

BP West Coast Products LLC

v.

SFPP, L.P.

ORDER DISMISSING COMPLAINT

121 FERC ¶ 61,243 (2007)

In this case, BP West Coast Products LLC filed a complaint against SFPP, L.P. and, among other things, according to the Commission brought three claims. The first was that the company's index-based rate increase for index year 2007 resulted in rates that were unjust and unreasonable. The second was that the company did not properly apply its existing cost-of-service methodologies to develop the underlying costs use for Page 700 of its Form 6. The third was a challenge to the level of the company's base rate including a claim that cumulative index-based rate increases over the years exceeded cumulative increases in the company's costs and that the cost elements embedded in the company's cost-of-service were improperly defined. The Commission dismissed the complaint indicating essentially that oil pipeline indexing proceedings were intended to be simple, but combining three such challenges in one proceeding would almost certainly result in confusion of the issues.

121 FERC 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

BP West Coast Products LLC

Docket No. OR07-20-000

v.

SFPP, L.P.

ORDER DISMISSING COMPLAINT

(Issued December 14, 2007)

1. On August 22, 2007, BP West Coast Products, LLC (BP West Coast) filed a complaint against SFPP, L.P. (SFPP), purportedly against the index-based increases taken by SFPP on July 1, 2007. SFPP filed an answer on September 11, 2007. The Commission dismisses the complaint for the reasons stated below.

Summary

2. The Commission's normal practice is to summarize a complaint and the pipeline's response, then to make rulings on the issues presented. Except as is necessary to explain certain specific points, the Commission will not do so here because the complaint does not meet the minimum standards for filing a complaint against an indexed-based rate increase as announced in two decisions issued on November 9, 2007, *infra*. Moreover, the complaint confuses a challenge to the reasonableness of the indexed-based increase in a single year, a challenge to the accuracy of the regulatory accounts underlying that increase, and a challenge to cumulative increases embedded in the pipeline's base rates or the generic cost factors embedded in those rates. As amplified below, the Commission has consistently ruled that these allegations should be separated.

3. Moreover, the complaint contains extraneous arguments wholly unrelated to the index-filing procedures that simply burden the Commission and the respondent pipeline in what is normally a simplified proceeding. Finally, the complaint fails to identify with specificity the tariffs complained against or contain the required affidavit that the shipper complainant has a substantial economic interest in the services the complaint purports to address. While these latter two points are secondary with regard to the instant complaint, BP West Coast has filed many complaints with the Commission that fail to meet these technical pleading requirements. Without exception, all other recent complaints filed against SFPP or its affiliates identify the specific tariffs involved and include the requisite

affidavits. It is unfair to allow BP West Coast to avoid the minimum pleading standards that the Commission applies to other shippers and to which most have consistently conformed. Failure to do so in the future may result in summary dismissal of a complaint or protest.

Specific Rulings

4. The complaint first purports to assert reasonable grounds to conclude that SFPP's July 1, 2007 index-based increases resulted in rates that are unjust and unreasonable.¹ The complaint asserts that SFPP's 2006 FERC Form No. 6 demonstrates that SFPP is already over-recovering its cost-of-service and under a Commission order dated June 6, 2007, this provides reasonable grounds to conclude that the resulting rates are unjust and unreasonable.² In reply, SFPP asserts that the June 6 Order is inconsistent with the Commission's regulations, but the Commission need not reach that point. On November 9, 2007, the Commission issued related orders³ limiting the scope of the June 6 Order to cases where: (1) the pipeline is substantially over-recovering its costs, and (2) the index-based increase would substantially exacerbate that increase due to the difference between the dollar amount of the pipeline's actual cost increases and the additional revenue that would be generated by the indexed-based increases. SFPP states that its cost-of-service increased by 15.3 percent and the index only allowed a 4.3186 percent increase in revenue. SFPP's claims are accurate and therefore the complaint fails the modified test announced in the cited October 2007 SFPP and Calnev Orders.

