114 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.	Docket Nos.	OR92-8-026 OR93-5-016 OR94-3-015 OR94-4-017
Mobil Oil Corporation v. SFPP, L.P.	Docket No.	OR95-5-014
Tosco Corporation v. SFPP, L.P.	Docket No.	OR95-34-013
ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation v. SFPP, L.P.	Docket Nos.	OR96-2-013 OR96-10-010 OR98-1-012 OR00-4-002
Ultramar Diamond Shamrock Corporation, and Ultramar, Inc. v. SFPP, L.P.	Docket Nos.	OR96-2-011 OR96-17-007 OR97-2-006 OR98-2-008 OR00-8-008
Tosco Corporation v. SFPP, L.P.	Docket Nos.	OR98-13-008 OR00-9-008

Navajo Refining Corporation v. SFPP, L.P.	Docket No. OR00-7-007
Refinery Holding Company	Docket No. OR00-10-007
SFPP, L.P.	Docket No. IS98-1-003
SFPP, L.P.	Docket No. IS04-323-003

ORDER ON REHEARING

(Issued February 13, 2006)

1. This order addresses requests for rehearing or clarification of the Commission's order in these proceedings issued December 16, 2005.[1] The requests for rehearing or clarification were filed by Navajo Refining Company, L.P. and Western Refining Company jointly (Joint Shippers), and SFPP, L.P. In addition, BP West Coast Products LLC and ExxonMobil Oil Corporation (BP West Coast) filed suggested errata to the December 16 order, which the Commission also addresses here. The requests for rehearing are granted in part and denied in part as discussed below.

I. **<u>Background</u>**

2. The Commission's December 16 Order made numerous determinations regarding the rate reasonableness of SFPP's East and West Lines. That order issued in part in response to a prior remand by the Court of Appeals for the D.C. Circuit[2] in June 2005 as well as making rulings in the Docket No. OR98-2-000, *et al.* complaint proceedings that were ongoing at that time. The December 16 Order required SFPP to make a compliance filing no later than February 28, 2006. Most matters raised by the filings under review involve the cost calculations that SFPP must include in that filing. For that reason, the Commission will issue a relatively short order here and may expand certain aspects of its rulings once SFPP makes its compliance filing. A more detailed background is contained

[1] *SFPP, L.P.*, 113 FERC ¶ 61,277 (2005) (December 16 Order).

[2] *See BP West Coast Products, L.L.C. v. FERC,* 374 F.3d 1263 (D. C. Cir. 2004) (*BP West Coast* or "the Remand Opinion")

in the December 16 Order and the summary of the rehearing arguments is included below.

II. Discussion

A. Requests of the Joint Shippers

3. The Joint Shippers assert that the Commission erred in allowing SFPP to recover through a prospective surcharge the costs SFPP incurred in defending its East Line rates for the period August 1, 2000 through April 30, 2006. They assert that this is inconsistent with the Commission's interpretation of *Arizona Grocery Co. v Atchison, Topeka & Santa Fe Ry, Co.,*[3] which precludes the use of retroactive reparations to modify a final rate prescribed by the Commission.[4] At bottom, they argue that the Commission ruled that the East Line rates derived from a 1994 cost of service, to be effective August 1, 2000, are final rates that may only be modified prospectively. They assert that the proposed surcharge would modify the 1994 rates by permitting SFPP to recover regulatory costs that were incurred after August 1, 2000, thus modifying an *Arizona Grocery* rate that was in effect on that date.[5]

