

121 FERC ¶ 61,195
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, *et al.*

v.

Docket No. OR07-3-002

SFPP, L.P.

ConocoPhillips Company

v.

Docket No. OR07-6-001

SFPP, L.P.

ORDER ON REHEARING

(Issued November 20, 2007)

1. This order addresses a joint rehearing request by several shipper complainants¹ of the March 29, 2007 order in the captioned cases, which the Commission denies for the same reasons given for rejecting the complaints.²

Background

2. The March 29 Order dismissed two complaints against SFPP's July 1, 2005, index-based increase of its North Line rates because the complaints incorrectly relied on a December 2006 Order addressing SFPP's proposed 2006 indexed increase of its East Line rates.³ That December 2006 Order held that when SFPP filed new East Line rates on May 1, 2006, that filing included all of the actual 2005 costs for that service. Hence

¹ Chevron Products Company, Tesoro Refining and Marketing Company, and Valero Marketing and Supply Company.

² *BP West Coast Products, LLC, et al. v. SFPP*, 118 FERC ¶ 61,261 (2007) (March 29 Order).

³ *SFPP, L.P.*, 117 FERC ¶ 61,271 (2006) (December 2006 Order).

there were no East Line cost increases prior to 2005 for SFPP to recover through an index-based filing. Such a filing would have been based on the difference between SFPP's 2004 and 2005 cost-of-services as reflected on Page 700 of its 2004 and 2005 FERC Form No. 6 reports.⁴ However, given the use of actual 2005 costs to design the new East Line rates, such a comparison was irrelevant. The Commission further held that since all of SFPP's East Line costs were embedded in the newly filed East Line rates, any further rate increases by application of the index methodology in July 2006 would so substantially exceed its actual costs that the resulting rates would be unjust and unreasonable. The Commission denied SFPP's rehearing request on September 20, 2007.⁵

3. In the instant case, the complaints correctly stated that SFPP filed new rates for its North Line on April 28, 2005, based on a 2004 cost-of-service. The complainants then alleged that because SFPP had fully recovered its 2004 cost-of-service in its April filing, there was no difference between its 2003 and 2004 costs. Following the December 2006 Order, they argued that the Commission should require SFPP to rescind its July 2005 index-based increase to its North Line rates and the subsequent index-based increase in July 2006. SFPP replied that the new North Line rates it filed on April 28, 2005, were inadequate to recover all the costs contained in the 2004 cost-of-service that underpinned the April 28, 2005 filing. It further asserted that it would not recover all of those costs even after it applied the 2005 index factor to the rates it filed on April 28, 2005. The Commission accepted these assertions and dismissed the complaints.

Discussion

4. The rehearing request makes three assertions. The first is that the Commission improperly precluded a challenge to the SFPP's 2005 index-based increase to its North Line rates because it denied complainants an opportunity for a hearing. This portion of the rehearing request appears premised on an assumption that complainants are entitled to challenge the lawfulness of an index-based rate increase. This is incorrect. Complainants must demonstrate reasonable grounds to conclude that the index based increase so exceeds the pipeline's actual cost increases that the resulting rates are unjust and unreasonable. The complainants failed to do so because even with the permitted index increase, SFPP's rates would not have been adequate to recover its actual costs. Under Commission policy this precludes a finding that the resulting rate is unjust and unreasonable by definition.⁶

⁴ *Id.* at P 3.

⁵ *SFPP, L.P.*, 120 FERC ¶ 61,245 (2007).

⁶ March 2006 Order at P 10, n. 10 and 11.

5. As part of this first assertion they further argue that the lawfulness of the July 2005 index-based increase is discrete from the ongoing rate proceeding regarding SFPP's 2005 North Line rate filing in Docket No. IS05-230-000. They note that the Commission found that the very remedy they seek would be provided if the underlying rates were reduced in that proceeding. Given the uncertainty of what cost structure for SFPP North Line rates may actually result, they assert that the dismissal should not be with prejudice. While the argument is not entirely clear, it appears to state that the cost-of-service that ultimately results in Docket No. IS05-230-000 may eventually differ from those included in SFPP's 2004 cost-of-service study. Thus, it is possible the resulting rate would be high enough so SFPP could not under recover its costs when it applied the 2005 indexed-based rate increase and therefore that increase was unjustified. The Commission notes that the instant case involves an index-based increase to a rate subject to refund. Accordingly, the index-based increase at issue here is also fully subject to refund if the indexed component of any new rate would result in a rate that is unjust and unreasonable under the holding of the December 2006 Order upon which they rely. Thus there is no reason to pursue a separate proceeding here and it would be grossly inefficient to do so.

6. Second, they assert that there were numerous challenges to the cost-of-service study upon which SFPP based its April 28, 2005 cost-of-service, and that the presiding Administrative Law Judge rejected many elements of the cost-of-service. Given this, they assert that the Commission should not have accepted SFPP's assertion that its rates would yield less than its cost-of-service. This contention is without merit. The sole basis for determining the reasonableness of an index-based rate increase is a comparison of the pipeline's reported cost-of-service to that of the prior year. Of course no such comparison is possible here because the only basis for analysis is the 2004 cost-of-service that underpinned SFPP's April 28, 2005 North Line rate filing. However the Commission has consistently held that shippers cannot challenge the appropriateness of the cost-of-service components that underpin a rate in an index proceeding. Shippers can only advance this rate challenge by a complaint against the base rate.⁷ The complaint here is against the index increases and the underlying rate components are already under investigation in the Docket No. IS05-230-000 proceeding, as the rehearing request notes. For this reason, the Commission denies the request to examine the validity of the costs that underpin the index filing.

7. Third, the rehearing request asserts that the result in this case directly contradicts the conclusion of the December 2006 Order regarding SFPP's East Line rates. The Commission disagrees as this argument is wholly without merit. The March 2007 Order at issue completely explained that SFPP was not over recovering its North Line costs through its July 2005 and July 2005 index-based North Line rate increases because the

⁷ See *SFPP, L.P.*, 119 FERC ¶ 61,330 (2007) and cases cited.

rate increases from the 2005 increase were inadequate to recover its costs in the first place. The December 2006 Order held that SFPP was recovering its full costs based on the East Line rate filing it made in May 2006. The two cases are factually distinct for the reasons stated, and rehearing is denied.

The Commission orders:

The requests for rehearing are denied as stated in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.