5. The complaint also posits that SFPP greatly over-recovered its cost-of-service over a period of several years. SFPP replies that the relevant calculations do not allow for the substantial reductions in its East Line, West Line, Sepulveda, and Watson Station rates that occurred in 1996 and 1997 pursuant to Commission orders or settlements. This is undoubtedly true but both the complaint and the answer are irrelevant. The Commission has consistently held that a complaint against a single index-based increase can only reach the increase in that year. This complaint initially purports to reach the 2007 index increase and appears to extend its reach beyond this single year to other years on the

¹ *SFPP, L.P.*, 119 FERC ¶ 61,330 (2007) (June 28 Order).

² *SFPP, L.P.*, 119 FERC ¶ 61,241 (2007) (June 6 Order).

³ *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141 (2007) and *Tesoro Refining and Marketing Company v. Calnev Pipe Line, L.L.C.*, 121 FERC ¶ 61,142 (2007).

grounds that a complaint against one year necessarily reaches the base rates. This is fundamentally inconsistent with the Commission's prior orders and is rejected.⁴

6. The complaint also purports to assert numerous errors with the cost figures that underpin Page 700 of SFPP's 2006 FERC Form No. 6. These include the excessive return on equity based on the risk assumptions included in the equity cost-of-capital, phantom income tax allowances, inflated equity ratios, improper purchase accounting adjustments, padded operation and maintenance expenses, inclusion of subjective reserves, and improper costs from parents and affiliates. SFPP correctly states that the Commission has consistently ruled that these are generic cost issues that address how its cost-of-service is constructed and are not properly raised by a complaint against an increase for a single year.⁵

7. The complaint asserts that there are certain significant differences between the numbers stated in SFPP's FERC Form No. 6s in 2005 and 2006. SFPP reasonably replies that the differences reflect the fact that there were different methodologies for calculating income tax allowance, return, and certain rate base matters in effect in those years. It correctly states that indexing procedures require the pipeline to prepare Page 700 of its 2006 FERC Form No. 6 by applying the current methodology and then to conform the Page 700 of the prior year 2005 to the same methodology. This permits an apples to apples comparison under the simplified cost recovery method contemplated by the regulations.⁶ The complaint also contains arguments regarding the definition of a final rate and when a complaint is appropriate. SFPP correctly replies that these arguments are

⁴ *Calnev Pipe Line, L.L.C.*, 119 FERC 61,332 at P 7 (2007); *BP West Coast Products LLC v. SFPP, L.P.*, 119 FERC ¶ 61,241 at P 8 (2007); *SFPP, L.P.*, 115 FERC ¶ 61,388 at P 10 (2006); *SFPP, L.P.*, 113 FERC ¶ 61,253 at P 11, 22 (2005); *SFPP, L.P.*, 107 FERC ¶ 61,344 (2004).

⁵ *Calnev Pipe Line, L.L.C.*, 119 FERC 61,332 at P 5 (2007); *SFPP, L.P.*, 119 FERC ¶ 61,330 (2007) at P 8; *BP West Coast Products LLC v. SFPP, L.P.*, 119 FERC ¶ 61,241 at P 9 (2007); *SFPP, L.P.*, 113 FERC ¶ 61,253 at P 8, 11, 22, 23 (2005); *SFPP, L.P.*, 111 FERC ¶ 61,510 at P 14 (2005).

⁶ Order No. 561 at 30,948. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs., Regs. Preambles, January 1991-June 1996 ¶ 30,985 (1993), 58 F.R. 58753 (Nov. 4, 1993), Order No. 561; *order on reh'g*, Order 561-A, FERC Stats. & Regs., Regs. Preambles, January 1991-June 1996 ¶ 31,000 (1994), 59 F.R. 40242 (Aug. 8, 1994); *aff'd*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *aff'd* *Association of Oil Pipe Lines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002) *order on remand*, *Five-Year Review of Oil Pipeline Pricing Index*, 102 FERC ¶ 61,195 (2003).

at bottom, an attack on the Commission's decisions regarding SFPP's 2007 filing to recover costs related to the transportation of Ultra Low Sulfur Diesel products.⁷ Not only are these allegations lengthy, they are irrelevant since there is no doubt that SFPP's July 1, 2007 indexed-based rate increase results in final rates since there was and is no suspension.⁸

