

130 FERC ¶ 61,081  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

SFPP, L.P.

Docket No. IS09-375-002

ORDER DISMISSING REHEARING REQUEST  
AND DENYING REHEARING

(Issued January 29, 2010)

1. This order addresses the rehearing requests by Tesoro Refining and Marketing Company (Tesoro) and Chevron Products Company (Chevron) of the Federal Energy Regulatory Commission's (Commission) June 30, 2009 order<sup>1</sup> accepting SFPP, L.P.'s (SFPP) tariff filing in Docket No. IS09-375-000. In this order the Commission finds Tesoro's request for rehearing to be deficient, and therefore, dismisses its rehearing request. The Commission denies Chevron's rehearing request for the reasons discussed below.

**I. Background**

2. On May 29, 2009, SFPP filed FERC Tariff Nos. 175 through 180 seeking to increase its rates by 7.6025 percent effective July 1, 2009 pursuant to the Commission's indexing regulations.<sup>2</sup> Several parties, including Tesoro and Chevron, filed protests. SFPP defended its proposed index-based rate increases stating as shown in its FERC Form No. 6, its costs in 2008 exceeded the 7.6025 percent rate increase permitted for the 2009 index year.<sup>3</sup> SFPP's FERC Form No. 6, page 700 shows that SFPP's actual interstate cost of service increased from \$143 million in 2007 to \$183 million in 2008, an increase of approximately 28.08 percent.<sup>4</sup>

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<sup>1</sup> *SFPP, L.P.*, 127 FERC ¶ 61,312 (2009) (June 30 Order).

<sup>2</sup> *See* 18 C.F.R. § 342.3 (2009).

<sup>3</sup> June 30 Order, 127 FERC ¶ 61,312 at P 9.

<sup>4</sup> *Id.*

3. The Commission accepted SFPP's proposed index-based rate increases effective July 1, 2009, subject to SFPP modifying the ceiling rates for SFPP's East Line to reflect the settlement rates that became effective May 1, 2009.<sup>5</sup> The Commission found that, aside from the protestors' arguments regarding the East Line settlement rates, the protests were "inapposite."<sup>6</sup> The Commission supported this conclusion by stating that:

A protest lies only if the protesting party establishes that the increase in the rates generated by the application of the index results in a rate increase that is so in excess of the pipeline's actual cost increases that the resulting rates are unjust and unreasonable. It is impossible to meet this standard if the dollar increase resulting from the application of the index is less than the actual dollar increase in the pipeline's cost in the previous year, in this case calendar year 2008. [footnote omitted] Moreover, review of the dollar amounts of the increase occurs only in the context of a complaint. For reasons of administrative efficiency, in reviewing protests the Commission compares the percentage increase in index and the percentage increase in the pipeline's costs to determine whether the increase should be deemed to result in an unjust and unreasonable rate.<sup>7</sup>

## II. Requests for Rehearing

4. Tesoro and Chevron filed requests for rehearing of the June 30 Order. Subsequently, SFPP filed an answer to Tesoro's rehearing request.

5. On rehearing, both Tesoro and Chevron argue the Commission erred in relying on SFPP's FERC Form No. 6 cost of service data to conclude that SFPP's increase in its costs between 2007 and 2008 exceeded the proposed 7.6025 percent increase to SFPP's rates.<sup>8</sup> Chevron also asserts on rehearing that the Commission erred by failing to apply

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<sup>5</sup> *Id.* P 19.

<sup>6</sup> *Id.* P 20.

<sup>7</sup> *Id.* (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 8, 10 (2007)).

<sup>8</sup> *See* Tesoro Refining and Marketing Company, July 27, 2009, Request for Rehearing at 2 (Tesoro Rehearing); Chevron Products Company, July 30, 2009, Request for Rehearing at 2 (Chevron Rehearing).

the “substantially exacerbate” standard as raised in Chevron’s protest to evaluate the appropriateness of SFPP’s requested index-based rate increases.<sup>9</sup>

### **III. Commission Determination**

#### **A. Procedural Matters**

6. Rule 713(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 713(d) (2009), prohibits answers to requests for rehearing. Accordingly, we reject SFPP’s answer filed in this proceeding.

#### **B. Rehearing Requests**

7. We find that Tesoro’s rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission’s Rules of Practice and Procedure.<sup>10</sup> Rule 713(c)(2) requires rehearing requests to include a separate section entitled “Statement of Issues” listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.<sup>11</sup> Under Rule 713, any issue not so listed will be deemed waived. Accordingly, we dismiss Tesoro’s rehearing request.<sup>12</sup>

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<sup>9</sup> Chevron Rehearing at 3-5.

<sup>10</sup> 18 C.F.R. § 385.713(c)(2) (2009). *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh'g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006) (amending Order No. 663 to limit its applicability to rehearing requests).

<sup>11</sup> The purpose of Rule 713(c)(2) is to ensure that issues are properly identified in order to prevent wasteful litigation. *See* Order No. 663, FERC Stats. & Regs. ¶ 31,193 at P 3-4. The Commission previously has accepted requests for rehearing that failed to include a separate section entitled “Statement of Issues” because they did include a separate section entitled either “Specification of Grounds” or “Specification of Errors” in which each rehearing issue was listed in separately enumerated paragraphs. *See, e.g., Broadwater Energy LLC et al.*, 124 FERC ¶ 61,225, at P 17 (2008). Thus, the Commission found those rehearing requests sufficiently complied with Rule 713. However, in this case Tesoro’s rehearing request fails to identify or enumerate the issue or errors in any fashion.

