

I. The 2009 Complaints

2. Tesoro directs its 2009 complaint to the rates for SFPP's West Line to points in Arizona, those for SFPP's North Line, and those for SFPP's West Line rates to the interconnection with Calnev Pipe Line LLC at Colton, CA. Tesoro asserts that SFPP over-recovered its cost of service in both 2007 and 2008 based on its FERC Form No. 6 for those years. Tesoro recognizes that SFPP incurred an operating loss in 2008 based on the information included on SFPP's Page 700 of its FERC Form No. 6 for that year, but asserts that this reported 2008 loss does not recognize that SFPP's 2007 and 2008 Page 700 cost of service substantially exaggerated SFPP's actual cost of service in those years. It asserts on this basis alone that SFPP's rates are unjust and unreasonable.

3. BP West Coast's complaint addresses all of SFPP rates in effect on the date of its complaint. BP West Coast asserts that SFPP's rates are unjust and unreasonable because SFPP includes in its cost of service an inappropriate income tax allowance, does not properly calculate its equity cost of capital, fails to adjust the equity return to reflect benefits to limited partners from the tax deferral elements of a master limited partnership, includes a management fee in income when calculating its income tax allowance, improperly includes the allowance for deferred income taxes (ADIT), has an improper allocation of overhead costs, does not properly project the long term volumes on the West Line given the anticipated expansion of Calnev's pipe line, and improperly includes an inflation adjustment under the Commission's oil pipeline indexing procedures.

4. SFPP answered both complaints. SFPP points out that it lost almost \$30 million in 2008, as it reported on Page 700 of its 2008 FERC Form No. 6, and thus had an under-recovery of approximately 16 percent. As a result, it states, it is impossible to argue that it was over-recovering its cost of service in 2008. SFPP further asserts that in 2007 it had an over-recovery of only 3.96 percent,² and that in addition neither its 2007 nor 2008 FERC Form No. 6 reflects the significant refund and reparation obligations it may be obliged to make under previous Commission orders.³ SFPP asserts that its rates are just and reasonable and that its rate designs reflect Commission policy on the issues addressed by BP West Coast in its complaint. It further asserts that the complaints are general, provide little supporting detail, and thus are inadequate under the Commission's complaint procedures.⁴ SFPP concludes that at bottom the complaints are simply

² *Citing SFPP, L.P.*, 123 FERC ¶ 61,317, at P 7 (2008).

³ *E.g., SFPP, L.P.*, 121 FERC ¶ 61,240 (2007) and *Tesoro Refining and Marketing, Inc., et al. v. SFPP, L.P.*, 117 FERC ¶ 61,285 (2006).

⁴ *Citing* 18 C.F.R. § 385.206 (2009) (Rule 206).

repetitive challenges to the Commission's income tax allowance, cost of capital, and indexing methodologies, and SFPP's own cost allocation methodologies.

5. The Commission requires that a complaint against an oil pipeline rate establish reasonable grounds to conclude that the rate is unjust and unreasonable before the Commission will accept the complaint and set it for hearing.⁵ The Commission concludes that neither complaint has satisfied this standard as neither has established reasonable grounds to conclude that SFPP's rates may have been unjust and unreasonable on the date of the complaints, or during the 2008 calendar year upon which they are based. Both rely in part on an assertion that SFPP is over-recovering its cost of service. However, SFPP's page 700 for 2008 demonstrates that SFPP had operating expenses of \$183,406,724 and revenues of \$153,871,946, and thus a loss of almost \$30 million. Thus, on the basis of the recovery of costs, the complaints fail. The result here reflects the Commission's consistent use of Page 700 of the FERC Form No. 6 as the screening device for determining if the complaint alleges reasonable grounds to conclude that a pipeline's rates may, or may not be, just and reasonable.⁶ This is true, whether rejected a complaint as is the case here, or whether accepting the complaint, as was done in *America West*.