8. At bottom, the instant complaint seeks to conflate in a single proceeding three different types of proceedings. The first is whether there are reasonable grounds to conclude that an index-based increase taken in a single year results in rates that are unjust and unreasonable. This is a narrow test that is based on a comparison of Page 700 of the relevant years, with very narrow exceptions. One of these exceptions includes a review of the percentage or dollar increase in the return under restrictive circumstances. The only technical issue here is whether the pipeline properly performed the requisite calculations using its existing cost-of-service methodology and its accounts. This is consistent with the simplified cost recovery purpose of the Commission's indexing methodology and regulations.⁹

9. The second type of proceeding is a complaint that provides reasonable grounds to conclude that the pipeline did not properly apply its existing cost-of-service methodology to develop the underlying cost inputs used to develop the Page 700 in its annual FERC Form No. 6, or the inputs were improperly entered into its accounts or the calculation. These are mechanical costing and accounting matters that are normally handled as part of the Commission's ongoing audit procedures unless a complainant shows credible grounds to believe that a significant problem is involved. The Commission notes that pipelines submit their FERC Form No. 6 under oath and exposes the pipeline and its employees to civil and criminal sanctions if there are purposeful errors in either regard.¹⁰

10. The third proceeding is a complaint against the level of the base rate, which in this context can mean two different things, which are not mutually exclusive. One is that the cumulative increases from the index-based increases over the years now exceed the cumulative increases in the pipeline's actual costs to the point that the resulting rates are unjust and unreasonable. The second is that the cost components embedded in the

⁷ *SFPP, L.P.*, 120 FERC ¶ 61,014 (2007), *reh'g denied by operation of law*, *SFPP, L.P.*, 120 FERC ¶ 61,209 (2007).

⁸ June 28 Order, Ordering Paragraphs.

⁹ Note 3, *supra*.

¹⁰ SFPP corrected and refiled its FERC Form No. 6 where necessary to assure an accurate presentation of the accounts. *Cf. SFPP, L.P.*, 102 FERC ¶ 61,334 (2003).

pipeline's cost-of-service are improperly defined or no longer accurately measure the pipeline's costs. These can include the specifics of income tax allowances, return, rate base, operating and maintenance expenses, capital structure, and overhead costs, which are the type of factors listed in the complaint. A complainant must pursue these issues in a complaint against the base rates and not one that attempts to conflate this more complicated proceeding with the more simplified procedures and limited reliefs involved in the two previous examples.¹¹

11. BP West Coast appears to believe that the Commission should permit it to pursue all three types of complaint in a single proceeding. However this would defeat the central purpose of the indexing regulations, which is a simplified method for recovering industry-wide cost increases. Each of the three basic complaints described here involves a different order of accounting, analytical, and procedural complexity. Combining them would almost certainly result in confusion of the issues to be addressed at the filing stage or at hearing, the scope of discovery, a muddled record, and significantly more cost than is warranted given the purpose of the regulations and the goal of simplified oil pipeline regulation embodied in the Energy Policy Act of 1992.¹²

12. The Commission previously explained the differences between the three types of complaints against an indexed-based rate in several proceedings to which BP West Coast was a party, or in which its counsel represented another pipeline.¹³ To assure that there is no misunderstanding, the Commission has again done so in greater detail than one would assume is necessary given its prior rulings. For this reason, the Commission is simply dismissing the complaint in this proceeding in the expectation that the distinctions stated here will be followed in the filing of any future complaints.

¹¹ Note 4, *supra*.

¹² Energy Policy Act of 1992 (Public L. No.102-486, 106 Stat. 2776 (1992)).

¹³ See *Calnev Pipe Line, L.L.C.*, 119 FERC 61,332 (2007); *SFPP, L.P.*, 119 FERC ¶ 61,330 (2007); *BP West Coast Products LLC v. SFPP, L.P.*, 119 FERC ¶ 61,241 (2007); *SFPP, L.P.*, 115 FERC ¶ 61,388 (2006); *SFPP, L.P.*, 113 FERC ¶ 61,253 (2005); *SFPP, L.P.*, 111 FERC ¶ 61,510 (2005); *SFPP, L.P.*, 107 FERC ¶ 61,344 (2004); *SFPP, L.P.*, 102 FERC ¶ 61,344 (2003); *SFPP, L.P.*, 96 FERC ¶ 61, 332 (2001).

The Commission orders:

The complaint is dismissed for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary