

SFPP, L.P.

ORDER ACCEPTING TARIFF FILING SUBJECT TO REFUND

140 FERC ¶ 61,106 (2012), *reh'g denied*, 143 FERC ¶ 61,141 (2013)

In this case, SFPP, L.P. (SFPP) filed on July 5, 2012, for an index-based rate increase of only 5.4 percent for its Calnev and West Lines. This was so even though the Commission's index for increase purposes was 8.6011 percent. A number of shippers intervened and protested. SFPP reported in the pertinent Pages 700 of Forms 6 a 4.48 percent decline in its costs between 2010 and 2011, and when that was coupled with the filed-for-increase, the total was 9.88 percent. This was below the 10 percent "percentage comparison test" the Commission uses to evaluate whether it should investigate an index-based rate increase proposal based on a protest to such a filing. Noting its 10 percent test, the Commission approved the index-based rate increase SFPP sought for its Calnev and West Lines. The Commission sustained its ruling on rehearing.

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140 FERC ¶ 61,106
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.

SFPP, L.P.

Docket No. IS12-501-000

ORDER ACCEPTING TARIFF FILING SUBJECT TO REFUND

(Issued August 3, 2012)

1. On July 5, 2012, SFPP, L.P. (SFPP)¹ filed revised tariffs² to implement an index-based rate increase under section 342.3 of the Commission's regulations. As discussed below, the Commission accepts SFPP's tariff to be effective August 5, 2012, subject to refund, and the outcome of proceedings in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.*

Background and Filings

2. On July 5, 2012, SFPP submitted tariffs proposing an index-based rate increase of approximately 5.4 percent. SFPP states that this increase is less than the Commission's 2012 Index adjustment factor of 8.6011 percent. Page 700 of SFPP's FERC Form No. 6 reports a cost decrease of 4.48 percent between 2010 and 2011. When SFPP combines this cost decrease with its proposed index-based rate increase of 5.4 percent, the proposed rate increase results in a divergence of 9.88 percent under the Commission's percentage comparison test.

¹ SFPP is a common carrier pipeline which transports crude oil and refined petroleum products in interstate commerce in Texas, New Mexico, Colorado, Oklahoma, Kansas, and Illinois.

² SFPP, L.P., FERC Oil Tariff, SFPP Tariff Database, Calnev Line, FERC 196.9.0, 196.9.0, West Line, FERC 198.9.0, 198.9.0.

3. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted. Motions to intervene and protests were filed by Phillips 66 Company (Phillips), Tesoro Refining and Marketing, and Indicated Shippers.³ On June 25, 2012, SFPP filed a response to the protests.

4. The protests argue that SFPP's proposed 5.4 percent index-based rate increase is so substantially in excess of the actual cost changes incurred by SFPP that the proposed rates are unjust and unreasonable. The protests also contend that SFPP should be denied its index increase because SFPP's costs declined between 2010 and 2011.

5. On July 25, 2012, SFPP filed a response stating that its proposed rate increase is not substantially in excess of its cost changes and that the proposed increase is consistent with Commission regulations.

Discussion

6. The Commission accepts SFPP's proposed tariff. Protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission's regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter must allege reasonable grounds for asserting that . . . the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable⁴

7. To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the carrier's FERC Form No. 6, Page 700 data in a percentage comparison test.⁵ The percentage comparison test is a very

³ Chevron Products Company; BP West Coast Products LLC; Valero Marketing and Supply Company; Delta Air Lines, Inc., Continental Airlines, Inc., Southwest Airlines Co., US Airways, Inc. (collectively, Airlines); and Airlines For America.

⁴ 18 C.F.R. § 343.2(c)(1) (2012).

⁵ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) (*Calnev*) and *SFPP, L.P., et al.*, 129 FERC ¶ 61,228, at P 7 (2009). The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase. *See Calnev*, 130 FERC

narrow test that “compare[s] the Page 700 cost data contained in the company’s annual FERC Form No. 6 to the data that is reflected in the index filing for a given year with the data for [the] prior year. . . .”⁶ This test is the “preliminary screening tool for pipeline [index-based] rate filings,”⁷ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.⁸

8. SFPP’s FERC Form No. 6, Page 700 shows a total cost of service decrease between 2010 and 2011 of approximately 4.48 percent. SFPP’s 4.48 percent decrease in costs combined with the proposed index-based rate increase of 5.4 percent results in divergence of 9.88 percent under the percentage comparison test. This magnitude of divergence between the pipeline’s costs and its revenue increase, as expressed in percentage terms, is not sufficient for the protesters to satisfy the requirements of section 343.2(c)(1).⁹ The Commission has previously explained that section 343.2(c)(1) does not automatically bar an index increase for pipelines that have experienced a cost decrease.¹⁰

¶ 61,082 at P 11 (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at PP 8-9 (2007) (*BP West Coast*)).