6. In light of SFPP's 2008 under-recovery, the complaints advance other arguments in an attempt to sustain their complaints. These arguments address the structure of SFPP's cost of service and the quality of its cost accounting. At bottom, Tesoro's argument here is that SFPP's cost of service is grossly exaggerated and as such is based on criticisms of the method by which overhead costs are allocated to SFPP and the

⁵ See *America West Airline Inc., et al. v. Calnev Pipe Line L.L.C.*, 121 FERC ¶ 61,241, at P 5 (2007) (*America West*). In this order the Commission concluded that the complainants had established that there were ground to conclude that Calnev's rates were unjust and unreasonable based solely on the Page 700. *Id.*

⁶ See *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 2, 7, 8, 10 (2007) (*BP West Coast v. SFPP I*), *order on reh'g*, 123 FERC ¶ 61,121 (2008), (*BP West Coast v. SFPP II*), *appeal sub nom. ExxonMobil Oil Corporation and BP West Coast Products LLC v. FERC*, No. 07-1163, *et al.* (consolidated) (D.C. Cir.); *see also SFPP, L.P.*, 117 FERC ¶ 61,271, at P 4 (2006); *see also Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, 58 F.R. 58753 (Nov. 4, 1993), FERC Stats. & Regs., Regs. Preambles January 1991-June 1996 ¶ 30,985, at 30,948 (1993); *order on reh'g*, Order 561-A, 59 F.R. 40242 (Aug. 8, 1994) FERC Stats. & Regs., Regs. Preambles January 1991-June 1996 ¶ 31,000 (1994), *aff'd*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *aff'd Association of Oil Pipe Lines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002), *order on remand, Five-Year Review of Oil Pipeline Pricing Index*, Order No. 561-B, 102 FERC ¶ 61,195 (2003).

determination of SFPP's cost of capital. Tesoro's argument is contrary to the Commission's December 2007 Order in this regard wherein the Commission makes clear that challenges to an oil pipeline's existing cost-of-service methodology must be included in a complaint against the base rates.⁷ Even allowing for a liberal standard in reviewing a complaint, Tesoro's 2009 complaint in the instant docket reflects a failure to provide supporting detail and to comply with the distinctions drawn by the December 2007 Order.

7. But even if the cost-of-service allegations had been properly included in the instant docket, they would have failed. Tesoro's assertion is that incorrect overhead cost allocations and cost of capital calculations alone are sufficient to justify its complaint against SFPP. A general assertion that the pipeline has an improper methodology is inadequate to support a complaint absent some additional rationale,⁸ particularly if the pipeline reports an operating loss on its Page 700 of its FERC Form No. 6. As SFPP stated in its reply to the Tesoro's audit complaint in Docket No. OR09-18-000 and reiterated here, Tesoro has in its possession the work papers for SFPP's 2006 and 2007 FERC Form No. 6 reports.⁹ While the allocation of costs among SFPP's various lines would vary somewhat from year to year, these papers would provide a basis for determining whether there was a credible basis for Tesoro's allegation that the overhead costs had been over-allocated to SFPP.¹⁰ Moreover, despite the work papers and expert testimony available for the years 2003, 2004, and 2007 in other SFPP rate proceedings addressing SFPP's West Line rates,¹¹ Tesoro does not show why the cost of service elements it speaks to at the company level, if modified would make SFPP's 2009 West Line rates, the focus of its complaint, unjust and unreasonable. Neither the Commission nor SFPP can respond to the general nature of the allegations in Tesoro's complaints

⁷ *BP West Coast v. SFPP I*, 121 FERC ¶ 61,243, at P 8-10 .6

⁸ *See ExxonMobil Oil Corporation, et al. v. Calnev Pipe Line L.L.C., et al.*, 120 FERC ¶ 61,075, at 7-8 (2007).

⁹ *See* July 6, 2009 Answer of SFPP, L.P. to Complaint of BP West Coast Products LLC Requesting Staff Audit filed in Docket No. OR09-12-000 at 4-5.

¹⁰ *Cf. SFPP, L.P.*, 124 FERC ¶ 61,103, at P 7-8 (2008).

¹¹ In Docket No. OR03-5-001, *see* Ex. No. CC-1; In Docket No. OR03-5-000, *see* Ex. Nos. SFW-47, SFW-65, and ACC-1; In Docket No. IS08-390-002, *see* Ex. Nos. ACV-1 and TES-1. Ex. No. TES-1, the Prepared Answering Testimony of Peter K. Ashton on Behalf of Tesoro Refining and Marketing Company, provides detailed testimony in Docket No. IS08-390-002 on SFPP's West Line cost of service using 2007 and updated 2008 cost data.

when data on SFPP's cost allocation and rate design practices are available in public dockets and the underlying source papers have been produced.