4. The current 1994 rates placed in effect as of August 1, 2000 are not at this time just and reasonable final rates, but only interim rates, due to their remanded status. The Commission recognizes that when any final East Line rates (to be effective August 1, 2000) are established by this remand, *Arizona Grocery* will apply to that rate. As is the case with all rates determined by the Commission, those rates will be defined by the cost factors embedded in them, in this case the 1994 cost of service now before the Commission on remand in Docket No. OR92-8-000, *et al.* However, the rates to be so established will have no embedded cost component to recover East Line regulatory costs for the period January 1, 1994 through July 31, 2000, or for the period August 1, 2000 through April 30, 2006, the day before the May 1 date any new interim East Line rates would become effective pursuant to the December 16 Order. Thus, the Commission's December 16 Order would not modify the 1994 East Line rates that will be effective on August 1, 2000, whether interim or final rates. Rather, it authorizes a surcharge to

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[3] *Arizona Grocery Co. v Atchison, Topeka & Santa Fe Ry, Co.,* 284 U.S. 370 (1932) (*Arizona Grocery).*

[4] *See BP West Coast* at 1304.

[5] The August 1, 2000 rate was modified by the December 16 Order to reflect cost issues addressed on remand. These are not relevant to the Joint Shippers' argument.

recover an important cost factor that was and will not be embedded in the 1994 East Line rates to be effective August 1, 2000.

5. As noted, the Commission's Opinion No. 435 Orders[6] excluded any cost factor for East Line regulatory expenses from the 1994 cost of service used to define the new East Line rates required by those orders. Those new East Line rates were established as of January 1, 1994, and were indexed forward to August 1, 2000, the effective date adopted by the earlier Opinion No. 435 Orders. Thus, the Commission denied SFPP any prospective cost recovery of litigation costs related to the East Line rates for period after January 1, 1994. Rather, the Commission required SFPP to recover its East Line regulatory costs for the period 1994 through 1998 first by charging those costs against the excess East Line revenues[7] SFPP may have earned during that period. The Commission held that SFPP could recover the balance of any remaining legal costs not recovered through the calendar year 1998 through a prospective surcharge beginning as of the effective date of the revised 1994 East Line rates, *i.e.*, August 1, 2000. The court upheld this approach even though any such surcharge would have applied (and on remand could still apply) after the August 1, 2000 effective date of a rate that will be subject to *Arizona Grocery*. Thus, even though SFPP incurred East Line regulatory costs after 1994, the court affirmed the test year used to design the *Arizona Grocery* rates, and SFPP's recovery of those costs by a surcharge effective after August 1, 2000.[8]

6. The methodology that the Commission has adopted here uses the same approach. The cost-of-service for the new challenges to the East Line rates is that for the 1999 calendar year, and the new rate level to be different from the 1994 rate level, if any, will be indexed forward to the future effective date of May 1, 2006 for the interim rates required by the December 16 Order, thus establishing a new future prospective rate under *Arizona Grocery*. Just as in the Opinion No. 435 Orders, the Commission declines to

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[6] *Opinion No. 435* (86 FERC ¶ 61,022 (1999)), *Opinion No. 435-A* (91 FERC ¶ 61,135 (2000)), *Opinion No. 435-B* (96 FERC ¶ 61,281 (2000)), and an *Order on Clarification and Rehearing* (97 FERC ¶ 61,138 (2001)) (collectively the Opinion No. 435 Orders).

[7] That is, those revenues that SFPP had collected in excess of the just and reasonable rate East Line rates established for the calendar year 1994, which were then indexed forward to August 1, 2000. Given the additional cost information now available, on remand the Commission has extended this methodology through July 31, 2000, the day before the new East Line rates were to become effective.

[8] *BP West Coast* at 1293-94.

embed any East Line litigation costs in the 1999 East Line cost of service which will be effective on an interim basis on May 1, 2006. The Commission again did so in light of the largely unpredictable, and thus immeasurable, nature of such costs, and proposed the use of a prospective surcharge. Thus, for the period between August 1, 2000 and April 30, 2006, SFPP will have had *no* opportunity to recover *any* East Line regulatory costs because the Commission precluded it from doing so under both the rates to be established as of August 1, 2000 and those that will be established on an interim basis effective May 1, 2006. This is so because litigation over the 1994 East Line rates continued on appeal after August 1, 2000, was clearly expected to do so, is continuing, and is now before the Commission on remand.[9]

7. It is reasonable to allow SFPP recovery of its East Line regulatory costs for the period between August 1, 2000, and April 30, 2006, since the Commission effectively precluded the carrier from filing for a higher East Line rate on August 1, 2000, and thereby denied SFPP the opportunity to protect itself by filing to include a cost component to recovery its anticipated East Line regulatory costs. Because the East Line regulatory costs to be incurred after August 1, 2000 were never embedded in the rate to be effective on that date, the Commission is *not* modifying that rate. Rather, the Commission has permitted recovery through a *surcharge* to the rates, which rates (exclusive of the surcharge) are based on embedded costs. This has been established and affirmed as a reasonable practice because there was reasonable notice to shippers that the Commission would use an alternative approach given the unpredictable non-recurring nature of those costs. The Opinion No. 435 Orders established that (1) the Commission was denying SFPP any prospective recovery of its East Line rates by means of an embedded cost factor for the period after August 1, 2000; (2) that the litigation over those rates would likely continue, including extensive and complicated judicial appeals; (3) that to protect shippers against an excessive embedded regulatory cost factor the Commission had established a pattern of using prospective surcharges to recover the East Line regulatory costs; and (4) that SFPP would recover its regulatory costs for the complaints filed in the Docket OR98-2-000 *et al.* in any new rates established in those proceedings.[10]

8. A second argument advanced by Joint Shippers is that the Commission erred by not applying the approach it adopted in the Opinion No. 435 Orders for the period after 1999, a point that is subtly inconsistent with their first. They argue that if SFPP

[9] The December 16 Order notes that these expenses continued to be high in 1999 and 2000, a fact that was anticipated by the Commission's prior orders. *See SFPP, L.P.*, 97 FERC ¶ 61,138 (2001) at P 13.

[10] *Id.* P 13 and 14.

over-recovered its East Line costs for the period the period after August 1, 2000 (based on the 1999 test year used to develop the East Line cost of service for the instant proceedings), the Commission should require SFPP to absorb any East Line regulatory fees before imposing a surcharge. Thus, even though the 1994 East Line rates effective as of August 1, 2000 are protected against refunds under *Arizona Grocery*, Joint Shippers would have the Commission require SFPP to absorb its regulatory costs if its revenues from the revised rates exceeded the costs included in the 1999 test year cost of service, as indexed forward to thee effective date of any new East Line rates established by this proceeding. In other words, Joint Shippers argue that a surcharge should not be applied until regulatory fees are used to offset excess revenues generated by the 1994 rates. On its face, this is inconsistent with their prior argument that that Commission should not permit a surcharge because it would modify the 1994 rates that are *Arizona Grocery* rates.

9. In fact, the Joint Shippers' request is consistent with *Arizona Grocery* and with the Commission's prior orders in this proceeding. As noted, the Commission's Opinion No. 435 orders denied SFPP *any* recovery of prospective East Line regulatory costs after August 1, 2000 through the use of the traditional test period methodology. Under the test period methodology, the carrier assumes the risks of any under-recovery of costs that are embedded in its rates, but gains the benefit of any over-recovery until such time as its rates are changed through a carrier filing or Commission action. Thus, to the extent SFPP over-recovers its East Line costs after August 1, 2000, it is unreasonable for it keep the resulting revenues if those revenues are sufficient to cover both the costs actually embedded the 1994 East Line rates effective August 1, 2000. Otherwise SFPP will recover its East Line regulatory costs twice since the Commission first absolved the carrier of any such market risk, and then permitted SFPP to recover its East Line regulatory costs through surcharge.[11] As the court noted in *BP West Coast*, it is this type of windfall that the Commission's Opinion No. 435 methodology sought to prevent.[12]

10. Finally, the Commission notes that the 1994 East Line rates that were made effective on August 1, 2000 are now before the Commission on remand, and therefore the terms of those rates are not now final and they may be modified here. In fact, the court contemplated that the Commission could choose to do so. Therefore the Commission will modify its prior Opinion No. 435 Orders on remand to provide that for the period after August 1, 2000 through April 30, 2006, SFPP may recover its East Line regulatory

[11] SFPP does face the regulatory risk that the costs themselves may be imprudent, and that therefore there would be no recovery through the surcharge mechanism.

[12] *BP West Coast* at 1293.

costs through a prospective surcharge in lieu of having a regulatory cost embedded in the revised East Line rates to be effective on August 1, 2000, provided that there were insufficient net east line revenues to recovery those costs. To accomplish this, SFPP would calculate its East Line regulatory costs for the period August 1, 2000 through April 30, 2006 for this phase of the litigation.[13] The East Line regulatory costs will be summed for that period, as well any revenues for the same period in excess of the East Line costs determined by the 1994 test year, as those costs are indexed forward.[14] If those revenues are sufficient to recover those embedded costs plus the East Line regulatory costs between August 1, 2000 and April 30, 2006, under *Arizona Grocery* SFPP is entitled to keep the surplus because it bears the risk of the embedded costs. If the revenues are inadequate to cover the East Line embedded costs plus East Line regulatory costs permitted here, SFPP may recover the shortfall through a five year surcharge that the Commission will establish in the compliance phase of this proceeding.

11. Joint Shippers raise three additional points. First, they assert that the Commission appears to extend the Opinion No. 435 Orders' methodology for recovering regulatory costs through July 31, 2000, the day before the revised East Line rates are to be effective (August 1, 2000) which is correct. Joint Shippers are concerned that the December 16 order suggests that such regulatory costs should be offset not against surplus revenues but against reparations paid. The Commission clarifies that its intention was to offset the additional East Line regulatory costs through July 31, 2000 against surplus revenues for the same period, thus consistently applying its Opinion No. 435 Orders' methodology. Joint Shippers also assert that SFPP has prevailed in its assessment of some additional $4 million in Arizona real estate taxes and therefore this additional expense should be removed from the 1999 cost of service. That is the intention of the Commission's order.

12. Finally, the Joint Shippers assert that the Commission erred in permitting SFPP to use a so-called traditional method of allocating Arizona real estate taxes between

[13] The Commission did not clearly specify in the December 16 Order the outside date for the East Line regulatory costs to be recovered through the surcharge established by the order. However, the ruling here is that the appropriate date is May 1, 2006, the point at which any new interim rates would become effective. Thus, any final resolution of the amount of any surcharge must wait the calculation of the indexed 1999 cost of service and determine of the revenue and cost relationship discussed in the body of the order.

[14] This is because under *Arizona Grocery* the East Line revenues are based on 1994 costs until such time as the rate is changed prospectively, if at all, based on the 1999 cost of service at issue in Docket No. OR98-2-000, *et al.*

jurisdictional and non-jurisdictional facilities. They assert that the there is no such method and that the December 16 Order erred in allowing SFPP to adopt a novel allocation method that the ALJ rejected. They argue that SFPP should use the same method that SFPP uses in other jurisdictions for allocating real estate taxes between jurisdictional and non-jurisdictional facilities. The Commission clarifies that its intent was to permit SFPP to utilize the allocation method that the State of Arizona requires it to use. This decision in the December 16 Order was based on the argument that the State of Arizona required a different allocation method than all the other states in which SFPP operates. The ID held that there was no basis to conclude that the State of Arizona requires a different method, and rather that SFPP simply assumed that in Arizona all centrally (state) assessed taxes were allocated to the jurisdictional facility and all local taxes were assessed to non-jurisdictional facilities. The ID further noted that in its 1999 Form 6 annual report SFPP in fact used the same allocation methodology for all states. Given these two points, the Commission will grant rehearing and affirm the ID.