<sup>12</sup> *See, e.g., Entergy Services, Inc.*, 122 FERC ¶ 61,059 (2008); *Duke Power Co., LLC*, 116 FERC ¶ 61,171 (2006); *South Carolina Electric & Gas Co.*, 116 FERC ¶ 61,218 (2006).

8. Chevron raises two issues in its request for rehearing. Chevron first asserts the Commission erred in relying on SFPP's FERC Form No. 6 cost of service data to conclude that SFPP's increase in its costs between 2007 and 2008 exceeded the proposed 7.6025 percent increase to SFPP's rates.<sup>13</sup> Chevron states that SFPP's FERC Form No. 6 data is "doubtful" as SFPP employs "convoluted accounting methodologies" to compile its annual Form 6 data, especially on issues such as "overhead cost allocation, excessive rates of return and inflated rate bases."<sup>14</sup>

9. The Commission denies rehearing on this issue. Chevron's rehearing request essentially challenges the accuracy of the regulatory accounts underlying SFPP's index-based rate increases; i.e. the cost figures that underpin SFPP's Page 700 data of its FERC Form No. 6. The Commission has consistently ruled that Form No. 6 implementation matters are generic cost issues that address how a pipeline's cost of service is constructed and are not properly raised in a protest or complaint against an index-based rate increase.<sup>15</sup> Instead these are accounting matters that may be raised in a separate complaint that asserts credible grounds to believe that there is a significant accounting problem. The Commission will not allow Chevron to mount a general attack on SFPP's FERC Form No. 6 accounting practices through a protest in this proceeding.

10. Chevron's second allegation of error asserts the Commission failed to articulate a reasoned explanation for rejecting the argument in Chevron's protest that SFPP's 2009 index increase would substantially exacerbate SFPP's existing overrecovery of its cost-of-service.<sup>16</sup> Chevron objects to the fact that the Commission did not apply the "substantially exacerbate" standard and, instead only used the percentage comparison test.<sup>17</sup> Chevron urges the Commission to clarify on rehearing "whether it applied the 'substantial[ly] exacerbated' [standard] *sub silentio*."<sup>18</sup>

11. The Commission denies rehearing on this issue, as it properly dismissed Chevron's "substantially exacerbate" challenge to SFPP's index-based rate increases. The substantially exacerbate standard is relevant only in a complaint proceeding

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<sup>13</sup> Chevron Rehearing at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> See *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 9 (2007) and *Calnev Pipe Line, L.L.C.*, 119 FERC ¶ 61,332, at P 7 (2007).

<sup>16</sup> Chevron Rehearing at 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5.

challenging an index-based rate increase, not in the initial tariff proceeding. The Commission did not apply the “substantially exacerbate” standard *sub silentio* in the June 30 Order.

12. Protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission’s regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter must allege reasonable grounds for asserting that . . . the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable . . . .<sup>19</sup>

13. To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the data reported in the carrier’s FERC Form No. 6, page 700 data in a “percentage comparison test.” The percentage comparison test is a very narrow test that “compare[s] the Page 700 cost data contained in the company’s annual FERC Form No. 6 to the data that is reflected in the index filing for a given year with the data for prior year. . . .”<sup>20</sup> This test is the “preliminary screening tool for pipeline [index-based] rate filings,”<sup>21</sup> and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.<sup>22</sup>

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<sup>19</sup> 18 C.F.R. § 343.2(c)(1) (2009).

<sup>20</sup> *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test compares proposed changes in rates against the change in the level of a pipeline’s cost of service.

<sup>21</sup> *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 FR 59137 (November 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh’g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

<sup>22</sup> *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 6 (2007) (“[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure. It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry’s average annual cost increases.”).

14. The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase.<sup>23</sup> For example, in a complaint proceeding the Commission will consider the “substantially exacerbate” standard that was first articulated in *BP West Coast Products LLC v. SFPP, L.P.*<sup>24</sup> In this proceeding, Chevron’s protest went beyond the percentage comparison test the Commission strictly applies to determine whether to investigate a protested annual index filing. Thus, the Commission correctly declined to consider Chevron’s arguments regarding the “substantially exacerbate” standard. Accordingly, the Commission denies Chevron’s request for rehearing on this issue.

The Commission orders:

- (A) Tesoro’s request for rehearing in Docket No. IS09-375-002 is dismissed for the reasons stated in the body of this order.
- (B) Chevron’s requests for rehearing in Docket No. IS09-375-002 is denied for the reasons stated in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>23</sup> *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 8-9 (2007).

<sup>24</sup> 119 FERC ¶ 61,241, *order denying reh’g*, 121 FERC ¶ 61,141 (2007) (complaint challenging SFPP’s 2005 index-based rate increase). With respect to SFPP’s 2005 index proceedings, the Commission rejected BP West Coast Products LLC’s (BP West) protest based solely on application of the percentage comparison test. However, when evaluating BP West’s subsequent complaint against SFPP’s 2005 index increase, the Commission found grounds for an investigation into the index rate increase where the usual percentage comparison test would not. The Commission found that BP West’s complaint against SFPP’s 2005 index increase warranted investigation based on BP West’s showing under the substantially exacerbate standard: (1) that SFPP was substantially over-recovering its cost of service and (2) that SFPP’s index-based increase so exceeded the actual increase in SFPP’s costs that the resulting rate increase would substantially exacerbate that over-recovery.