

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. OR07-8-000

v.

SFPP, L.P.

ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued June 6, 2007)

1. This order addresses the complaint against SFPP, L.P. (SFPP) in the captioned Docket No. OR07-8-000. BP West Coast Products LLC (BP West Coast) asserts that the indexed-based rate increases SFPP took on July 1, 2005 resulted in rate increases that were so substantially in excess of SFPP's actual cost increases that the rates are unjust and unreasonable.¹ The Commission holds the complaint filed in abeyance pending resolution of other proceedings involving SFPP.

The Pleadings

2. BP West Coast's complaint states that it is challenging the justness and reasonableness of SFPP's 2005 index rate increase.² It asserts that the Commission improperly held that when filing a protest against an index based rate increase, shippers retain the burden of proof to any challenge to the indexed rates.³ The complaint then states that the Commission rejected a protest to SFPP's July 1, 2005, indexed-based rate increases and that the Court of Appeals for the D.C. Circuit denied an appeal of that decision on jurisdictional grounds.⁴ The complaint, like BP West Coast's earlier protest

¹ 18 C.F.R. § 343.2(c)(1)(2006).

² SFPP's 2005 index rate increase applied to all its interstate rates and became effective on July 1, 2005. See *SFPP, L.P.*, 111 FERC ¶ 61,150 at P 1 (2005) (June 30, 2005 order).

³ Citing *SFPP, L.P.*, 113 FERC ¶ 61,253 at P 22 (2005).

⁴ Citing *ExxonMobil Oil Corporation v. FERC*, D.C. Cir. Nos. 05-1471 and 05-1472, unpublished order dated February 27, 2007 (*ExxonMobil*).

against SFPP's July 2005 indexed-based rate increases, posits that it meets the burden to allege reasonable grounds for asserting that the resulting rate is unjust and unreasonable. BP West Coast adds that its complaint goes beyond that burden and demonstrates that the resulting rate is unjust and unreasonable.⁵

3. BP West Coast claims that the \$4,500,000 rate increase resulting from the 3.6 percent increase allowed by indexing was substantially in excess of the claimed cost increase of \$407,000. The complaint further asserts that SFPP's costs actually decreased because SFPP improperly included in its costs a corporate income tax allowance in violation of *BP West Coast Products v. FERC*,⁶ an improper management fee to Kinder Morgan Energy Partners, L.P. (KMEP), and various costs related to the capital structure of KMEP, a master limited partnership. BP West Coast also asserts that SFPP's underlying base rates are unreasonable, as shown by its FERC Form No. 6 reports, and that SFPP improperly adjusted its 2003 and 2004 FERC Form No. 6 reports.

4. BP West Coast then states that the Commission allowed a 19.6 percent cumulative index increase for all oil pipelines since the inception of indexing. It argues that any cumulative increase for SFPP is far in excess of any cost increases and is necessarily unjust and unreasonable. BP West Coast asserts this resulted in an excess profit of more than \$16,000,000 based on SFPP's 2004 FERC Form No. 6, which was further increased by the additional \$4,500,000 rate increase taken in 2005 under the indexing methodology. After additional allegations regarding SFPP's relationship with KMEP, the complaint requests the Commission to immediately reduce SFPP's rates based on the over-recoveries reflected on Page 700 of SFPP's Form No. 6, to refund any overcharges SFPP has collected, to provide refund relief to shippers that did not file a complaint, and to recalculate SFPP's July 1, 2006, index-based rate increase to reflect the remedies it requests in this complaint.

5. SFPP filed an answer on April 12, 2007. SFPP claims that the complaint is simply one of a long series of complaints that seeks to keep settled issues in play. It opines the complaint fails to establish reasonable grounds to assert that the resulting rates that became effective on July 1, 2005, were not just and reasonable. SFPP asserts that the indexing methodology is intended to adjust rates to just and reasonable levels for inflation driven costs without the need for strict regulatory review while simultaneously protecting shippers from rate increases greater than the rate of inflation.⁷ It also states

⁵ BP West Coast complaint at 4.

⁶ *BP West Coast Products v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004) (*BP West Coast*).

⁷ *Citing* Order No. 561 at 30,948-49.

that the indexing methodology is not strictly cost based, allowing some divergence between the actual cost changes experienced by the individual pipeline and the rate changes permitted by the index.⁸ SFPP argues that the methodology thus adopts a policy of simplified, efficient cost recovery balanced against the danger of unreasonable increases.

6. SFPP further asserts that within this policy framework the Commission compares the Page 700 cost data contained in the company's annual FERC Form No. 6 to the data for the prior year. This relatively mechanical approach recognizes that simplicity is the hallmark of the Commission's indexing procedure and that review of the pipeline's filing is normally limited to matters that appear on the face of page 700.⁹ SFPP argues that the Commission previously rejected a protest, holding that the .3 percent increase (.003) in SFPP's costs was within the 3.6 percent range permitted by the 2005 index formula, and that as such, the protests failed to meet the standard contained in section 343.2(c)(1) of the regulations.¹⁰ Noting that the standard applies to both protests and complaints to the indexing methodology, it concludes that since BP West Coast failed in the earlier protest proceeding, it should fail here.