8. BP West Coast also relies here on the audit complaint it filed against SFPP in Docket No. OR09-11-000, we also dismissed in a separate order.¹² However, BP West Coast's complaint in the instant dockets lacks any supporting detail explaining why it is appropriate to accept a complaint against all of SFPP's rates when the pipeline substantially under-recovered its 2008 cost of service. Rather, BP West Coast's complaint, like Tesoro's, attacks several fundamental Commission rate design policies that were embedded in SFPP's rates on July 1, 2009. BP West Coast provides no grounds to believe that, even if its underlying methodological arguments were correct, that any adjustments to SFPP rates based on those arguments would suffice to eliminate a 2008 operating loss of approximately \$30 million. As with Tesoro's complaint, there are several public sources of data that BP West Coast could have used to support its complaint, but it did not do so. BP West Coast's 2009 complaint provides no reasonable grounds to conclude that SFPP's rates are unjust and unreasonable on the date of the complaint.¹³

9. When initiating a complaint, BP West Coast and Tesoro have the burden of proof to establish they meet the threshold standard for filing the complaint.¹⁴ The Commission is not required to hold a hearing when issues of material fact are not in dispute.¹⁵ However, disputed facts cannot be mere allegations and the complainant must make an adequate proffer of evidence to support the facts.¹⁶ The evidence presented in a complaint is not adequate unless it is actually linked to the activity, error or omission

¹² 2009 Audit Order, 129 FERC ¶ 61,109 at P 18.

¹³ See *ExxonMobil Oil Corporation, et al. v. Calnev Pipe Line L.L.C., et al.*, 120 FERC ¶ 61,075, at 7-8 (2007).

¹⁴ *Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, et al.*, 45 FERC ¶ 61,287, at 61,905 (1988).

¹⁵ *Kansas Power and Light Co. v. FERC*, 851 F.2d 1479, 1484 (D.C. Cir. 1988); *Ohio Power Co. v. FERC*, 744 F.2d 162, 170 (D.C. Cir. 1984).

¹⁶ *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990); *Cerro Wire & Cable v. FERC*, 677 F.2d 124, 129 (D.C. Cir. 1982); *City of New Orleans v. SEC*, 969 F.2d 1163, 1167 at n. 6 (D.C. Cir. 1992); *General Motors Corp. v. FERC*, 656 F.2d 791, 798 n. 20 (D.C. Cir. 1981).

addressed by the complaint.¹⁷ The instant complaints are too general and fail to provide any reasonable basis for concluding that the required threshold standard has been met.

10. The Commission reiterates that the EPO Act of 1992 was intended to reduce excessive and costly oil pipeline regulation and administrative proceedings, and thus required the Commission to simplify its oil pipeline regulatory procedures.¹⁸ For this reason the Commission has consistently required complainants to establish that there are reasonable grounds to conclude that the oil pipeline rates complained against may be unjust and unreasonable.¹⁹ Accepting complaints that consist of general allegations and that lack any supporting detail and documentation would compromise that standard and the statutory purpose.²⁰ The Commission therefore dismisses the 2009 complaints in the captioned dockets (except as discussed below with respect to the complaint Docket No. OR08-13).

¹⁷ *Sunrise Energy Company v. Transwestern Pipeline Company*, 62 FERC ¶ 61,087, at 61,625 (1993).

¹⁸ Energy Policy Act of 1992 (Public L. No. 102-486, 106 Stat. 2776 (1992)); *Ass'n of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1429 (D.C. Cir.).

¹⁹ See *ExxonMobil Oil Corporation, et al. v. Calneve Pipe Line L.L.C.*, 120 FERC ¶ 61,075, at P 4 (2007); *America West Airline Inc., et al. v. Calneve Pipe Line L.L.C.*, 121 FERC ¶ 61,241, at P 5 (2007); *BP West Coast Products, LLC v. Calneve Pipe Line L.L.C.*, 121 FERC ¶ 61,242, at P 5 (2007). As noted, the Commission concluded in all of these cases that the complainants had met the threshold standard.