⁶ *Calnev*, 130 FERC ¶ 61,082 at P 10; *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test compares proposed changes in rates against the change in the level of a pipeline’s cost of service.

⁷ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs., Regulations Preambles Jan. 1991-June 1996 ¶ 31,006, at 31,168, *order on reh’g and clarification*, Order No. 571-A, FERC Stats. & Regs., Regulations Preambles, Jan. 1991-June 1996 ¶ 31,012 (1994).

⁸ *BP West Coast*, 121 FERC ¶ 61,141 at P 6 (“[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure. It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry’s average annual cost increases.”).

⁹ Shippers may file complaints against the index increases, which would allow for the consideration of factors beyond the percentage comparison test. *SFPP, L.P.*, 129 FERC ¶ 61,228 at P 8.

¹⁰ *Calnev Pipeline LLC*, 115 FERC ¶ 61,387 (2007).

Further, the Commission has never found an index rate increase to be “substantially in excess” of actual cost changes under section 343.2(c)(1) when the difference between the proposed index rate increase and the pipeline’s actual change in cost is less than 10 percent. At 9.88 percent, SFPP’s proposed rate increase is not so substantially in excess of the actual cost changes incurred by the carrier that the rate adjustment should be disallowed.

9. SFPP’s currently effective base rates underlying its index-based rate filing are under review currently in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.* As a result, the proposed indexed rates in the instant proceeding are subject to adjustment pending the resolution of those proceedings. The Commission therefore accepts SFPP’s indexed rates subject to refund and the outcome of Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.*

The Commission orders:

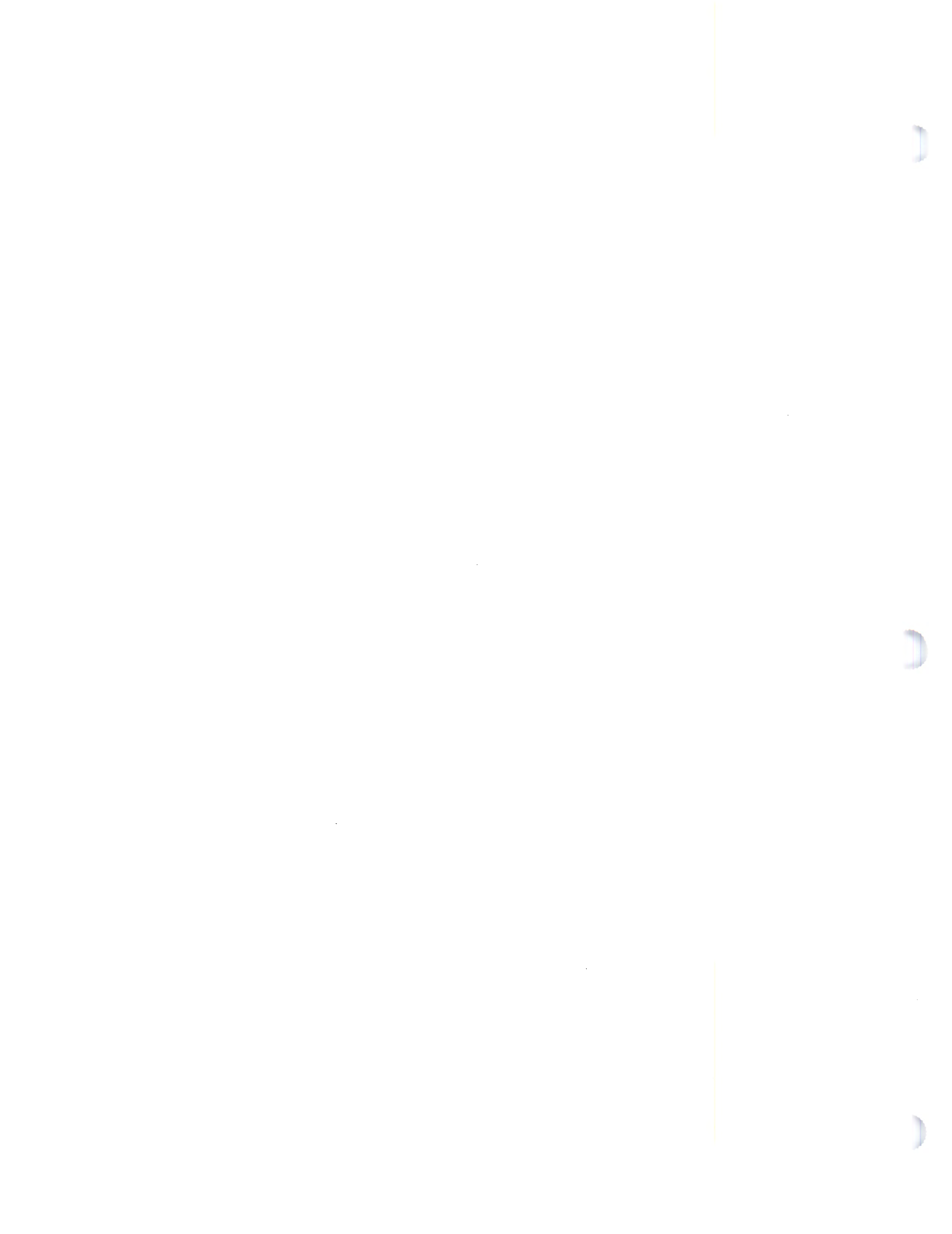
SFPP’s FERC Oil Tariff Nos. 196.9.0 and 198.9.0 are accepted, effective August 5, 2012, subject to refund and further order of the Commission in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.*