7. SFPP also asserts the Commission has not shifted the burden of proof required in indexing procedures. It notes that BP West Coast only had a *prima facie* burden in the protest proceeding, but that it has the burden of proof to establish reasonable grounds to conclude that the increases are unjust and unreasonable in a complaint proceeding. It also argues that BP West Coast improperly raises a host of arguments concerning SFPP's underlying rates, such as the income tax allowance, purchase price adjustment, and other rate design issues. SFPP asserts that the Commission previously rejected the investigation of such matters in the context of an index proceeding.¹¹ It also notes that the Commission previously found that the challenged increases were subject to adjustments in other proceedings and to the outcome of other proceedings and that the same costs are at issue in many other cases. SFPP urges the Commission to dismiss the complaint.

⁸ Citing *id.* at 30,949.

⁹ Citing *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261 at P 8 (2007).

¹⁰ *Id.*

¹¹ Citing *SFPP, L.P.*, 113 FERC ¶ 61,253 at P 23 (2005); *BP West Coast Products, LLC*, 118 FERC ¶ 61,261 at P 10.

Discussion

8. The first page of this complaint states that complainant “files this Original Complaint against SFPP, L.P. (SFPP) challenging the justness and reasonableness of SFPP’s 2005 index rate increases.”¹² The complaint then states that it addresses not only whether the increases were unreasonable, but that it demonstrates “that the resulting rate is unjust and unreasonable,”¹³ and that in a complaint, “the pipeline’s entire cost of service is fair game.”¹⁴ Thus, having stated that the action is against the 2005 index increase, the complaint appears to evolve into an attack on the entire rate. The Commission construes the complaint as against a single year since it is directed against the same SFPP 2005 index filing that the Commission accepted in the protest phase. However, a complaint against an index increase in a single year is limited to the increase in that year.¹⁵ Thus, to the extent this complaint attacks SFPP’s base rates that were in effect on June 30, 2005, the Commission dismisses those aspects of the complaint and precludes any investigation of the base rates in effect on that date. As SFPP notes, complaints have been filed against the underlying base rates in other proceedings that will be determined on the basis of SFPP’s 2004 cost of service.¹⁶

9. Similarly, while BP West Coast raises numerous rate design issues, these are outside the scope of an index proceeding. The Commission has consistently held that a challenge to an index increase taken in a specific year is limited to an evaluation of the increase taken in the index year and not a review of the base rate or any cumulative increases taken in prior years.¹⁷ Any such challenge is normally limited to matters that appear on the face of the Page 700 and the applicable standard for either a protest or a complaint is whether there are reasonable grounds for asserting that the rate is so

¹² BP West Coast complaint at 1.

¹³ *Id.* at 4.

¹⁴ *Id.* at 13.

¹⁵ See *SFPP, L.P.*, 115 FERC ¶ 61,388 at P 10 (2006); *SFPP, L.P.*, 107 FERC ¶ 61,344 (2004); *SFPP, L.P.*, 113 FERC ¶ 61,253 at PP 11, 22 (2005).

¹⁶ Cf. the complaints filed in *BP West Coast Products LLC and ExxonMobil Oil Corporation v. SFPP, L.P.* (Docket No. OR05-4-000) and *ConocoPhillips Company v. SFPP, L.P.* (Docket No. OR05-5-000) (both filed in December 2004), and consolidated with *Chevron Products Company v. SFPP, L.P.* (Docket No. OR03-5-000) (filed July 2003). See 114 FERC ¶ 61,133 (2006).

¹⁷ See Footnote 15, *supra*.

substantially in excess of the cost increases incurred by the carrier that the rate is unjust and unreasonable.¹⁸ This is done by comparing the costs incurred in the calendar year preceding the index year with the prior year. Thus, an index rate established on July 1, 2005, is based on a comparison of the pipeline's costs in 2004 with the costs incurred in 2003. As the regulations require, this means that the costs to be compared must be based on the same rate design and cost assumptions and thus the carrier must adjust them if the assumptions change.¹⁹ Given this, the likely result of changing the annual FERC Form No. 6 would be to adjust the costs in both years to reflect the changes in both years with minimal, if any, change in the percentage change.²⁰ There may be other cost-based challenges to a specific year's index-based increase, but a challenge based on rate design issues are not among them.²¹

10. However, the complaint's core allegation is straightforward. It asserts that page 700 of SFPP's FERC Form No. 6 shows an over recovery of some \$16,000,000. BP West Coast argues that permitting SFPP to take the full 2005 index increase percentage amounts to a rate increase of 3.6 percent when SFPP's costs increased by only .3 percent, and a resulting over recovery of some \$4,500,000. Thus, it claims, the increase was so in excess of the actual costs increases incurred by the carrier that the resulting rates were unjust and unreasonable. The Commission concludes that there is merit to this contention. Generally, if a pipeline is not recovering its cost of service, the Commission permits the carrier to apply the full increase allowed under the index methodology even if its costs declined, and has held that the resulting rate could not be unjust and unreasonable since the pipeline was not recovering its cost of service.²²

The instant complaint essentially argues that the converse should apply and control here; *i.e.*, if a pipeline is substantially over recovering its cost of service, the Commission should not allow the carrier a further increase under indexing even though the rate increase for the year is not substantially in excess of the cost increase for the year.

