UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Chevron Pipe Line Company | Docket Nos. IS06-231-000, IS06-232-000, IS06-233-000

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND, AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued April 26, 2006)

1. On March 27, 2006, Chevron Pipe Line Company (Chevron) submitted three tariff filings,[1] proposing to implement Hurricane Recovery Surcharges (HRS) on crude oil barrels transported through its Empire Terminal in Plaquemines Parish, Louisiana and its Fourchon Terminal in LaFourche Parish, Louisiana. Chevron's proposals include a new definition of the term "Shipper", eliminates certain references to "consignee" and establishes a Sulfur/Quality Bank in FERC Tariff No. 966. Chevron proposes that all the instant tariffs, with the new HRS become effective May 1, 2006, except for FERC Tariff No. 966, for which Chevron requests waiver of the Commission's notice requirement to permit its Sulfur/Quality Bank proposal to become effective April 1, 2006. Valero Marketing and Supply Company (Valero), ConocoPhillips Company (ConocoPhillips) and BP Oil Supply Company (BP Oil) filed motions for leave to intervene and protests to Chevron's filings. Chevron filed an answer.

2. As discussed below, the Commission accepts and suspends FERC Tariff Nos. 961 through 965 and 967, and the HRS in FERC Tariff Nos. 961 through 967, to become effective May 1, 2006, and FERC Tariff No. 966,[2] effective April 1, 2006, subject to

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[1] FERC Tariff Nos. 961- 965 in Docket No. IS06-231-000, FERC Tariff No. 967 in Docket No. IS06-232-000, and FERC Tariff No. 966 in Docket No. IS06-233-000.

[2] Chevron's proposed Sulfur/Quality Bank was not protested, but parties did object to the redefining of the term "Shipper" included in Item 11 (Sulfur Bank) of FERC Tariff No. 966.

refund, and sets these matters for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

Chevron's Filings

3. In Docket No. IS06-231-000, which comprises FERC Tariff Nos. 961 through 965, Chevron proposes to implement separate HRS at its Empire and Fourchon Terminals. Chevron will assess the HRS on all crude oil transported through Empire Terminal at 25 cents per barrel, and through Fourchon Terminal at 19 cents per barrel, as measured upon delivery out of each terminal. Chevron states both terminals suffered extensive damage as a result of Hurricane Katrina and estimates it will spend $93.9 million and $5.4 million, respectively, to repair and restore the crude oil terminals. Chevron claims the HRS only captures the expense portion of those costs and estimates it will recover $53.9 million over 23 months and $4.9 million over 19 months for Empire and Fourchon Terminals, respectively. Chevron maintains that the HRS will not recover any capital costs. Chevron proposes to conduct a final true-up based upon actual throughput and final expenses and will then either refund excess revenues or bill deficiencies to its shippers.

4. Chevron also states that the proposed tariffs continue the collection of the current, temporary pumping surcharge at Empire Terminal. However, Chevron promises to immediately file to cancel this temporary pumping surcharge if shippers do not protest the proposed HRS or if the Commission permits the HRS to become effective without suspension or refund because it will also recover these temporary pumping costs as part of the new HRS.

5. Chevron proposes new language to redefine the term "Shipper" in each proposed tariff as "the entity that originally nominates Crude Petroleum from a reception point listed in this tariff and is responsible to Carrier for all charges and obligations hereunder, except as otherwise noted." Finally, Chevron removes the word "consignee" from certain items in the proposed tariffs.

6. Docket No. IS06-232-000 contains proposed FERC Tariff No. 967, which is a joint tariff between Chevron and Devon Energy Offshore Company (CPL-DEP joint tariff) established pursuant to a Commission approved settlement in Docket No. IS04-219-000.[3] The settlement provides that the CPL-DEP joint tariff would include and continue to include all provisions of Chevron's tariff for its West Bay System, not

[3] *Chevron Pipe Line Co.*, 109 FERC ¶ 61,116 (2004).

inconsistent with the settlement as that tariff is modified from time to time. Proposed FERC Tariff No. 962 filed in Docket No. IS06-231-000 of the instant filing revises Chevron's currently effective West Bay System tariff. Therefore, the filing of proposed FERC Tariff No. 967 conforms this CPL-DEP joint tariff to the proposed West Bay System tariff (FERC Tariff No. 962) pursuant to the settlement. In FERC Tariff No. 967, proposed to become effective May 1, 2006, Chevron establishes the same HRS of 25 cents per barrel for its Empire Terminal and definition of "Shipper" discussed above.

