

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

SFPP, L.P.

Docket No. IS06-502-000

ORDER REJECTING TARIFFS

(Issued August 31, 2006)

1. On August 1, 2006, SFPP, L.P. (SFPP) filed proposed FERC Tariff Nos. 130 and 131, together with a motion to make the proposed tariffs effective August 2, 2006, on one day's notice. As discussed below, the Commission rejects the proposed tariffs.

The Tariff Filing

2. SFPP's proposed FERC Tariff Nos. 130 and 131 would do two things. FERC Tariff No. 130 would restore SFPP's West Line interstate rates for movements of petroleum products from points in the Los Angeles basin to destinations in Arizona to the same level that existed on April 30, 2006, plus an index adjustment for the period beginning July 1, 2006. SFPP's West Line rates were previously reduced pursuant to the Commission's December 16, 2005, Order in Docket No. OR96-2-000, *et al.*¹ FERC Tariff No. 131 would do the same for movements from points in Los Angeles to SFPP's connection with the Calnev Pipe Line, L.L.C. These rates were also reduced on May 1, 2006. The resulting rates would be at the level that would have been obtained if the rates in effect on April 30, 2006 had not been reduced and the index factor available to the oil pipeline industry for the index year 2006 had been applied to those rates.²

3. SFPP asserts that a recent motion for a partial remand and a brief filed by the Commission in the Court of Appeals for the D.C. Circuit warrants the tariff filing and

¹ *SFPP, L.P.*, 113 FERC ¶ 61,277 (2005).

² *See SFPP, L.P.*, 115 FERC ¶ 61,388 (2006) for the order approving SFPP's previous filing to apply the 2006 index factor as of July 1, 2006.

requested action.³ SFPP states that the rate reduction required by the December 16, 2005 order is premised on the Commission's finding in its March 2004 Order⁴ and June 2005 order⁵ that there were substantial changes to the economic circumstances that provided the basis for SFPP's West Line rates.⁶ Prior to the determination in those orders, SFPP's West Line rates were grandfathered under section 1803 of the EP Act of 1992. SFPP argues that the Commission conceded in both its July 24 motion for partial remand and its July 31 brief that it could not defend the calculations supporting the determination of substantially changed circumstances in the March 2004 and June 2005 Orders. It claims that as such, the determination of substantially changed circumstances is not supported by a valid Commission order and the Commission lacked jurisdiction to order the rate reductions required by the December 16, 2005 Order.

4. SFPP therefore requests that its August 1, 2006 filing be accepted and that the West Line rates in effect on April 30, 2006 be reinstated, including the application of the index factor applicable to those rates on July 1, 2006. SFPP asserts that this is a matter of equity. It argues that if the Commission should conclude that in a subsequent order that there were no substantially changed circumstances to the West Line rates, the rates existing prior to May 1 would be reinstated based on the Commission's conclusion. In the meantime, SFPP's revenue would be reduced for the period May 1, 2006 until the West Line rates were reinstated under any such subsequent Commission order. It claims that it is unlikely that the revenues could be collected retroactively and therefore the forgone revenue would be permanently lost. SFPP asserts that this would be inequitable when the tariffs filed here will be automatically subject to refund. Thus, any revenues collected from its shippers under the proposed tariffs would be repaid with interest if the Commission affirms its determination that there were substantially changed circumstances to the economic basis for SFPP's West Line rates.

³ Citing "Motion of Respondent Federal Energy Regulatory Commission for Partial Voluntary Remand" filed July 24, 2006 in *ExxonMobil Oil Corp v. FERC*, Case No. 04-11-2, *et al.*, and "Brief of Respondent Federal Energy Regulatory Commission and United States of America" filed July 31, 2006 in the same case. The request for partial voluntary remand was denied on August 17, 2006. *Id.* (D.C. Cir. Aug. 17, 2006) (order denying motions).

⁴ *SFPP, L.P.*, 106 FERC ¶ 61,300 (2004) (March 2004 Order).

⁵ *SFPP, L.P.*, 111 FERC ¶ 61,334 (2005) (June 2005 Order).

⁶ See section 1803 (a) of the EP Act of 1992, 106 Stat 2776, 3011 (1992).

Interventions and Protests

5. Timely interventions and protests were filed by ConocoPhillips Company, Valero Marketing and Supply Company, and Chevron Products Company, filing jointly and severally, by the Airlines, filing jointly and severally,⁷ and BP West Coast products LLC and ExxonMobil Corporation, filing jointly and severally. These intervening parties assert that the proposed filing is in direct contravention of the Commission's determination that SFPP's West Line rates are unjust and unreasonable and the Commission's December 16, 2005 Order reducing those rates. They also assert that the Commission stated that it does not concede that its determination on the issue of substantially changed circumstances was incorrect; only that the calculations contained in its March 2004 and June 2005 Orders could not be defended.

6. They further assert that the Commission has requested that the Court of Appeals not act on SFPP's motion in that court to have the West Line rates reinstated. They argue that the Commission has stated that the underlying orders are still valid and that there should be no change to the current West Line rates until further order by the Commission. They also argue that portions of SFPP's West Line rates are not grandfathered and that SFPP has improperly applied the Commission's indexing regulations. They further assert that since the underlying March 2004 and June 2005 jurisdictional orders are before the court, the Commission lacks jurisdiction to accept SFPP's proposed tariffs. BP West Coast also makes numerous arguments that SFPP's West Line rates are not grandfathered, that those rates are excessive and unjust and unreasonable, and that the reinstated rates would contain unlawful tax allowances, equity returns, and other cost factors. SFPP filed a reply addressing these various arguments, asserting they are without merit, and restating its initial position and concerns.

Discussion

7. The Commission's request for a partial voluntary remand on the issue of substantially changed circumstances to address the concerns that SFPP raised here, which SFPP opposed, was denied by the Court on August 17, 2006. Moreover, the Court instructed the Commission to brief all issues regarding substantially changed circumstances by September 1, 2006. Thus, the issues on which SFPP relies to support its tariff filing remain before the Court of Appeals and are not pending before the Commission. Accordingly, the Commission rejects SFPP's FERC Tariff Nos. 130 and 131. Given this conclusion, there is no need to reach the other issues raised by the parties.

⁷ America West Airlines, Inc., Southwest Airlines Co., Northwest Airlines, Inc., and Continental Airlines, Inc.

The Commission orders:

SFPP's FERC Tariff Nos. 130 and 131 are rejected for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.