124 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P. Docket No. IS08-390-000

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND AND CONDITIONS, AND ESTABLISHING A HEARING AND SETTLEMENT PROCEDURES

(Issued July 29, 2008)

1. On June 30, 2008, SFPP, L.P. (SFPP) submitted a tariff filing with a cost-of-service (COS) justification that proposes rate increases for all petroleum products movements on SFPP's West Line between Watson Station, Los Angeles County, California and Phoenix, Arizona. SFPP proposes an effective date of August 1, 2008 for FERC Tariff Nos. 171 and 172. The filing was protested. As detailed below, the Commission accepts and suspends SFPP's FERC Tariff Nos. 171 and 172, to become effective August 1, 2008, subject to refund, and sets this matter for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

SFPP's Filing

2. SFPP states the rate increases reflect a decline in volumes on SFPP's West Line from California to Phoenix. In December 2007, SFPP completed a major expansion of its East Line between El Paso, Texas and Phoenix, increasing the East Line's capacity from 99,000 barrels per day (bpd) to 143,000 bpd. Correspondingly, SFPP states deliveries to Phoenix through the East Line have increased significantly from an average of 95,170 bpd in 2007 to 121,330 bpd in the first five months of 2008. As a result of the increase in East Line throughput to Phoenix, SFPP states that West Line deliveries to Phoenix have declined markedly over the same period, falling from an average of 114,120 bpd in 2007 to an average of approximately 77,810 bpd in the first five months of 2008 – a drop in volumes of 32 percent.

3. FERC Tariff No. 171, which cancels FERC Tariff No. 167, increases the rates by 12.3 percent between both Watson and East Hynes Stations in Los Angeles County,

California to Phoenix, and by 26.6 percent between Colton Transmix Facility in San Bernardino County, California and Phoenix. FERC Tariff No. 172, which cancels FERC Tariff No. 166, increases the rates by 10.6 percent between both Watson and East Hynes Stations and a connection with Calnev Pipe Line L.L.C., at Colton in San Bernardino County, California.

4. SFPP states the instant filing is in accordance with 18 C.F.R. § 342.4(a) (2008), Cost of Service Rates, and in accordance with 18 C.F.R. Part 346 (2008), Oil Pipeline Cost-of-Service Filing Requirements. As required by the Commission's regulations, SFPP states its filing demonstrates a substantial divergence between SFPP's actual costs and its current ceiling rates such that the ceiling rates would preclude SFPP from being able to charge just and reasonable rates. In addition to its transmittal letter, SFPP submitted 117 pages of cost, revenue, and throughput data supporting the proposed West Line rate increases. SFPP states these supporting workpaper schedules calculate its COS for the test period[1] to be $47,162,000, and its test period revenue under the current ceiling rate is projected to be approximately $41,988,000, which would result in an under-recovery of approximately $5,174,000 or 12.3 percent. Under the proposed rate, SFPP states the test period revenue is projected to be approximately $47,157,000.

<u>Interventions and Protests</u>

5. On July 15, 2008, motions to intervene and protest were submitted by BP West Coast Products LLC and ExxonMobil Oil Corporation (jointly "Indicated Shippers"), Tesoro Refining and Marketing Company (Tesoro), ConocoPhillips Company (ConocoPhillips), and by Continental Airlines, Inc., Northwest Airlines Inc., Southwest Airlines Co., US Airways, Inc., Chevron Products Company, and Valero Marketing and Supply Company (collectively the "Joint Protestors").

6. The protestants assert that SFPP has not demonstrated a substantial divergence between SFPP's actual costs and the revenues that would result from the application of the index ceiling rate, oppose the rate increase, and therefore request the Commission suspend the proposed rates, subject to refund, and set the instant docket for hearing and investigation. The protestants state SFPP's filing raises numerous issues of material fact with respect to SFPP's claimed actual costs and proposed rate levels, including, but not

[1] SFPP states it used calendar year 2007 as the base period for actual cost, revenue and throughput data and used the first nine months of 2008 (January 1, 2008 through September 30, 2008) for the test period to adjust the base period for certain changes in costs that are known and measurable with certain accuracy at the time of the filing.

limited to, the appropriate: (1) return on equity and debt; (2) capital structure; (3) income tax allowance; (4) throughput levels; (5) operation and maintenance allowance; (6) rate base for the pipeline; (7) cost allocation; and (8) rate design.