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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143 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.

Docket No. IS12-501-001

ORDER DENYING REHEARING

(Issued May 16, 2013)

1. On September 4, 2012, Indicated Shippers¹ filed a request for rehearing of the Commission's August 2012 Order which accepted SFPP, L.P.'s (SFPP) index-based rate increase for its Calnev and West Line systems subject to refund, and the outcome of proceedings in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.*² As explained below, the Commission denies the request for rehearing.

I. Background

2. On July 5, 2012, SFPP submitted tariffs proposing a revised index-based rate increase of approximately 5.4 percent for its Calnev and West Line systems. The August 2012 Order accepted SFPP's filing. The August 2012 Order explained that the Commission evaluates protests to an index-based tariff filing using the carrier's FERC Form No. 6, Page 700 data in a percentage comparison test.³ The August 2012 Order explained that SFPP's 4.48 percent decrease in costs between 2010 and 2011 as reported on Form No. 6, Page 700 combined with the proposed index-based rate increase of 5.4 percent results in divergence of 9.88 percent. Based upon the percentage comparison test, the August 2012 Order concluded that SFPP's proposed rate increase was not so substantially in excess of the actual cost changes incurred by the carrier that the rate adjustment should be disallowed. The August 2012 Order noted that the effective rates

¹ Chevron Products Company; BP West Coast Products LLC; Phillips 66 Company; Tesoro Refining and Marketing; Delta Air Lines, Inc.; Continental Airlines, Inc.; Southwest Airlines Co.; US Airways, Inc.; and Airlines For America.

² *SFPP, L.P.*, 140 FERC ¶ 61,106 (2012) (August 2012 Order).

³ *Id.* P 7 (citing *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010); *SFPP, L.P.*, 129 FERC ¶ 61,228, at P 7 (2009)).

underlying SFPP's index-based rate filing were under review in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.* Thus, the August 2012 Order accepted SFPP's indexed rates subject to refund and the outcome of the proceedings in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.*

II. Rehearing Requests

3. On September 4, 2012, Indicated Shippers filed a request for rehearing of the August 2012 Order. Indicated Shippers contends that the Commission's acceptance of indexed increases where the divergence is less than "ten percentage points" is a departure from the Commission's prior practice and not the product of reasoned decision-making. Indicated Shippers further state that the use of the ten percentage point threshold, particularly given SFPP's reported cost decrease, is arbitrary, contrary to Commission regulations, and does not satisfy the Commission's statutory obligation to ensure just and reasonable rates under Section 1(5) of the Interstate Commerce Act (ICA).