7. Docket No. IS06-233-000 comprises FERC Tariff No. 966, proposed to become effective April 1, 2006, on four days' notice, to establish a new Quality Bank that combines Gravity and Sulfur Banks and includes an administrative fee of $0.004 per barrel for Chevron's Breton Sound System. Chevron requests waiver of the Commission's notice regulations to begin segregating the Breton Sound System common stream at Empire Terminal on April 1, 2006, as Chevron has determined that this crude's sulfur content is expected to consistently exceed 0.5 percent by weight.[4] Chevron also establishes the same 25 cents per barrel HRS for its Empire Terminal and requests the tariff become effective on May 1, 2006. In addition, Chevron redefines the term "Shipper" discussed previously, and continues the temporary pumping surcharge.

Intervention, Protest, and Answer

8. Protests and motions to intervene were filed on April 10, 2006, by Valero and on April 11, 2006, by ConocoPhillips and BP Oil. Chevron filed an answer to the protests on April 17, 2006.[5]

9. Valero protests the definitional changes and the HRS proposed in FERC Tariff No. 967. Valero contends that the proposed definition of "Shipper" and the elimination of the term "consignee" in Items 45, 60 and 65 are not just and reasonable. Valero states that it currently purchases about 15,000 barrels per day of crude from other shippers and consignees at the Empire Terminal, and after taking ownership, it typically loads the crude into barges and/or tankers at the Empire dock facilities, or ships it from Empire into

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[4] Chevron's FERC Tariff No. 20 filed in Docket No. IS04-68-000, effective December 1, 2003, provides that Chevron would segregate the Breton Sound crude stream and establish a sulfur bank when it determined this crude consistently contains a sulfur content exceeding 0.5 percent by weight.

[5] On April 19, 2006 Chevron filed an errata to its Answer to correct a typographical error.

interconnected pipeline facilities owned by ExxonMobil Pipeline Company for further interstate transportation. According to Valero, it historically, scheduled transportation of its crude out of Empire directly with Chevron under the rates and conditions of Chevron's FERC Tariff No. 950 or in some instances, it pays the tariff rates indirectly when Chevron invoices the shippers from whom Valero purchases crude who in turn pass through those charges to Valero.

10. Valero states that notwithstanding Chevron's historic practice of directly billing Valero for jurisdictional movements from Empire to Valero, since Hurricane Katrina, Chevron has taken the position that Valero is not a shipper or a consignee at Empire. Valero contends that it appears that Chevron designed the new definitions proposed in FERC Tariff 967 to implement the current interpretation that Valero is not a shipper at Empire which would eviscerate Valero's rights under Chevron's tariffs. Valero argues that Chevron offers no justification for the proposed elimination of the term "consignee" or why it now adopts new definition for the term "Shipper". Valero urges the Commission to reject the proposed definition of "Shipper", require Chevron to maintain the references to consignees in Items 45, 60 and 65, and affirm that Valero is in fact a shipper and/or consignee at Empire. Alternatively, Valero urges the Commission to suspend these provisions of the tariff for the maximum statutory period.

11. Valero also asserts that Chevron has failed to demonstrate that its proposed HRS is just and reasonable. Valero contends that Chevron offered no evidence or other quantification of its costs to make an adequate showing that $53.9 million in hurricane-related expenses is just and reasonable. Valero questions how Chevron differentiated the $53.9 million in expenses to the total cost of $93.9 million, whether the entire $53.9 million is attributable to Hurricane Katrina and whether any of the $40 million that Chevron treats as capital may be subject to recovery under the HRS. Valero further questions the appropriateness of the proposed 23-month recovery period and whether the proposed HRS properly accounts for rate increases that will become effective July 1, 2006 under the new oil pipeline index adjustment adopted in Docket RM05-22-000.[6] Valero also claims that based on Chevron's filing and on a letter from Chevron to affected shippers, the HRS appears to include costs that are associated with or are currently being recovered by the temporary pumping surcharge.