²⁰ See *ExxonMobil Oil Corporation v. FERC*, 487 F.3d 945, 956-57, providing a summary of the statute, the Commission's and court's prior actions, and stating in part:

In Title 18 of that Act, called "Oil Pipeline Regulatory Reform," Congress sought to simplify ratemaking procedures for oil pipelines; this would reduce administrative and litigation costs for pipelines and shippers ... The goal of these provisions was to decrease the costs associated with administrative proceedings and litigation involving oil pipeline rates.

In a subsequent paragraph, the court continued:

In keeping with its general purpose to reduce costs from administrative proceedings and litigation associated with the regulation of oil pipelines, the EPO Act also includes a "grandfathering" provision that insulates pre-existing rates from challenge even if the rates exceed the appropriate indexed cap. *Id.* (emphasis added).

II. BP West Coast's 2008 Complaint

11. BP West Coast filed a general rate complaint in Docket No. OR08-13-000 on August 8, 2008 against all of SFPP's rates except the settlement rates in effect for the Watson Station Drain Dry facilities. The complaint asserts that SFPP's rates are unjust and unreasonable and that the instant complaint is required by the Commission's December 2007 Order. BP West Coast further asserts that SFPP's rate design improperly includes an income tax allowance for any claimed current income tax allowance, that SFPP is not entitled to an income tax allowance for any deferred income tax liability, and that the related allowance for deferred income taxes (ADIT) has been improperly collected and must be returned to the ratepayers. In addition, the complaint challenges all aspects of SFPP's return, including rate of return on equity, rate of return on debt, capital structure, rate base and additions and credits to rate base, including starting rate base, accumulated deferred income taxes, and amortization of deferred earnings.

12. BP West Coast's challenge to SFPP's return includes the method for calculating the equity cost of capital for a master limited partnership, the definition of taxable income to a partnership, and the use of MLP cash distributions in the Commission's discounted cash flow model. BP West Coast also questions the volumes underlying SFPP's West Line rates, the allocation of overhead costs, the operating and maintenance costs assigned to SFPP, and the "automatic" indexing forward of SFPP's rates in the context of a rate case. BP West Coast therefore requested that the complaint be set for hearing and settlement judge proceedings. BP West Coast also filed a motion on August 22, 2008 in Docket No. OR08-13-000 requesting that matters involving SFPP's East and West Line rates be severed from the instant docket and that the portion of the complaint addressing SFPP's East and West Line rates be consolidated with certain then pending index-based increase and general rate proceedings involving SFPP East and West Line rates.²¹

13. SFPP filed an answer on August 28, 2008 to BP West Coast's initial and amended 2008 complaint. SFPP asserts that the complaint is unnecessary and cumulative and is intended to block indexing under the Commission's regulations. SFPP further states that BP West Coast's argument that the instant complaint has been mandated by the Commission is incorrect in that the Commission's prior orders have only stated the type of complaints that should not be conflated.²² SFPP further argues that many of the issues

²¹ These include the initial rate filing by SFPP of its East Line rates Docket Nos. IS08-28-000, OR03-5-000, *et al.*, and IS08-390-000, and that for its West Line rates, Docket No. IS08-389-000.

²² *Citing* December 2007 Order, 121 FERC ¶ 61,243 at P 8-10.

raised by the complaint had been addressed by earlier Commission decisions and that there was no need to pursue those matters further, including whether a partnership may obtain an income tax allowance, and whether SFPP's return on equity is properly calculated. SFPP argues that the multiple challenges BP West Coast has filed will simply result in multiple and overlapping decisions on the same issues. SFPP concludes that the complaint does not establish why this particular complaint should be pursued.

14. SFPP asserts the complaint fails to allege that there are substantially changed circumstances to the grandfathered portions of its Oregon Line and North Line rates, an essential component of any complaint. It also asserts that the complaints should not lie against its East Line rates since those rates were settled from the period June 1, 2006 through November 30, 2007,²³ and as such are excluded from the two year reparations period measured back from August 8, 2008. It states that its existing rate design is consistent with Commission policy and therefore requests the Commission to dismiss the complaint. SFPP also opposes the August 22, 2008 motion to sever and consolidate.