Discussion

4. The Commission denies Indicated Shippers' request for rehearing. As explained in the August 2012 Order, protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission's regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter must allege reasonable grounds for asserting that . . . the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable⁴

5. As the August 2012 Order elaborated, to maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the carrier's FERC Form No. 6, Page 700 data in a "percentage comparison test."⁵ The percentage comparison test is a very narrow test that "compare[s] the Page 700 cost data contained in the company's annual FERC Form No. 6 to the data that is reflected in the

⁴ 18 C.F.R. § 343.2(c)(1) (2012).

⁵ *Calnev*, 130 FERC ¶ 61,082 at P 10; *SFPP*, 129 FERC ¶ 61,228 at P 7. The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase. See *Calnev*, 130 FERC ¶ 61,082 at P 11 (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at PP 8-9 (2007)).

index filing for a given year with the data for [the] prior year. . . .”⁶ This test is the “preliminary screening tool for pipeline [index-based] rate filings,”⁷ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.⁸

6. SFPP’s FERC Form No. 6, Page 700 showed a total cost of service decrease between 2010 and 2011 of approximately 4.48 percent. SFPP’s 4.48 percent decrease in costs combined with the proposed index-based rate increase of 5.4 percent resulted in divergence of 9.88 percent under the percentage comparison test. The Commission confirms the August 2012 Order’s finding that this magnitude of divergence between the pipeline’s change in costs and revenues is insufficient for Indicated Shippers’ protest to satisfy the requirements of section 343.2(c)(1). As the August 2012 Order stated, the Commission has never found an index rate increase to be “substantially in excess” of actual cost changes under section 343.2(c)(1) when the difference between the proposed index rate increase and the pipeline’s actual change in cost is less than 10 percent.⁹ The

⁶ *Calnev*, 130 FERC ¶ 61,082 at P 10; *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test compares proposed changes in rates against the change in the level of a pipeline’s cost of service.

⁷ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 Fed. Reg. 59,137 (Nov. 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh’g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

⁸ *Calnev*, 130 FERC ¶ 61,082 at P 10 (citing *BP West Coast Products*, 121 FERC ¶ 61,141 at P 6 (“[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure. It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry’s average annual cost increases.”)).

⁹ August 2012 Order, 140 FERC ¶ 61,106 at P 8. Indicated Shippers state that in Docket No. IS11-444 the Commission set for hearing rates that only resulted in a 9.6 percent divergence under the percentage comparison test. *SFPP, L.P.*, 135 FERC ¶ 61, 274 (2011). However, this case does not undermine the findings of the August 2012 Order. In Docket No. IS11-444, SFPP had proposed its index increases for all of its pipeline systems in one filing. While the percentage divergence for the Watson Volume Deficiency Charge was 9.6 percent, for each of SFPP’s East, West, North, and Oregon lines, the percentage comparison test yielded a divergence of 10.9 percent between

(continued...)

Commission also has previously explained that section 343.2(c)(1) does not preclude an index increase for pipelines that experience a cost decrease.¹⁰ In this proceeding, the Commission will exercise its discretion not to investigate SFPP's index increase.¹¹

The Commission orders:

Indicated Shippers' request for rehearing is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

SFPP's proposed rate increase (6.9 percent) and the company-wide cost decrease (4.0 percent) reported by SFPP on its page 700. The Commission determined that the 10.9 magnitude of divergence "raises an issue of reasonableness that the Commission will investigate." *Id.* P 11. It was on this basis that the Commission in Docket No. IS11-444-000 set the filing for hearing. The Commission only referred to the percentage comparison test as applied to the Watson Volume Deficiency Charge in a footnote. *Id.* at n.10. No party contended that the Commission should deny the protests only with respect to the Watson Volume Deficiency Charge while accepting the protests with respect to SFPP's remaining rates, and in setting the entire filing for hearing procedures, the Commission never addressed this possibility.

¹⁰ *Calnev Pipeline LLC*, 115 FERC ¶ 61,387, at PP 3, 9 (2007); *Shell Pipe Line Co.*, 102 FERC ¶ 61,350, at PP 4, 10, *order on reh'g*, 104 FERC ¶ 61,021, PP 8-9 (2003).

¹¹ *ExxonMobil Oil Corp v. FERC*, 219 Fed. Appx. 3 (D.C. Cir. Feb. 27, 2007) (holding that a decision not to investigate a proposed indexed rate increase is committed to Commission discretion); *ExxonMobil Oil Corp. v. FERC*, 2007 WL 2306949, *1 (D.C. Cir. Jul 27, 2007) (same).

Document Content(s)

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