12. Valero suggests that if the Commission determines that a surcharge, rather than a cost-of-service or settlement rate, is the appropriate means for an oil pipeline to recover hurricane-related costs, the Commission should apply the principles it adopted for

[6] *See Order Establishing Index for Oil Price Change Ceiling Levels*, 114 FERC ¶ 61,293 (2006).

recovery of extraordinary costs pipelines incurred to secure the nation's infrastructure after the events of September 11, 2001.[7]

13. Valero states that while it protests the reasonableness of the HRS, it does not ask the Commission to suspend the effective date of the HRS. Instead, Valero requests that the Commission allow the HRS to go into effect on May 1, 2006, subject to refund, and that the Commission order Chevron to immediately cancel its existing temporary pumping surcharge, so that Chevron does not charge shippers two overlapping surcharges. If however, the Commission does not intend to attach a refund condition to the HRS and order the cancellation of the temporary pumping surcharge, Valero requests the Commission suspend the HRS for the maximum statutory period.

14. ConocoPhillips protests the changes to FERC Tariff Nos. 961-965 and 967, requests the Commission to reject the tariffs or, alternatively, suspend them for the full statutory period, and initiate an investigation to determine whether the proposed HRS are lawful. ConocoPhillips contends that Chevron's tariff filings do not comply with the Commission's regulations governing the establishment of new oil pipeline rates because Chevron did not submit the full cost, revenue, and throughput data required to justify cost-of-service rates nor did Chevron submit a sworn affidavit that a non-affiliated shipper agreed to the proposed HRS. ConocoPhillips also argues that the filings do not comply with the Commission's regulations for modifying existing oil pipeline rates nor do they follow any of the alternative rate-changing methodologies allowed under the Commission's regulations.

15. According to ConocoPhillips it is not possible to determine from the information contained in the filings whether the claimed costs were prudently incurred and if the proposed HRS are appropriate means to recover them. ConocoPhillips raises concerns about the nature of the costs Chevron proposes to recover, the proposed cost recovery period and the relationship of the HRS to other sources of cost reimbursement Chevron may have available. ConocoPhillips contends that although Chevron claims the costs underlying the HRS are for repairing and restoring the terminals, well over half of the costs are classified as expenses rather than capital costs and that parties cannot evaluate the classification without more data. ConocoPhillips further argues that the HRS exceed the total transportation rates for some of the services using the terminals, are equal to more than 50 percent of the rates of other affected transportation services, and that one reason for the relative magnitude of the increase is that the HRS would recover the costs

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[7] *See Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶ 61,299 (2001) ("Security Policy Statement").

over a period of less than two years. ConocoPhillips suggests that to the extent that Chevron is entitled to recover the costs through a surcharge, the Commission should lengthen the recovery period to reduce the impact.

16. ConocoPhillips also questions the relationship between the proposed HRS and the existing hurricane-related temporary pumping surcharge at Empire Terminal. ConocoPhillips contends that because Chevron does not propose to cancel the existing surcharge if the HRS are protested and allowed to take effect subject to refund, approval of the HRS after a protest proceeding could result in double recovery of hurricane-related costs by Chevron. ConocoPhillips further suggests that Chevron may have other sources of reimbursement for hurricane-related costs such as insurance.

17. BP Oil protests FERC Tariff Nos. 961-967, requests that the Commission accept the filings subject to Commission investigation of whether the HRS are just and reasonable, and request the Commission require Chevron to keep an account of the amounts collected under the HRS and issue refunds if the HRS are found not to be just and reasonable.

18. BP Oil asserts three grounds in support of its protest. First, it argues that the HRS is higher than a number of the terminal charges currently levied by Chevron at the Empire and Fourchon Terminals and that the increase is also significant in relation to existing pipeline haul rates which are for relatively short hauls. Second, BP Oil questions why the Commssion should allow Chevron to recover expenses over periods of less than two years when in a conventional cost-of-service rate proceeding, such costs would likely receive classification as non-recurring costs and recovered over multiple years to avoid "rate shock." Finally, BP Oil asserts that the classification of expenditures as capital and expense is often the subject of considerable controversy, and that for this reason as well, further proceedings are necessary.