B. SFPP's Requests

13. SFPP first asserts that the Commission erred in directing SFPP to calculate reparations for its West Line rate to West Phoenix, Arizona for complaints filed in 1997 based on a conclusion that there were substantially changed circumstances in that year. It asserts that the Commission had previously held that there could be no reparations for the complaints against that rate before 1998.[15] SFPP is correct. In its March 26, 2004 Order the Commission found that there were substantially changed circumstances to the economic basis of the West Line Phoenix rate in beginning in 1997.[16] A review of the March 26, 2004 Order indicates that P 58 states that "given the volume increase of 7.56 percent in 1997, when combined with the 19.09 percent decrease in costs by 1997, the Commission finds substantially changed circumstances as of 1997." The March 26 Order clarifies that the Commission made that determination based on a full year's information for the calendar year 1997. Thus, the substantially changed circumstances came to fruition only as of December 31, 1997, the completion of the comparison period. Since changed circumstances must occur *before* the filing of the relevant complaint, the only complaints that will lie against the West Line Phoenix rate are those filed after December 31, 1997. Thus, there can be no reparations for the West Line Phoenix rate in 1997 and rehearing is granted.

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[15] December 16 Order at P 50.

[16] *ARCO Products Co., a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation v. SFPP*, 106 FERC ¶ 61,300 (2004) at P 52-53 (March 26 Order).

14. SFPP next argues that the Commission erred in determining the capital structure to be applied to SFPP by directing removal of SFPP's 1998 purchase price adjustment (PPA).[17] This PPA wrote up the balance sheets of both SFPP and its parent, Kinder Morgan Energy Partners, L.P. (KMEP) when KMEP acquired SFPP in 1998. The December 16 Order addressed this issue in detail, explaining how the PPA was inconsistent with well established Commission precedent denying the use of such adjustments for rate making purposes. The PPA is particularly large in this instance. The depreciated year end book value placed on SFPP's net carrier property increased from $467,431,100 in 1997 to $1,205,480,925 in 1998 and its total depreciated tangible property from $634,234,340 in 1997 to $1,498,129,309 in 1998 with only a modest increase in the carrier's debt.[18] Basic principals of corporate finance hold that the market value of the company would surpass historical regulatory book value by such a huge premium only if SFPP were, at least in the eyes of the purchaser, substantially over-recovering its historical cost of service. The Commission designed its policy regarding PPAs to assure that none of this premium is passed through to the ratepayers. As the next paragraph summarizes, this can be done by changing the relative weights of the debt and equity components of SFPP's capital structure even if the rate base is not increased for purposes of calculating the carrier's depreciation allowance for regulatory purposes.[19]

15. SFPP's third argument is that the December 16 Order erred in holding that SFPP's capital structure should be used to design the 1999 cost of service rather than that of its parent, KMEP.[20] SFPP argues that the Commission should apply its standard tests regarding whether SFPP was able to raise its own capital, the source of any guarantees, and the similarity of risks between parent and subsidiary entities. The December 16 Order found that SFPP still relied on its own credit in 1999 rather than on KMEP's guarantees. More fundamentally, the December 16 Order found that the inclusion of the PPA in KMEP's capital structure distorted the debt to equity ratio of both SFPP's and KMEP's capital structures for regulatory purposes. As such, the Commission concluded

[17] December 16 order at P 55 and 64-65.

[18] *See* SFPP's FERC Form No. 6 for 1998 at pages 111 and 113. The increase in total liabilities was less than $47 million.

[19] As part of its argument SFPP notes that some of the entities controlled by KMEP are jurisdictional entities that also include PPAs and consistency would permit it to retain those PPAs. The answer to this argument is that the Commission could direct KMEP to remove all jurisdictional PPAs that do not meet the ratepayer benefit tests.

