

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 No. IS06-356-000

ORDER ACCEPTING TARIFFS

(June 29, 2006)

1. On May 31, 2006, SFPP, L.P. (SFPP) filed FERC Tariff Nos. 123, 124, 125, 126, 127, and 128 pursuant to the Commission's indexing methodology adopted pursuant to Order No. 561<sup>1</sup> and as set forth in section 342.3 of the Commission's regulations.<sup>2</sup> SFPP also filed FERC Tariff No. 129, which contains an Index of Tariffs. SFPP proposes that the tariffs be effective July 1, 2006.

2. Protesters include ConocoPhillips Company and Valero Marketing and Supply Company (joint filing); Western Refining Company, L.P.; Tesoro Refining and Marketing Company; BP West Coast Products LLC, Chevron Products Company, and ExxonMobil Oil Corporation (joint filing); American West Airlines, Inc., Southwest Airlines Co., Northwest Airlines, Inc., and Continental Airlines, Inc. (joint filing); and Navajo Refining Company, L.P. all of which filed motions to intervene and protests. Their protests request that the Commission reject the filing, or in the alternative, ask that the filing be suspended, made subject to refund, and set for hearing to determine whether the proposed increases are so substantially in excess of actual cost increases incurred by SFPP that the resulting rates will be unjust and unreasonable.

---

<sup>1</sup> In Order No. 561, the Commission adopted a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30,985 (1993), 58 F.R. 58753 (Nov. 4, 1993); *order on reh'g*, Order 561-A, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 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).

<sup>2</sup> 18 C.F.R. § 342.3 (2005).

3. The Commission concludes that SFPP's filing generally is consistent with the Commission's indexing regulations. Therefore, the Commission will accept SFPP's proposed tariff Nos. 123, 124, 125, 126, 127, 128, and 129 to be effective July 1, 2006.

#### **Description of the Filing and Protests**

4. SFPP describes its proposed tariff sheets as follows:

F.E.R.C. Tariff No. 123 covers SFPP interstate movements from Sepulveda Junction to Watson (Cancels F.E.R.C. Tariff No. 116).

F.E.R.C. Tariff No. 124 covers SFPP interstate movements from Watson and East Hynes to CalNev Pipe Line, L.L.C. (Cancels F.E.R.C. Tariff No. 121).

F.E.R.C. Tariff No. 125 covers SFPP East Line Interstate movements (Cancels F.E.R.C. Tariff No. 122).

F.E.R.C. Tariff No. 126 covers SFPP West Line Interstate movements (Cancels F.E.R.C. Tariff No. 120).

F.E.R.C. Tariff No. 127 covers SFPP North Line Interstate movements (Cancels F.E.R.C. Tariff No. 117).

F.E.R.C. Tariff No. 128 covers SFPP Oregon Line Interstate movements (Cancels F.E.R.C. Tariff No. 114).

F.E.R.C. Tariff No. 129 – Index of Tariffs (Cancels F.E.R.C. Tariff No. 118).

5. On June 15, 2006, Protesters filed their motions to intervene and protest. Protesters make the following arguments: SFPP is not entitled to the proposed index rate increases because they so substantially exceed the actual cost increases incurred by SFPP that the increases will result in unjust and unreasonable rates. The data contained in SFPP's FERC Form 6 Report does not justify an increase. None of the existing rates or any proposed rate is grandfathered. SFPP has changed the format of its FERC Form 6 reports to the extent that those reports lack consistency or credibility. SFPP has filed new cost-of-service based rates through its filing in Docket No. IS06-283-000 and therefore those rates are not eligible for an index rate adjustment. The barrel-mile test shows that the increased year-to-year revenues exceed the claimed increased in year-to-year costs and thus SFPP is not entitled to an indexed-based rate increase. SFPP's East Line and West Line rates cannot be indexed because the Commission has found that those rates are unjust and unreasonable and has instituted interim rates for those lines. SFPP's interstate

cost-of-service declined from 2004 to 2005. SFPP improperly included a tax allowance in the indexed rates and has failed to make interim refunds required by the Commission's December 16, 2005 Order.<sup>3</sup>

6. On June 20, 2006, SFPP filed a response to motions to intervene and protests. SFPP states its indexing increase is justified under the Commission's regulations. SFPP asserts that it evaluated its percentage change in costs and asserts its cost-of-service increased from 2004 to 2005 by 6.6 percent, while the index provides a 6.15 percent rate increase. SFPP states that the Shippers' claim that none of the rates are grandfathered is inaccurate since the Oregon Line rates clearly are, and that in any event this is irrelevant to determining whether an index-based increase should be permitted. SFPP further asserts that Order No. 561 provides that if a rate is changed during the year through a method other than indexing, the pipeline may index at next subsequent adjustment date *i.e.*, the July 1 following the rate filing. SFPP states that the East Line and West Line rates were previously lowered in the Docket Nos. OR92-8-000, *et al.* and OR96-2-000, *et al.* proceedings. It asserts that when those rates were indexed effective July 1, 1999, there were no protests from shippers because the 1999 index lowered rather than raised the rates. SFPP states that Protesters' claim that costs declined from 2004 to 2005 is incorrect. Rather, SFPP restated its 2004 FERC Form No. 6 to reflect changes required by rulings on income tax allowance issues included in the December 16 Order. It further asserts that it is authorized to include an income tax allowance in applying the index and that it was under no obligation to make interim refunds.