19. In its answer to the protests, Chevron submits the Commission should reject the protests and allow the proposed tariffs to become effective as filed, without suspension. Chevron states that the protested tariffs directly relate to the damage that Hurricane Katrina inflicted on its Empire and Fourchon Terminals, which already caused Chevron to spend $106 million. Chevron estimates the total cost to repair the Hurricane Katrina damage to its Gulf of Mexico assets will be $160 million which is more than its 2004 cost

of service for all its FERC jurisdictional services and nearly one and a half times its 2004 interstate operating revenues.[8] Further, Chevron states it already spent on Hurricane Katrina recovery virtually as much as it received in interstate operating revenues in 2004 ($111.3 million).

20. As soon as possible after Hurricane Katrina, Chevron states, it started restoration of service efforts as Empire Terminal which took a direct hit from the storm, was much more severely damaged[9] than the Fourchon Terminal, and needed almost a complete rebuilding. Chevron states that before Hurricane Katrina, nearly 20 percent of the Gulf of Mexico crude oil production (approximately 350,000 barrels per day (bpd)) moved through the Empire Terminal, which presently operates only at 70 percent of pre-hurricane throughput. Fourchon Terminal moves 39,000 bpd or 65 percent of its pre-hurricane throughput of 60,000 bpd). Moreover, Chevron does not know when it will completely return to pre-hurricane throughput operations at the terminals.

21. As a result, Chevron indicates that the highest throughput it assumed in calculating the Empire Terminal surcharge was 320,000 bpd for the period from December 2006 through March 2008 with an estimate of 295,000 bpd for the period from May 1, 2006 through November 30, 2006. Chevron continues that it estimated throughputs of 38,000 bpd for its Fourchon Terminal, for May 1, 2006 through July 30, 2006, and 47,000 bpd for the remainder of the recovery period.

22. Chevron states it only seeks recovery of the expense portion of its total costs (no capital costs) through temporary, modest surcharges, which was in its judgment the more equitable approach for both itself and its shippers than recovering these costs through a cost-of-service rate increase which would embed the costs in rates shippers would continue to pay for many years. Further, regarding surcharge mechanisms, Chevron states the Commission previously accepted "surcharges when the cost to be incurred is a legitimate cost-of-service expense but is likely to vary in its application...particularly...if the expense is of a type that is not expected to be continuously incurred over the life of the pipeline...."[10]

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[8] 2004 FERC Form No. 6 data was utilized as Chevron has not finalized its 2005 data.

[9] Chevron submitted several pictures and newspaper articles of the destruction caused by Hurricane Katrina.

[10] Chevron cites *SFPP,L.P.,* 111 FERC ¶ 61,334 at P50 (2005).

23. Chevron also argues that implicit in the Commission's Security Policy Statement authorizing oil pipelines to recover prudently incurred costs necessary to safeguard the reliability and security of the nation's transportation infrastructure through a surcharge mechanism, is the Commission's recognition that a surcharge can be the appropriate way for a carrier to recover extraordinary costs it must expend in a short period of time to prevent or respond to a catastrophic event. Chevron states it had to move quickly to restore Gulf of Mexico crude oil production, it incurred necessary extraordinary expenses, and it should receive timely relief and not asked to wait years to recover these expenses. Chevron states it is amenable to Valero's suggestion that it follow the Policy Statement guidelines established by the Commission for security surcharges to recover prudently incurred costs.

24. Regarding the issue of insurance recovery raised by ConocoPhillips, Chevron reiterates that the surcharges will recover only the expense portion of the costs for the terminals' repair and recovery, but that it is not certain at this time whether its insurance will cover any expense items or limit recovery to capital cost only. Chevron states that it will reflect any potential insurance recovery proceeds in the true-up of its HRS.