[20] December 16 Order P 66-68 and 72.

it was not possible to develop a reasonable weighted cost of capital relying on KMEP's capital structure. The December 16 Order did recognize that the PPA would not result in a different market cost per unit for SFPP's debt and equity capital, *i.e.*, that the inclusion or removal of the PPA would not materially alter KMEP's risk. Its inclusion would, however, increase SFPP's overall cost of capital by increasing the equity component in violation of Commission policy, and thereby increase both the weighted, and thus the total cost of capital. No further discussion is required on this matter given the explanation in the December 16 Order and rehearing is denied.

16. SFPP also asserts that the December 16 Order erred in requiring the removal of the PPA from the calculation of the gross plant factor in the allocation of corporate overhead expenses under the Massachusetts formula among the various entities that KMEP controls.[21] SFPP makes two central arguments in this regard. The first is that the PPA reflects the relative value of those different enterprises. The second is that there is no way to determine the original cost basis of non-jurisdictional entities that are controlled by KMEP given the passage of time and earlier non-jurisdictional accounting practices that may have applied to those entities.

17. The first point has no merit. The Massachusetts formula allocates costs that cannot be directly allocated on the basis of the relative net plant of the subsidiaries. As with the earlier discussion, economic regulation looks to the value to the rate payer of services performed by the company based on its current operating costs, historical capital, and return on that capital, not on the value placed on the company's assets by the owners. The PPA KMEP included on its books from its acquisition of SFPP reflects a net book plant that greatly exceeds SFPP's historical book value, and thus will over-allocate costs to SFPP based on the relative value of its net book plant in relationship to the total.[22] SFPP is correct that removal of the PPA does not reflect the value placed on the different organizations by the owners and will not allocate operating costs on a rational basis that might be adopted by an owner. However, this is not the issue. Commission policy regarding PPAs is to prevent increased costs to the rate payers based on the owners' perception of the value of the company and any premiums the owners might pay for that value. In this case, as noted, that was over twice its book value. Rehearing is denied regarding this first argument. The second point regarding the difficulty in determining the original cost basis of non-jurisdictional entities has more merit. Recognizing this

[21] December 16 Order P 85-86.

[22] The PPA serves to both increase the total amount of the net plant used in the formula and overstates SFPP's percentage of net plant as a component of the total. This is particularly true since SFPP represented the vast majority of the total.

difficulty and accounting practicalities, the Commission will only require KMEP to remove the PPA recorded on its books at the time that the acquisition of the non-jurisdictional entity occurred. This will reduce the risk that the relative value of its SFPP component is understated.

18. SFPP also asserts that the December 15 Order erred by requiring the inclusion in the Massachusetts formula of certain subsidiaries for which corporate functions are provided by entities other than KMEP, effectively causing a double allocation of overhead expenses.[23] The entities include Plantation Pipe Line, Trailblazer Pipeline, and Kinder Morgan Gas Transmission LLC. While SFPP's proof was only marginally adequate in this regard, the argument is reasonable and the Commission will grant rehearing.

19. SFPP further asserts that the December 16 Order erred in directing SFPP to determine West Line reparations for the complaints in Docket No. OR96-2-000, *et al.* by indexing any rates based on the 1999 cost of service backward to the dates of relevant complaints rather than using the cost of services for each of the pre-1999 years in question.[24] As the prior discussion indicates, this ruling applies to the calendar year 1996 for some complaints and to the calendar year 1998 for others.[25] The Commission first notes that the court held in *BP West Coast* that the Commission did not act arbitrarily by first adopting a 1994 cost of service, and then indexing it backwards to determine the reparations that would be due for earlier complaints against the East Line rates. The Commission applied this holding for all the East Line rates that were the subject of complaints in the Docket No. OR92-8-000, *et al.* proceedings.[26]

20. As discussed in Opinion No. 435, the series of complaints against the East Line adjudicated in that proceeding were filed on September 4, 1992, December 22, 1993, January 14, 1994, and August 7, 1995. Thus, a 1994 cost of service was used for determining the reasonableness of the East Line rates since it was the most recent calendar year available for establishing the prospective rates to be set in response to the

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[23] *Id.*

[24] *Id.*, P 95.