¹⁸ 18 C.F.R §343.2(c)(1) (2006).

¹⁹ *See SFPP, L.P.*, 102 FERC ¶ 61,344 at PP 7-8, 11. The requirement is that the adjustments be reasonable. *Id.*, P 11. *See also SFPP, L.P.*, 111 FERC ¶ 61,510 at PP 13, 15 (2005).

²⁰ *SFPP, L.P.*, 111 FERC ¶ 61,510 at P 14 (2005).

²¹ *Id.*; *SFPP, L.P.*, 113 FERC ¶ 61,253 (2005) at PP 8, 11, 22, 23 (2005).

²² *See Shell Pipe Line Company*, 102 FERC ¶ 61,350 (2003), *order on reh'g*, 104 FERC ¶ 61,021 (2003).

11. Upon further review here, the Commission agrees and concludes that a complaint will meet the standards of section 343.2(c) if it establishes that the pipeline appears to substantially over-recover its costs at the time it files tariffs to increase rates under our indexation methodology. On the merits, the instant complaint alleges that an over recovery of some \$16 million will become an over recovery of some \$20 million based on the July 1, 2005 index rate increases. Without endorsing the specifics of either party's math, this might normally be sufficient to meet the standard established here, but as with other matters regarding SFPP's rates, there are procedural complexities involved. Specifically, the complaint addresses all index rate increases SFPP applied in July 2005, which were based on SFPP's 2004 FERC Form No. 6 and the revenues and expenses reported on Page 700 of that report.

12. However, since the 2004 FERC Form No. 6 was filed, the Commission has reduced certain of SFPP's rates that were in effect in that year and ordered SFPP to calculate estimated reparations or refunds for that and other years. These include the Watson Station Drain Dry charges,²³ the Sepulveda Line rate,²⁴ and SFPP's East and West Line rates.²⁵ The Commission has also concluded that SFPP's 2005 index increase of its North Line rates was just and reasonable based on a specific review of those rates.²⁶ In fact, the only 2005 SFPP rates for which there has not been some initial determination are the Oregon Line rates, and these were subject to at least two complaints filed in late 2004.²⁷ Once the rates subject to these proceedings have been determined with finality (if necessary) and any refunds or reparations due have been remitted to shippers, any remaining 2005 over-recoveries may, or may not, be substantially reduced. Thus, it

²³ Settlement approved August 16, 2006, *SFPP, L.P.*, 116 FERC ¶ 61,116 (2006). Thus, any rates the settlement established for 2004 are just and reasonable.

²⁴ *Texaco Refining and Marketing Inc., et al. v. SFPP, L.P.*, 117 FERC ¶ 61,285 (2006). The Commission notes that the 2004 Sepulveda Line volumes were substantially less than the design volumes of 18,519,000 barrels.

²⁵ *SFPP, L.P.*, 113 FERC ¶ 61,277 (2006). The base rate for the East and West Line rates will be designed based on a 1999 cost of service, indexed forward to 2004, subject to any changes as a result of pending court appeals and Commission action during the compliance phase of the relevant dockets.

²⁶ *BP West Coast Products, LLC, et al. v. SFPP, L.P.*, 118 FERC ¶ 61,261 (2007).

²⁷ See *BP West Coast Products, LLC, et al. v. SFPP, L.P.*, 110 FERC ¶ 61,183 (2005), Dockets No. OR05-4-000 and OR05-5-000. Since these complaints attack all of SFPP's base rates in effect in 2004, there is no reason to institute a proceeding that would examine the rate design of those rates.

makes little sense to pursue this complaint until a final determination is made regarding SFPP's 2004 revenues and costs.

13. For these reasons the BP West Coast's complaint against SFPP's 2005 index-based rate increase is held in abeyance until the completion of certain other SFPP proceedings. As noted, the Commission dismisses those portions of the complaint that are directed to rate design issues or may be intended to challenge SFPP's 2004 base rates.

The Commission orders:

(A) In Docket No. OR07-8-000, the Commission dismisses those portions of the complaint directed against SFPP's base rates in effect in 2004, as well as all the allegations addressing rate design, management efficiency and prudence, and partnership structure.

(B) The balance of the complaint in Docket No. OR07-8-000 addressing the reasonableness of SFPP's July 1, 2005 indexed-based rate increases is held in abeyance pending further order of the Commission.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.