15. The Commission first notes that BP West Coast's 2008 complaint in Docket No. OR08-13-000 raises many of the same issues that are before the Commission in other dockets. These include: (1) the Remand Proceeding²⁴ addressing East and West Line rates at issue in Docket Nos. OR92-8-000, *et al.* and OR96-2-000, *et al.*; (2) the Sepulveda Line case²⁵ at issue in Docket No. OR96-2-012; (3) the North Line initial rates proceeding at issue in Docket No. IS05-230-000;²⁶ (4) the North and Oregon Line rates in Docket No. OR03-5-001;²⁷ and (5) the East and West Line rates in Docket No. OR03-5-000.²⁸ These last two dockets, both of which use a 2003 or 2004 cost of service, present additional arguments on the income tax allowance, cost of equity capital, cost of

²³ *Citing SFPP, L.P.*, 122 FERC ¶ 61,107, *as modified*, 123 FERC ¶ 61,002 (2008).

²⁴ *SFPP, L.P.*, 121 FERC ¶ 61,240 (2007).

²⁵ *Tesoro Refining and Marketing, Inc., et al., v. SFPP, L.P.*, 117 FERC ¶ 61,285 (2006).

²⁶ *SFPP, L.P.*, 116 FERC ¶ 63,059 (2006).

²⁷ *Chevron Products Co., et al. v. SFPP, L.P.*, 125 FERC ¶ 63,018, at P 738-796 (2008).

²⁸ *Chevron Products Co., et al. v. SFPP, L.P.*, 127 FERC ¶ 63,023, at P 280-392 (2009).

debt, and overhead cost allocations matter present to varying degrees in the earlier proceedings against SFPP.

16. Given confusion that would be created in simultaneously considering the same issues in multiple dockets, the Commission concludes that there is no reason to consider the fundamental cost-of-service issues raised by BP West Coast's 2008 general rate case complaint issues again until they have been clarified further in the five cited dockets. In the meantime, reparations are available under the ICA Act and are sufficient to protect the interests of a single complainant until the fundamental issues are clarified in the earlier dockets. More importantly, until these cited earlier cases are completed, it will be difficult to determine whether there are reasonable grounds to conclude that SFPP's rates may have been unjust and unreasonable as applied to BP West Coast in 2008. SFPP's East, West, and Sepulveda Line rates have already been modified on an interim basis²⁹ and there are no final rates for the North Line. Until the final level of those rates is determined, as well as those of the Oregon Line, and any revised rates are indexed forward to 2008, it is not possible to determine the effective rates that would apply to BP West Coast in 2008. BP West Coast appears to recognize that the rates for 2008 may change depending on the outcome in those proceedings with regard to the North Line and Oregon line rates,³⁰ but such change in the underlying rates is equally possible for the other rates BP West Coast has challenged. Since the Commission cannot address the threshold issue involved in BP West Coast's 2008 complaint, the complaint will be held in abeyance pending resolution of the earlier cases.³¹ Given that BP West Coast's 2008 complaint is being held in abeyance, the motion to consolidate the West Line rate issues in Docket No. OR08-13-000 with the current West Line rate case in Docket No. IS08-390-000 is untimely and is therefore denied.

²⁹ *SFPP, L.P.*, 121 FERC ¶ 61,240, at P 148 and Ordering Paragraph (C) (2007); *Texaco Refining and Marketing, Inc., et al. v. SFPP, L.P.*, 117 FERC ¶ 61,285, at P 89 and Ordering Paragraph (C) (2006).

³⁰ See Sixth Original Complaint of BP West Coast Products LLC and ExxonMobil Oil Corporation Against SFPP, L.P., August 8, 2008, Docket No. OR08-13-000, at 3.

³¹ For similar reasons the Commission will continue to hold in abeyance three additional complaints against SFPP: Docket No. OR07-1-000, *Tesoro Refining and Marketing Company v. SFPP, L.P.*, 118 FERC ¶ 61,092 (2007); Docket No. OR07-2-000, *Tesoro Refining and Marketing Company v. SFPP, L.P.*, 118 FERC ¶ 61,138 (2007), filed December 12, 2006; and Docket No. OR07-4-000, *BP West Coast Products, LLC, et al. v. SFPP, L.P., et al.*, 118 FERC ¶ 61,250 (2007).

The Commission orders:

(A) The Commission dismisses Tesoro's complaint in Docket No. OR09-17-000 and BP West Coast's complaint in Docket No. OR09-22-000.

(B) BP West Coast's complaint in Docket No. OR08-13-000 is held in abeyance until further order by the Commission.

(C) The motion to sever and consolidate in Docket No. OR08-13-000 dated August 22, 2008 is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.