[25] This parallels the previous analysis stating that if substantially changed circumstances occurred in 1997, coming to fruition on December 31, 1997, then only complaints filed after that date would lie against a challenged rate.

[26] *BP West Coast* at 1307.

August 7, 1995 complaints. This assured that any prospective rates would reflect the most recent cost of service applicable to those consolidated proceedings. The earliest cost of service that would have been applicable to any of those complaints would have been 1992, or some two years earlier.[27] As discussed, the court affirmed the use of the 1994 test year to determine a rate as of 1994, and the indexing backward of that rate to determine reparations for the earlier filed complaints. Thus, there could be no reasonable objection to the use of the 1999 cost of service for calculating refunds for complaints filed against the West Phoenix rates in 1998.[28] Rehearing is denied with regard to the complaints filed against those rates for the time frame 1998 through 2000.

21. The situation regarding the 1996 complaints filed against the balance of the West Line rates is more difficult to resolve. Any stand-alone litigation against those rates would have arguably used a 1995 cost of service to resolve the first complaint filed in 1996, in this case the January 25, 1996 complaint filed in Docket No. OR96-10-000, a four year differential from the 1999 cost of service used in the Docket No. OR96-2-000 *et al.* complaints. Reparations would then lie for the difference between the revenues paid from the date of the complaint *forward* and the revenues that would have been collected under the new just and reasonable rate established as of January 1, 1995 using the 1995 cost of service. Given the increase in volumes over the West Line for the four years 1995 through 1999, of approximately 10 percent, and the relatively constant costs during the same period, the Commission will allow SFPP to calculate West Line reparations (other than the West Phoenix rate) for the years 1996, 1997, and 1998 based on its 1995 cost of service, as indexed through December 31, 1998. Any reparations for the West Line rates (including the West Phoenix rate) thereafter will be based on the indexed 1999 cost of service.[29] Moreover, the use of the 1995 cost of service should be

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[27] The twelve month test period would end December 4, 1992. Thus, assuming the use of a full calendar year as the Commission has done here, the result would have been the use of the 1992 and not the 1991 year.

[28] The earliest test year would by definition end December 31, 1997, well within the bounds of two year spread involved in the use of the 1994 test year in the Docket No. OR92-8-000 *et al.* consolidated proceeding.

[29] The Commission further notes that Texaco Refining and Marketing, Inc. (TRMI) filed its complaint on December 1, 1995. The Commission has determined that certain of SFPP's West Line rates were no longer grandfathered as of December 31, 1995 based on a full calendar year of relevant information. Under the statute TRMI could reasonably expect a ruling based only on the change in the economic basis for the rate prior to the filing of its complaint, or back to December 1, 1994. Given that the percentage variation from the base year as of December 31, 1995 was 27.32 percent, one

(continued)

based on the methodological rulings applied to the 1999 cost of service to assure some measure of administrative efficiency.

22. SFPP asserts that the December 16 Order erred in directing that the West Line turbine fuel rates should not be calculated on volumes, *i.e.*, not on barrels, but on barrel miles.[30] SFPP is correct that its rates are stated on a per barrel basis but designed on a barrel-mile basis. SFPP is correct in pointing out this inconsistency and rehearing is granted. Moreover, SFPP asserts that the December 16 Order erred in setting the interim turbine fuel rates based on the lower of the 1994 volumes indexed forward, or the 1999 volumes indexed forward, and not considering the more representative costs.[31] The Commission agrees that the turbine fuel rates should be designed for the period 1994 through August 1, 2000 based on the 1994 volumes, and thereafter based on the 1999 volumes. Normally if the Commission had set a rate based on the 1994 volumes, SFPP could have protected itself by filing a new rate case based on the Commission's rulings. However, this did not become an issue until July 20, 2004 when the court ruled that the Commission had erred in not setting such a rate during the Docket No. OR92-8-000, *et al.* proceedings. SFPP should not be penalized for the Commission's error and rehearing is granted.