25. Chevron states there will be no double-dipping in response to ConocoPhillips and Valero's claims that Chevron could overrecover if it does not cancel its Empire Terminal pumping surcharge and the HRS goes into effect, subject to suspension. Further, Chevron states that if both surcharges were collected, it would exclude the costs from, and reduce the time period of, the HRS.

26. Chevron states its proposed definition of "Shipper" and deletion of "consignee" from certain items in FERC Tariff No. 967 will not disadvantage Valero as claimed in its protest. Chevron states the proposed language changes will not change the manner in which Chevron and Valero have historically conducted business, nor prevent Valero from becoming a shipper in the future. Chevron notes that Valero makes no claims it has ever shipped crude oil into Empire terminal, but instead purchases crude oil at Empire terminal from shippers or consignees and moves its crude oil from Empire terminal via barges or third-party pipelines. Chevron states that the proposed language makes it explicit which entities are shippers on its Gulf of Mexico systems and are, therefore, responsible to Chevron for all corresponding charges and obligations because of the manner in which the Empire and Fourchon terminals operate. Chevron states neither terminal offers storage as the tankage at each terminal is necessary to receive and redeliver crude oil in a timely fashion to prevent the shutting-in of offshore production and the assessment of inventory management fees to shippers.

27. Chevron states that the establishment of the HRS provided another reason to put the definition of "Shipper" in its tariffs. Chevron explains that it will bill shippers for the HRS for about a two year period plus time necessary to conduct the billing trueup and that it is important that the entities which receive refunds or bills for any shortfall should be those whom Chevron reasonably expects to remain in a business relationship (i.e., shippers). Chevron indicates that while making refunds to other entities would not present an insurmountable problem, collecting any underrecovery from such entities may prove more difficult. Additionally, Chevron asserts that the new "Shipper" definition will not impact Valero's shipments on third-party pipelines and that Valero's attempt to parlay its status from purchaser to shipper by arguing that the Commission should consider its purchases at Empire Terminal as inline transfers subject to the Commission's jurisdiction is misplaced.[11]

28. Chevron states that Valero may continue to schedule deliveries with Chevron at Empire Terminal over the barge dock as it has done in the past and that it will invoice all associated fees to the original shipper. Chevron acknowledges that on some occasions in the past Valero has been directly invoiced for exit fees or gravity bank adjustments, but based on the proposed tariffs, Chevron will directly invoice Valero only for the consignment fees for transfers of crude and not for any shipper costs unless Valero becomes a shipper under the proposed definition.

29. Chevron states that if Valero wants the benefits of shipper status, it must meet the corresponding obligations and assume the corresponding risks, such as meeting creditworthiness requirements, acquiring title to crude oil at a tariff receipt point, meeting its tariff's crude oil specifications and nomination procedure requirements, participating in loss allowance and gravity bank, accepting the risk of crude loss from certain events such as hurricanes, providing and managing its linefill and tank bottom (working stock) inventory subject to penalty if not within plus or minus 25 percent, and being subject to prorationing and liens for unpaid charges. Chevron states that Valero, as a purchaser of crude oil at Empire Terminal, has none of these shipper obligations and that the Commission previously recognized that refiners such as Valero may find it "financially advantageous...to purchase crude oil at the destination rather than prior to shipment on the pipeline."[12] Further, Chevron states that in that case, the Commission ruled that

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[11] Chevron cites *Kerr-McGee Refining Corp. v. Williams Pipe Line Co.*, 72 FERC ¶ 61,274, at 61,199 (1995).

[12] Chevron cites *BigWest Oil Co. v. Frontier Pipeline Co.*, 108 FERC ¶ 61,183, at P 87 (2004).

"such refiners cannot have it both ways" and acquire a benefit available to shippers (the benefit in that case being reparations) "without having assumed the legal and financial obligations inherent in contracting directly with the pipeline for shipment on the system."[13] Thus, Chevron asserts purchasers, like Valero, do not become shippers simply by virtue of their purchases of crude oil from pipelines and because Valero is not a shipper it does not does not meet the Commission's regulations limiting protests of oil pipeline filings to persons with a substantial economic interest in the tariff filing. Therefore, Chevron argues that Valero lacks standing to protest FERC Tariff No. 967 and that the Commission should reject Valero's protest.