7. Indicated Shippers challenge SFPP's income tax allowance for claimed current and future income tax liability, accumulated deferred income taxes and amortization of deferred earnings. ConocoPhillips notes that SFPP's 2007 test period and revenue calculations in the instant filing are identical to its 2007 test period cost-of-service and revenue data filed in Docket No. OR03-5-000, with one exception, which is to add in $1.6 million in FERC Account 520 operating expenses that is claimed to be litigation expenses that will result from the instant filing.

8. ConocoPhillips states that SFPP's test period allocation of $5.4 million in Kinder Morgan Energy Partners (KMEP) allocated overhead expense may be overstated by 50 percent or more, and also questions the removal of actual 2007 oil losses and shortages (FERC Account 340) of negative $1.9 million as operating expenses from its test period COS calculations. ConocoPhillips states that SFPP disregards the considerably higher 2007 base period volumes and relies on volume levels for the first five months of 2008 as representative and appropriate of future West Line volume levels. Joint Protesters also question the long-term decline in volumes and attach "Exhibit A" to its protest, which contains a July 3, 2008 article with the headline "Arizona buys more gasoline from West Coast, less from El Paso," which contradicts SFPP's statement regarding the change in volumes in its East and West Lines.

9. Joint Protestors claim that SFPP's base period data filed in Docket No. OR03-5-000 report a 2007 base period cost of service of $43.8 million, but the same West Line volume data in Schedule 21 of the instant filing results in revenues under currently effective rates of $56.2 million, or an overrecovery of $12.4 million. Joint Protestors state the fact that SFPP is now asserting an underrecovery for the corresponding test period draws scrutiny to SFPP's test period adjustments, which add $3.4 million to the base period cost of service and subtract $14.2 million from revenues resulting under currently effective rates and base period volumes.

10. Tesoro notes that SFPP recently increased its West Line rates through the Commission's indexing regulations by 5.1653 percent.[2] With the tariff rate increases proposed in the instant filing, Tesoro states the result is a total annual rate increase between 16.32 and 33.09 percent for the West Line rates. Based on an analysis of the

[2] Docket No. IS08-302-000, filed on May 30, 2008.

cost of service study submitted by SFPP, Tesoro concludes that a complete record will lead to the conclusion that SFPP will not incur any under-recovery in the test period and more likely will achieve a significant over-recovery at existing ceiling rates because SFPP improperly calculated its rate of return, capital structure and long-term debt. Tesoro also claims SFPP included income from non-regulated entities in computing a tax allowance, which fails to comply with the Commission's *Policy Statement on Income Tax Allowances*.[3] Tesoro also asserts that SFPP may be using West Line rates to cross-subsidize its East Line rates. Tesoro further states that SFPP's rate design appears flawed because rate increases are proposed over the Colton to Phoenix route, even though SFPP does not appear to be projecting any reduction in throughput during the test period. Tesoro also asserts that SFPP used incorrect volume data in allocating costs between interstate and intrastate service, developed an inappropriate throughput volumes accounting for an overstatement of operating expenses of approximately $760,000, and improperly allocated approximately $1.1 million of corporate overhead costs.

Discussion

11. The Commission finds that SFPP has made an adequate initial showing that its filing meets the requirements of a cost of service filing, under 18 C.F.R. § 346.1 of the Commission's regulations based on the cost figures provided in its filing. The issues in this case pertain to the data and rate design methodology that SFPP uses to determine its proposed rate and the resolution of these factual disputes will have a rate impact on shippers using SFPP's West Line. However, there is insufficient data at this time to resolve these disputes. Therefore, the Commission will establish hearing procedures to examine all the issues raised by the filing.

12. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case relate to the support for SFPP's cost of service rate proposal and proposed cancellation of the joint service and new tariff rates may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter.[4] To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[5] If

[3] 111 FERC ¶ 61,139 (2005).

[4] *See* 18 C.F.R. § 343.5 (2008).

[5] 18 C.F.R. § 385.603 (2008).

the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.[6]

Suspension

13. Based upon a review of the filing, the Commission finds that SFPP's tariff filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act, the Commission will accept FERC Tariff Nos. 171 and 172 for filing and suspend them, to be effective August 1, 2008, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders**:**

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, SFPP's FERC Tariff Nos. 171 and 172 are accepted for filing and suspended, to become effective August 1, 2008, subject to refund and to further order of the Commission.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by SFPP's filing.

(C) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

[6] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

(E) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.