23. SFPP also asserts that the Commission erred in permitting pre-complaint relief for complaints filed after the date the Commission determined that there were substantially changed circumstances.[32] SFPP is correct and the Commission will modify its prior ruling. This problem is best illustrated by a simple example that is not tied to any specific complaint in this proceeding. Assume that a complaint was filed on February 1, 1996, and the Commission determined that the challenged rate was no longer

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month's variation would not appear to drop this percentage below the 25 percent measure for the West Line rates as a whole adopted by the Commission's June 1, 2005 remand order, or in the case of the CalNev and Tucson West points, below the 20 percent standard for individual points in the same order. *See SFPP, L.P.*, 111 FERC ¶ 61,334 (2005) at P 39 and Tables 2 and 3 of the Appendix. Accordingly, to deny TRMI complainant status based on the Commission's use of a full 1995 calendar year would be unduly harsh. TRMI may obtain reparations from December 1, 1995, the date it filed its complaint, for its shipments to the CalNev and Tucson West delivery points.

[30] December 16 Order P 108.

[31] *Id.* P 108 and 133.

[32] *Citing* to P 116 of the December 16 order.

grandfathered as of December 31, 1995. It would therefore establish a new rate as of February 1, 1996. Thereafter another complaint is filed on January 1, 1997, at which point the relevant rate is no longer grandfathered. Assuming a successful challenge to the new rate, the Energy Policy Act of 1992 bars reparations for the period before the date of that new rate, in this case February 1, 1996. This is because the Commission is barred from providing reparations before that date since, as SFPP points out, before that date the rate was grandfathered and no relief was available.

24. Finally SFPP asserts that the December 16 Order erred in directing the allocation of Watson Station regulatory costs to both the West Line rates and the North Line rates. SFPP correctly states that the North Line is not connected to the West Line or Watson Station. BP West Coast makes the same point and the December 16 Order is modified accordingly.

C. BP West Coast's Comments

25. As previously discussed, BP West Coast filed certain suggested changes to the Commission's December 16 Order that it believed the Commission should treat as errata, but which apparently were not of sufficient importance to be treated as a rehearing request. The Commission will address those comments in the spirit intended and modify the December 16 Order where the Commission considers that appropriate. It has already done so with respect to BP West Coast's comment on the allocation of Watson Station costs to the North Line. A second BP West Coast observation is that the listing of required filings contained in P 133 of the December 16 Order did not cross reference the 1994 West Line cost of service required to be completed under P 108 of the order. The Commission agrees that the 1994 West Line cost of service should have been referenced in P 108 and clarifies that SFPP has that obligation.

26. BP West Coast also states that the Commission failed to note that BP West Coast filed a July 1, 2005 reply brief in response to the Commission's June 1, 2005 Order in this proceeding. The Commission acknowledges the July 1, 2005 filing, but will address its arguments further as necessary in the context of the compliance filing. BP West Coast also asserts that the Commission's December 16 Order states that only SFPP's Brief on Exceptions contained extensive analysis of the income tax allowance issues raised by the Commission's June 1, 2005 Order. BP West Coast asserts that it, and Indicated Shippers, presented a great deal of analysis of income tax allowance issues in their various filings made between December 17, 2004 and December 12, 2005, including various briefs and offers of proof made in this and various related proceedings. The Commission recognizes that those filings were made, but does not consider it appropriate or useful to revisit here how the December 16 Order may have characterized, either explicitly or implicitly, the parties' filings. The Commission will address the matter of income tax allowances further in the context of the compliance filing due February 28, 2006, and the

counsel for BP West Coast and Indicated Shippers may refine and sharpen any of their prior arguments they believe are still appropriate.

The Commission orders:

The requests for rehearing and clarification of the December 16 Order are granted and denied as stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary