for other matters. Against settling the case are the possibility of showing a lower rate base, and consequently lower rates, and the possibility of proving that the omitted lines have already been dedicated to a public use.

The primary public interest served by accepting the proposed stipulation is that the shippers of crude oil in California will hereafter be guaranteed public utility transportation service. That guarantee of the availability of nondiscriminatory transportation will, in the long run, be in the interest of this state's oil producers and independent refiners. We would not want a situation to develop where because of changes in oil marketing dynamics and economics independent refiners and small producers could not move oil and be financially squeezed. If that situation were to develop the remedy of pursuing regulatory jurisdiction would possibly be too slow, and cause economic harm to an important segment of California's economy.

FINDINGS OF FACT

1. There is a dispute between ARCO and the Commission staff whether ARCO's pipelines have been dedicated to a public use.
2. No independent oil producer or refiner has protested the compromise rate base, rates, or the omission of any pipelines from the settlement.
3. Acceptance of the settlement would save considerable time and expense of litigation and eliminate the uncertainties of litigation.
4. Acceptance of the stipulation and proposed order will guarantee to crude oil shippers in California the availability of public utility pipeline transportation.
5. The exceptions of Standard Oil Company of California are without merit.
6. The exceptions of the City of Los Angeles regarding rates and rate base are premature, since tariffs have not yet been filed.
7. The interest of the City of Los Angeles, as representative of consumers of petroleum products, in raising issues related to the omission of pipelines is too tenuous to merit consideration, particularly in light of the lack of protest by independent refiners and producers who are directly concerned.
8. In light of the foregoing, the stipulation and proposed order (with minor editorial changes) are reasonable.
9. To facilitate the earliest possible filing of tariffs and operation as an acknowledged public utility pipeline, Paragraphs 1, 2, and 3 of the order should be effective immediately.

CONCLUSIONS OF LAW

1. The proposed order set forth in the stipulation between ARCO and the Commission Staff should be adopted.

O R D E R

IT IS ORDERED as follows:

1. The agreement set forth in the Stipulation between Atlantic Richfield Company (ARCO) and the Commission Staff, filed with the Commission on July 5, 1977, is hereby approved.

2. The pipeline facilities described in the map attached as Exhibit B to the Stipulation, entitled "Converted Pipelines System", are the crude oil and petroleum products pipeline facilities which are to be dedicated to public use. The Converted Pipeline System is described in detail in Exhibit A to the Stipulation. The Converted Pipeline System includes, in addition to the pipes, all rights-of-way that are assignable and other property and equipment reasonably associated with and necessary for the operation of the Converted Pipeline System. To the extent that rights-of-way, licenses and permits in the Converted Pipeline System are not assignable, the public utility subsidiary will make all reasonable efforts to acquire those or equivalent rights-of-way, licenses and permits and ARCO will cooperate with, and assist, the subsidiary in this effort. Pipeline facilities in California owned and operated by ARCO and its subsidiaries, other than the Converted Pipeline System, need not be dedicated to public use at this time.

3. ARCO will transfer the Converted Pipeline System to a subsidiary corporation as soon as practicable. The subsidiary corporation will operate the Converted Pipeline System as a public utility, and will file its tariffs, and rules and regulations and will do all other things required in order to operate the Converted Pipeline System at a public utility, subject to the jurisdiction of both the Public Utilities Commission of the State of California and the United States Federal Energy Regulatory Commission.

4. The valuation of the existing assets of the Converted Pipeline System shall be determined initially in the same amounts as the original cost less depreciation as determined by the United States Interstate Commerce Commission and its successor in these functions, the Federal Energy Regulatory Commission, but not to exceed \$9,431,000. The Commission Staff is directed not to issue a challenge to this initial valuation, but the valuation is subject to challenge in any rate proceeding brought by a third party.

5. On the effective date of this order, the Commission Staff is directed to cease any inquiry into the question whether ARCO's pipelines included within the stipulation have been dedicated to a public use heretofore. The occurrence of the contingencies set forth in Paragraph 7 hereof shall preclude any further investigation into this question by the Commission's Staff.

6. Subject to the completion of the provisions set forth in Paragraph 7 of this Order, ARCO is hereby dismissed as a respondent to the investigation.

7. The effective date of Paragraphs 4, 5, and 6 of this decision shall be the date when the last of all the following actions take place:

- a. ARCO transfers to a subsidiary all assets described in both Exhibits A and B to, and in Paragraph 2 of, the Stipulation;
- b. The subsidiary files tariffs with the Commission; and
- c. ARCO or the subsidiary files with the Commission an affidavit stating both of the foregoing actions have taken place.

8. In the event that all conditions specified in Paragraph 7 are not completed within 6 months from the date of this decision, this decision shall be nullified without further action by the Commission.

9. The effective date of Paragraphs 1, 2 and 3 of this decision is the date hereof.

Dated at San Francisco, California, this 21st day of MARCH, 1978.

*Decision:
I believe this matter should
go to hearing.
Robert W. Howell*

Robert Bateman

 President
William Lyons Jr

Vernon L. Strayer

Clare J. DeLoach

 Commissioners