

122 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

SFPP, L.P. Docket Nos. OR92-8-032
OR93-5-018 and -019
OR94-3-017 and -018
OR94-4-019 and -020

Mobil Oil Corporation Docket No. OR95-5-016

v.

SFPP, L.P.

Tosco Corporation Docket No. OR95-34-015

v.

SFPP, L.P.

ARCO Products Co. a Division of Docket Nos. OR96-2-020
Atlantic Richfield Company, Texaco OR96-10-013 and -015
Refining and Marketing Inc., and Mobil OR96-17-009 and -011
Oil Corporation OR98-1-015 and -016
OR00-4-007

v.

SFPP, L.P.

Ultramar Diamond Shamrock Docket Nos. OR97-2-008
Corporation and Ultramar, Inc. OR98-2-008 and -010
OR00-8-009 and -010

v.

SFPP, L.P.

Tosco Corporation

Docket Nos. OR98-13-009 and -010
OR00-9-011 and -012

v.

SFPP, L.P.

Navajo Refining Corporation

Docket No. OR00-7-009

v.

SFPP, L.P.

Refinery Holding Company

Docket No. OR00-10-009

v.

SFPP, L.P.

SFPP, L.P.

Docket Nos. IS98-1-005 and -007

SFPP, L.P.

Docket Nos. IS04-323-005 and -006

SFPP, L.P.

Docket Nos. IS06-215-002 and
IS06-220-001

ORDER ON REHEARING

(Issued February 15, 2008)

1. On December 27, 2007, the Commission issued an order in the captioned dockets addressing income tax allowance, reparations, and cost of service issues.¹ SFPP, L.P. (SFPP), Chevron Products, the CTV Group,² and Indicated Shippers³

¹ *SFPP, L.P.*, 121 FERC ¶ 61,240 (2007) (December 2007 Order).

² Consisting of ConocoPhillips Company, Tosco Corporation, Ultramar Inc., and Valero Marketing and Supply Company filing jointly.

³ BP West Coast Products LLC and ExxonMobil Oil Corporation filing jointly.

filed timely requests for rehearing. The requests raise issues in four categories: (1) reparations; (2) cost of service; (3) income tax allowance; and (4) the Commission's oil pipeline indexing methodology. The Commission addresses the first two categories here to facilitate SFPP's filing to comply with the December 2007 Order. The requests directed to the income tax allowance and indexing issues are more complex and will be addressed at a later time. The Commission grants rehearing in part and denies rehearing in part with regard to the reparation and cost of service issues.

I. Reparations

2. The December 2007 Order reviewed in detail which shipper complainants would be eligible for reparations pursuant to that order. Requests for rehearing were filed with regard to four of the determinations. Chevron asserts that the Commission erred in holding that Chevron is not eligible for East Line reparations based on a protest filed on September 23, 1992. It asserts that the Commission rejected this protest as an effective challenge to SFPP's West Line rates but later accepted the protest against SFPP's East Line rates.⁴ Chevron further asserts that SFPP never challenged this determination, paid Chevron some \$20 million in refund, and that this matter was not raised in the appeal leading to *BP West Coast Products LLC v. FERC*.⁵ It concludes that the December 2007 Order is contrary to the prior rulings of the Commission and should not be raised at this point.

3. The Commission reviewed Chevron's September 23, 1992 protest and its prior orders. The cited 1993 Orders did grant Chevron complainant status but did not literally state that Chevron had challenged the East Line rates as unjust and unreasonable. The 1993 Orders note that El Paso Refinery, L.P. challenged SFPP's reversal of the flow of one portion of its East Line, its pro rationing policy, and specifically alleged that both rendered SFPP's existing East Line rates unjust and unreasonable. The relevant order then states that "Chevron's protest similarly challenged the legality and fairness of the flow reversal and pro rationing policies."⁶ Chevron's September 23 protest thus clearly challenges the reversal and pro rationing policy as discriminatory and protests those changes.

⁴ *SFPP, L.P.*, 63 FERC ¶ 61,014 (1993) and *SFPP, L.P.*, 65 FERC ¶ 61,028 (1993) (1993 Orders).

⁵ 487 F.3d 945 (D.C. Cir. 2007)(*BP West Coast*).

⁶ *SFPP, L.P.*, 63 FERC at 61,123.

4. The sole reference to rates, however, is Chevron's claim in its protest that it has a direct and substantial interest in the outcome of the proceeding, including that the rates being charged are just and reasonable, a reference that barely warranted complainant status on the issue of rates. However, the Commission will grant rehearing given the Commission's prior rulings and the failure of SFPP to have timely challenged Chevron's status as a complainant against the East Line rates in effect at the time the protest was filed. Thus Chevron remains eligible for East Line reparations under its September 23, 1992 complaint.

5. Chevron also asserts that the Commission erred by holding that Texaco Refining and Marketing Inc. (TRMI), which Chevron later acquired, was not eligible for West Line reparations pursuant to its December 1, 1995 complaint in Docket No. OR96-2-000. It asserts that portions of the complaint: (1) alleged that SFPP continues to "violate the ICA...by charging an unjust and unreasonable rate for the transportation of refined petroleum products in interstate commerce for no legal rate has been established at the FERC;" and (2) requested the Commission require SFPP "to file rates, terms and conditions for the transportation on all SFPP pipelines and related facilities."⁷

6. The December 1 complaint does not support Chevron's assertions. The first page of the complaint is directed to SFPP's failure to file rates and charges for its Sepulveda Line and its Watson Station Drain Dry facilities. Thus, the complaint is directed to charges upstream from Watson Station. The references to points east of Watson Station involve general allegations that the collection of the unfiled rates and charges for the Sepulveda Line and Watson Station Drain Dry facilities make the total charge to points in Arizona unjust and unreasonable when the unfiled charges are combined with existing rates to Arizona. The December 1 complaint does not challenge the rates east of Watson Station as unjust and unreasonable based on the published level of those rates. In fact, the Commission severed both Watson Station and the Sepulveda Line rates from the OR96-2-000 and set them for a separate hearing and has addressed them in separate orders.⁸

⁷ Chevron rehearing request at 13, *citing* TRMI's 1995 complaint.

⁸ *See SFPP, L.P.*, 111 FERC ¶ 61,334 at 62,465-66 (2005) and *Texaco Refining and Marketing, Inc. v. SFPP, L.P.*, 117 FERC ¶ 61,285 (2006). The Watson Station Drain Dry Charges were settled, *SFPP, L.P.*, 116 FERC ¶ 61,116 (2006) and the Commission directed SFPP to make a compliance filing establishing just and reasonable rates for the Sepulveda Line. *See SFPP, L.P.*, 117 FERC ¶ 61,285 (2006).

7. At bottom, TRMI's December 1, 1995 complaint fails to attack the rates east of Watson Station because if just and reasonable rates were established for the Sepulveda Line and Watson Station Drain Dry facilities, there would be no issues regarding the West Line rates east of Watson Station to points in Arizona. The Commission's notice of complaint issued December 18, 1995, (which is not a formal order and as such has no binding legal import) did state that the complainant alleges that SFPP "is charging more than the maximum filed rate for transportation in interstate commerce for California to destinations in California and Arizona."⁹ However, this language in no way implies that the maximum rates were themselves unjust and unreasonable. Rather it affirms the conclusion that the West Line rates east of Watson Station were relevant to the complaint only because of the additive nature of the unfiled Sepulveda and Watson Station charges, not due to the intrinsic level of the line haul charges east of Watson Station in and of themselves. This part of the request for rehearing is without merit and is denied.

8. Indicated Shippers assert that the Commission erred by holding that Mobil Oil Corporation's April 3, 1995 complaint against SFPP in Docket No. OR95-5-000 is limited to reparations for the turbine fuel rates filed by SFPP in Tariff No. 18. The rehearing request asserts that this complaint was against SFPP's Tariff Nos. 15, 16, 17, and 18 and states that Tariff No. 15 contained both East and West Line rates, Tariff Nos. 16 and 17 contained West Line rates, and Tariff No. 18 the turbine fuel rates. Indicated Shippers also assert that the Commission erred by similarly limiting eligibility under a complaint filed by ARCO Products Company and TRMI on January 14, 1994 in Docket Nos. OR92-8-000 against SFPP's Tariff Nos. 15, 16, 17, and 18 rates. Indicated Shippers are correct that the East Line rates were not grandfathered at the time these complaints were filed and the complaints properly identified the rates at issue and alleged that they were unjust and unreasonable. Therefore the Commission concludes that the complainants are eligible for reparations pursuant to their complaints and grants rehearing as to the East Line rates contained in the Tariff No. 15 that is referenced by those complaints.

9. Finally, SFPP asserts that the paragraphs 81 and 82 of the December 2007 Order incorrectly state that the West Line rate to Phoenix, Arizona is grandfathered through December 31, 1996. It notes that this is directly contrary to

⁹ As cited by Chevron in its rehearing request at 13-14. Such notices are not published in the Commission's formal citations and reports.

a prior correction in the Commission's February 2006 Order, which held that the only complaints that will lie against the West Line Phoenix rate are those filed after December 31, 1997.¹⁰ SFPP is correct and rehearing is granted on this point.

II. Cost of Service Issues.

10. SFPP requested rehearing of three additional items related to preparation of its compliance filing. It first asserts that the December 2007 Order did not address SFPP's offer of proof regarding the appropriate treatment of Arizona property tax allocations submitted as part of SFPP's March 7, 2006 compliance filing. It notes that the February 2006 Order clarified that it was the Commission's "intent to permit SFPP to utilize the allocation method Arizona requires it to use"¹¹ for allocating real estate taxes between carrier and non-carrier property. SFPP asserts that in the same order the Commission affirmed the Phase II Initial Decision regarding the allocation of SFPP's Arizona property tax expenses for the test year 1999, and that SFPP adhered to the this decision in making its 1999 test year cost of service compliance filing. However, it asserts that the Commission's stated intention that it utilize the method required by Arizona yields a different result.

11. SFPP then refers to Schedule 25A (included in Tab G of its March 2006 compliance filing) as an offer of proof regarding the Arizona property tax allocation. This compares the Arizona property tax carrier percentages based: (1) on its books as reported in its FERC Form No. 6 reports; (2) Arizona property tax records as revise by Chevron/Navajo witness Mr. Zaegel; and, (3) the Arizona property tax percentages based on carrier property as a percentage of total property as adopted in the Phase II Initial Decision. It asserts that Schedule 25A reflected how SFPP booked its Arizona property taxes based on Arizona's central versus local assessment method rather than on its Arizona carrier property ratios. It notes that the former approach is actually closer to Mr. Zaegel's results than those adopted in the Phase II Initial Decision and the earlier Commission decisions that accepted the actual invoice methodology.¹² SFPP asserts that the 84.8 percent allocation reflected on Schedule 25A (1999) is the appropriate value and consistent with the Commission's intent in the February 2006 Order, the prior Docket No. OR92-8-000 proceeding, and how property is actually assessed in Arizona compared to the other states where SFPP does business. Of the allocation theories and calculations before it, the Commission concludes that SFPP's proffer

¹⁰ *SFPP, L.P.*, 114 FERC ¶ 61,136, at P 13 (2006) (February 2006 Order).

¹¹ *Id.* at P 12.

¹² *Citing SFPP, L.P.*, 80 FERC ¶ 63,014 at 65,174 (1977).

and explanation most closely conforms to its direction that the allocation selected reflects how the State of Arizona actually assessed SFPP's carrier and non-carrier property. Therefore the Commission grants rehearing and will accept the methodology SFPP proffered in its March 2006 compliance filing.

12. SFPP also asserts that the Commission erred by requiring it to index the East Line rates backwards from 1999 to 1998 into that calendar year to calculate reparations. It notes that this is directly inconsistent with the ruling for the West Line 1998 rates in which the Commission directed that reparations for the year be based on indexing the 1997 cost of service forward. It asserts that the 1997 cost of service is much closer to the 1998 cost than the 1999 cost of service, particularly as regards the allocation of overhead costs of service. The Commission agrees that consistency requires the use of the 1997 cost of service and that that year is more congruent with the 1998 costs. Rehearing is granted.

13. Finally, SFPP asserts that inclusion of three of its affiliated companies in that Massachusetts overhead allocation formula dramatically increases the total cost allocation to those subsidiaries. By way of background, the February 2006 Order permitted SFPP to exclude KMIGT, Plantation Pipeline, and Trailblazer Pipeline from the inclusion in the Massachusetts formula on the basis that only minimal overhead services were provided to those entities. In response to a shipper's rehearing request, the December 2007 Order again required SFPP to include those three affiliated companies in the formula. On hearing, SFPP states that it acknowledges the Commission's concerns and that it is not disputed that Kinder Morgan Inc. (KMI) principally operated and managed the three entities on Kinder Morgan Energy Partner's (KMEP) behalf or that KMEP reimburses KMI for those services.¹³ SFPP also recognizes the Commission's concern that KMEP may also play some role in the management of the three affiliates and that the record is not sufficient to exclude that potential. Thus, the Commission was concerned that there may be corporate general and administrative costs, in addition to those specifically assigned, that should be attributed to the three affiliates at issue here.

14. Given this, SFPP grants that there is at least some danger that there would be an under-allocation to the affiliates, but claims that the December 2007 Order results in a serious over-allocation to SFPP. To avoid this perceived over-allocation, it proposes to reduce KMEP's corporate pool of overhead costs, as contained in the March 2006 Compliance Filing, by 10 percent, or \$4,498,700, which should prevent costs from bleeding over to SFPP, but exclude KMIGT,

¹³ KMEP is the master limited partnership that owns SFPP. Legal control is vested in KMEP's general partner, KMI at the time relevant here.

Plantation, and Trailblazer from the allocation formula. It asserts that this will result in an overhead allocation of \$17.1 million in 1999, compared with \$19.2 million in the March 2006 Compliance Filing, a difference of \$2.1 million, or about 10.9 percent. SFPP asserts that, in contrast, application of the December 2007 Order reduces the overhead allocation to SFPP from \$19.2 to about \$14.2 million, a reduction of \$5 million or 26 percent. As part of its rationale, SFPP compares what would occur under its 1998 cost of service, a point at which the KMEP corporate structure was less complex. Applying the December 2007 Order to the 1998 cost of service reduces the overhead cost allocation to SFPP from \$27.2 million to \$23.8 million, a reduction of 3.4 million or 12.5 percent, roughly the same range as the reduction SFPP says would result as its proposed 10 percent reduction of KMEP's overhead costs. SFPP acknowledges that it should improve its cost analysis in the future.

15. The Commission will grant rehearing and accept SFPP's proffer on the cost allocation. SFPP is correct that the record supports the conclusion that KMEP reimburses KMI for the overhead costs of the three affiliates at issue. However, SFPP did not include the actual contracts in the record and as such left itself open to criticism that the Commission could not conclude with certainty the details of the contracts and hold conclusively that all of the relevant costs (by the Commission's tests) were reimbursed. At the same time, the complainant shippers did not introduce any affirmative evidence of their own that the allocation was inappropriate and attacked SFPP's evidence as inadequate. In the past the Commission accepted sources for overhead allocations as valid absent evidence to the contrary if the information addresses the Commission's requirements and the critiquing parties have not provided independent grounds to reject the data.¹⁴

16. Given this precedent and the record as a whole, a reallocation of 26 percent of the costs away from SFPP, which is KMEP's largest subsidiary, does seem harsh given the evidence, albeit incomplete, that KMEP provides reimbursement to KMI. Therefore the Commission will grant rehearing and accept reduction in the overhead allocation to SFPP that results from the \$ 4,498,700 reduction in KEMP's cost allocation pool. The Commission does so in part based on the congruence of this reduction with a similar calculation for the 1998 overhead cost allocation. The Commission notes that SFPP must prepare a 2004 cost of service for proceedings involving several subsequent complaints filed against its East and West Line rates in 2003 and late 2004, which will provide a near term opportunity to further refine the overhead allocation on a fuller record.

¹⁴ See *Mojave Pipeline Company*, 81 FERC ¶ 61,150, at 61,678 (1997). This involved the *Distrigas* method for allocating costs from the parent to the subsidiary rather than among subsidiaries, but the principle is the same.

The Commission orders:

Rehearing is granted and denied as stated in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.