30. Finally, Chevron acknowledges that it did not submit a cost-of-service analysis in compliance with the Commission's regulations in the manner described by 18 C.F.R. Part 346, or obtain shipper concurrences pursuant to 18 C.F.R. §§ 342.2(b) or 342.4, but submits that Commission precedent permits its filing of these particular surcharges. Chevron states that the security surcharges authorized by the Commission's Policy Statement are also filed without the traditional cost-of-service analysis or any shipper concurrence. Chevron claims that it has supplied costs and throughput, as supplemented by its answer to the protests, and requests the Commission waive any necessary regulations to accept Chevron's instant filings.

Discussion

31. The Commission finds that a surcharge such as that proposed in Chevron's HRS is an appropriate methodology to recover extraordinary expenses incurred as a result of Hurricane Katrina. After the catastrophic events of September 11, 2001, the Commission approved security surcharges for oil pipelines to recover prudently incurred expenses not recoverable by indexed rates. Chevron's HRS proposes to recover costs that Chevron claims are prudently incurred to repair a major part of the country's energy infrastructure. However, before recovery of these costs can be approved, the Commission must be assured that Chevron's proposed methodology provides for a reasonable recovery, that the costs to be recovered are all prudently incurred, and that there will be no overrecovery of the costs. Thus, the extent of the costs to be included in the surcharge, the estimated throughput, the amount of the surcharge, and the length of time the surcharge is to be effective, among other issues, require further examination. The issues in this case include but are not limited to the data and methods that Chevron used to determine its proposed surcharges. The cost figures and throughput data provided in the filings as supplemented by Chevron's answer, however, are insufficient for the Commission to verify the

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[13] *Id.*

calculation of the HRS and to ensure that the proposed charges are just and reasonable. In addition, it is unclear in light of the questions raised in protest by Valero, what effect the proposed language changes, such as the new shipper definition and the elimination of the term "consignee," will have. The resolution of these factual disputes will have a rate impact on shippers using Chevron's pipeline system. Accordingly, the Commission will establish hearing procedures to examine all the issues raised by the filings.

32. The Commission has consistently encouraged parties to resolve disputes of this nature through settlement, and the Commission concludes that formal settlement procedures may lead to a resolution of this case.[14] Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[15] If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.[16]

Suspension

33. Based upon a review of the filings, the Commission finds that Chevron's tariff filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act,[17] the Commission will accept the tariffs listed in ordering paragraph (A) below for filing and suspend them, to become effective in accordance with ordering paragraph (A) consistent with the Commission's policy established in *Buckeye Pipe Line Co.*,[18] subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

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[14] *See* 18 C.F.R. § 343.5 (2005), which states that the Commission will refer all protested rate filings to a settlement judge pursuant to 18 C.F.R. § 385.603 (2005).

[15] 18 C.F.R. § 385.603 (2005).

[16] If the parties decide to request a specific judge, they must make their joint request to the Chief Administrative Law Judge by telephone at (202) 219-2500 within five days of issuance of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

[17] 49 U.S.C. app. § 15(7) (1988).

[18] 13 FERC ¶ 61,267 (1980).

<u>The Commission orders</u>**:**

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Chevron's instant tariffs, FERC Tariff Nos. 961 through 965 and 967, are accepted for filing and suspended, to become effective May 1, 2006, subject to refund and subject to further order of the Commission. FERC Tariff No. 966 is accepted for filing and suspended, to become effective April 1, 2006, subject to refund and subject to further order of the Commission.

(B) Pursuant to the authority contained in the ICA, particularly section 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by Chevron's instant filings in Docket Nos. IS06-231-000, IS06-232-000 and IS06-233-000.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge, for the purpose pursuant to 18 C.F.R. § 375.302 (2005), shall convene a prehearing conference in this proceeding to be held within 20 days of the issuance this order in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held to clarify the positions of the participants and for the ALJ to establish any procedural dates for the hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

(D) The hearing established in Ordering Paragraph (B) above is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the issuance of this order. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(F) Within 60 days of the issuance of this order, the settlement judge shall file a report with the Chief Administrative Law Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Administrative Law Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to an ALJ for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Administrative Law Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.