

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.

Tesoro Refining and Marketing Company

v.

Docket No. OR07-2-000

SFPP, L.P.

ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued February 21, 2007)

1. On December 12, 2006, Tesoro Refining and Marketing Company (Tesoro) filed a complaint against SFPP, L.P.'s (SFPP) West Line rates.¹ SFPP's West Line transports petroleum products from Los Angeles, California, to Phoenix and Tucson, Arizona, as well as to intermediate points in California. The complaint alleges that SFPP's West Line rates are unjust and unreasonable and are not grandfathered under section 1803 of the Energy Policy Act of 1992. Tesoro asserts that SFPP should not have embedded certain cost components in those rates or that it incorrectly designed them. Such components include an income tax allowance, purchase accounting adjustments, the equity and debt cost of capital, and the allocation of overhead costs between SFPP and its parent partnership. Tesoro's assertions in this regard are based on earlier decisions of the Commission reviewing the West Line rates,² and on cost adjustments contained in an affidavit to the complaint. Tesoro requests reparations for a period commencing two years before the filing of the complaint.

2. On January 3, 2007, BP West Coast Products, LLC and ExxonMobil Corporation filed a joint motion to intervene in this proceeding, as did ConocoPhillips on January 11. SFPP filed an answer to the complaint on January 11, 2007. SFPP asserts that the complaint improperly concludes that the West Line rate is not grandfathered since the

¹ The complaint is also against SFPP's so-called Calnev Pipe Line, LLC (Calnev) line rates. However, Calnev is a separate company and SFPP has no Calnev rates as such. The details of the complaint show that the rates complained against are the West Line rates to the point of interconnection with the Calnev pipeline, an SFPP affiliate.

² *E.g.*, *SFPP, L.P.*, 113 FERC ¶ 61,277 (2005) and cases cited therein.

matter is now under review in the D.C. Circuit. It asserts that the Commission has authorized it to pursue an income tax allowance in other orders, and that in any event, many of the cost-based arguments upon which Tesoro bases its complaint were resolved or are under consideration by the Commission in earlier proceedings involving SFPP's oil pipeline rates.³ It further argues that adjustments contained in the affidavit attached to the complaint are invalid. It therefore urges that the Commission to deny the complaint or to hold it in abeyance until such threshold legal issues as grandfathering and income tax allowances are resolved.

3. On January 17, 2007, Tesoro filed a motion seeking leave to answer SFPP's answer. Tesoro reiterates the allegations included in its complaint. In this instance the proposed answer adds little to the clarity or purpose of the complaint. Thus, the Commission denies Tesoro's January 17, 2007 motion.

4. The Commission will hold this complaint in abeyance. The complaint raises cost of service issues that turn on income tax allowance, grandfathering and reparation issues that are now under review by the D.C. Circuit in *ExxonMobil Oil Corporation, et al. v. FERC*, Nos. 04-1102, *et al.* The rulings on these appeals could materially affect the complaint at a threshold level, as may the Commission's ultimate determinations on cost of service issues in the dockets that are before the court in the cited appeal. The Commission thus concludes it is premature to set this complaint for hearing at this time.

The Commission orders:

Tesoro's complaint in the instant docket is held in abeyance pending further action by the Commission for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³ *E.g. SFPP, L.P.*, 117 FERC ¶ 61,285 (2006).