### **Discussion**

7. The Commission bases its index system on the annual change in the Producer Price Index for Finished Goods (PPI). The PPI index reflects year-to-year changes in oil industry costs in general and therefore, reflects the change in the "average" oil pipeline company's cost of service. The percent change in the PPI from 2004-2005 was 6.1485 percent.<sup>4</sup> This is the percent multiplier the Commission permits pipelines to use to increase their index ceiling levels that will apply from July 1, 2006 through June 30, 2007, and SFPP's proposed increases result in rates that are at or below the applicable index ceiling levels based on the cost comparisons contained on page 700 of its FERC Form No. 6 report.

---

<sup>3</sup> *SFPP, L.P.*, 113 FERC ¶ 61,277 (2005) (December 2005 Order).

<sup>4</sup> *See Notice of Annual Change in the Producer Price Index for Finished Goods*, 111 FERC ¶ 61,139 (2005).

8. Section 343.2(c)(1) of the Commission's regulations provides in part as follows:

A protest or complaint filed against a rate proposed or established pursuant to [the indexing rules] must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable....<sup>5</sup>

9. The indexed rate changes proposed by SFPP do not violate the applicable new ceiling levels. Section 343.2(c)(1) establishes the standard a party must meet if it is otherwise to make a successful challenge to indexed rates: the challenging party must show that the proposed indexed rate increase is so substantially in excess of the pipeline's actual cost increases that it renders the resulting rate unjust and unreasonable. The Commission applied this standard consistently in rejecting challenges to SFPP's previous indexed rates by holding that SFPP's cost increases equaled or exceeded the amount of the inflation adjustment permitted by the Commission's indexing methodology.<sup>6</sup>

10. In this case, Protesters again fail to make the requisite showing. The revised index provides for an increase in rates of 6.1485 percent. SFPP's FERC Form No. 6 for 2005- shows an actual cost of service increase from \$100,535,308 to \$107,184,334, or a 6.6 percent increase, while the index increase was limited to 6.1485 percent. Thus the difference between the change in the index and the change in the cost of service is not "so substantially in excess" of the actual cost increase as to render the resulting rates unjust and unreasonable. To the extent Protesters argue that the accumulative increase in rates for several years of index increases unreasonably exceeds SFPP's actual increase in the same period, this argument must be advanced by means of a separate complaint, not a protest filed in the suspension phase. In an index-rate adjustment proceeding, the issue is not the accumulation of costs and revenue variances over many years. Rather, the focus of an index adjustment case is only whether the index increase is so substantially in excess of cost changes for the index year. Similarly, if Protesters believe that SFPP has not accurately calculated the index based on its existing costs and its internal records of those costs, they may file a separate complaint to that effect.

11. As for the issue of whether an index adjustment may be made in the same time frame as a cost-of-service filing, the cost-of-service rates in IS06-283-000 were effective June 1, 2006, and the indexed rates are effective July 1, 2006 through June 30, 2007.

---

<sup>5</sup> 18 C.F.R. § 343.2(c)(1) (2005).

<sup>6</sup> *See, e.g.*, SFPP, L.P., 111 FERC ¶ 61,510 (2005); SFPP, L.P., 107 FERC ¶ 61,334 (2004); SFPP, L.P., 102 FERC ¶ 61,344 (2003); SFPP, L.P., 96 FERC ¶ 61,332 (2001).

There is no Commission regulation that prevents a cost-of-service rate adjustment and an indexed rate adjustment in the same year. Section 342.4(d)(5) of the Commission's regulations provides that when a rate changed by a manner other than indexing takes effect during the index year, such rate will constitute the applicable ceiling level for that index year. If such rate is subsequently lowered, the ceiling level on such rate is then recomputed. The status of the subsisting base grandfathered rates is similarly irrelevant to the efficacy of the index adjustment since the index adjustment is applicable to all rates regardless of whether they are grandfathered. If a rate should be determined to be unjust and unreasonable in the context of a rate proceeding, the base rate would be recomputed once that determination has been made. Thus, the interim East Line and West Line rates may be indexed in 2006 as they have been in the past subject to adjustment of those rates once a final determination is made on the appropriate level for those rates. As SFPP's costs increased 6.6 percent from 2004 to 2005 based on its FERC No. Form 6 Report, there is no basis for rejecting the index adjustment or setting it for hearing.

12. The Protesters make numerous arguments asserting why SFPP rates are unjust and unreasonable. These include the fact that an income tax allowance is included in the rates and that the rates have come to violate the barrel mile "test" contained in Order No. 561. The Commission has consistently held that the reasonableness of the base rates that underpin the indexed rate cannot be challenged in an index proceeding. Since the tax allowance is an element of the base rate, this must be challenged in a complaint proceeding, as Protesters are now doing in ongoing proceedings involving the East, West, and North Line rates. Similarly, the so-called barrel mile "test" is not appropriately used in an index proceeding, but is only relevant to a complaint against the cumulative increase that has occurred over time. Finally, the December 2005 Order does not require SFPP to make interim refunds. It only requires that it prepare an estimate of refunds for review by the Commission.

The Commission orders:

SFPP's FERC Tariff Nos. 123, 124, 125, 126, 127, 128, and 129 are accepted to be effective July 1, 2006.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.