136 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ConocoPhillips Company v. SFPP, L.P.	Docket No. OR11-14-000
Chevron Products Company v. SFPP, L.P.	Docket No. OR11-15-000
Tesoro Refining and Marketing Company v. SFPP, L.P.	Docket No. OR11-19-000 (Not consolidated)

ORDER DISMISSING COMPLAINTS

(Issued August 4, 2011)

1. This order addresses complaints filed by Chevron Products Company (Chevron), ConocoPhillips Company (ConocoPhillips) and Tesoro Refining and Marketing Company (Tesoro) (together the Complainants) challenging SFPP, L.P.'s (SFPP) 2011 index-based rate increases to SFPP's interstate rates on its West, East, North, and Oregon Lines, as well as its Watson Station Volume Deficiency Charge (FERC Tariff Nos. 194.1.0, 195.1.0, 196.3.0, 197.1.0, 198.3.0, 199.1.0, and 200.1.0) which became effective July 1, 2011, subject to investigation and refund. In this order, the Commission dismisses all three complaints because the challenged tariffs have been set for hearing in the underlying index-based rate proceeding, Docket No. IS11-444-000.

I. Background

2. On May 27, 2011, in Docket No. IS11-444-000, SFPP filed proposed tariffs to implement an index-based rate increase under section 342.2 of the Commission's

regulations,[1] effective July 1, 2011. SFPP proposed a 6.9 percent rate increase on the West, East, North and Oregon Lines and 5.6 percent increase for its Watson Volume/ Pressure Deficiency Charge.[2] Multiple parties protested SFPP's tariff filing, including the Complainants: Chevron, ConocoPhillips, and Tesoro.[3]

3. On June 30, 2011, the Commission issued an order finding that SFPP's proposed index-based rate increases may be so substantially in excess of its change in actual costs that the proposed rates may be unjust and unreasonable.[4] Accordingly, the Commission accepted SFPP's tariffs for filing and suspended them, to become effective July 1, 2011, subject to refund and hearing.[5]

II. <u>The Complaints</u>

4. On June 13, 2011, Chevron and ConocoPhillips filed virtually identical complaints challenging as unjust and unreasonable, SFPP's 2011 index-based rate increases filed in Docket No. IS11-444-000. On July 20, 2011, Tesoro filed a very similar complaint also challenging SFPP's 2011 index-based rate increases filed in Docket No. IS11-444-000. The Complainants' core charge is that SFPP's proposed indexed rate increases are so substantially in excess of the actual cost increases incurred by the carrier that the rates are unjust and unreasonable. The Complainants urge the Commission to either reject SFPP's proposed indexed rate increases as unjust, unreasonable, and unlawful or, if the proposed indexed rate increases are permitted to take effect, to order a hearing to determine whether the indexed rate increases are just and reasonable and to allow for reparations for all amounts that may be paid by the Complainants in excess of the 2011 indexed rates.

5. In support of their challenge, the Complainants state SFPP's Form No. 6 for 2010 demonstrates that the indexed rate increases proposed by SFPP are so substantially in excess of the actual cost increases incurred by the carrier that the proposed rates are

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[1] 18 C.F.R. § 342.3 (2011).

[2] FERC No. 194.1.0, Item 260.

[3] Protests were filed by: ConocoPhillips; ExxonMobil Oil Corporation; and, jointly, Chevron, Tesoro, Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., US Airways, Inc., BP West Coast Products LLC, Holly Refining & Marketing Company LLC, Navajo Refining Company, L.L.C., Valero Marketing and Supply Company, and Western Refining Company, L.P.

[4] *SFPP, L.P.*, 135 FERC ¶ 61,274, at P 12 (2011) (2011 Index Order).

[5] *Id.*

unjust and unreasonable. Complainants note that page 700 of SFPP's Form No. 6 for 2010 shows that SFPP's total interstate cost-of-service actually decreased by $6.8 million from 2009 to 2010, representing a cost decrease of 4.5 percent.[6] They further argue that SFPP's decreased cost-of-service was not offset by a decrease in revenue pointing to page 700 of the 2010 Form No. 6, which shows that SFPP's total interstate operating revenues increased by $27.9 million from 2009 to 2010, representing a revenue increase of 18.8 percent.

6. The Complainants further assert that SFPP is already substantially over-recovering its cost-of-service, noting that page 700 of SFPP's Form No. 6 for 2010 shows that the carrier's total interstate operating revenues exceeded its total cost-of-service by $32.6 million, representing a 22.7 percent over-recovery of cost. Thus, Complainants conclude that SFPP's Form No. 6 for 2010 on its face establishes reasonable grounds to conclude that the rates resulting from SFPP's index tariff filing in Docket No. IS11-444-000 are unjust and unreasonable. This is because SFPP's own reported data shows that: (1) the pipeline is substantially over recovering its cost-of-service by 22.7 percent, and (2) the proposed 6.9-percent indexed based rate increase would substantially exacerbate that over-recovery, particularly in light of the 4.5-percent decrease in the pipeline's cost and the 18.8-percent increase in the pipeline's revenue.

III. <u>SFPP's Answer</u>

7. Notices of the Chevron and ConocoPhillips complaints were issued on June 14, 2011 and notice of Tesoro's complaint was issued on July 20, 2011. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before issuance of this order are granted.

8. On July 5, 2011, SFPP filed an answer responding to both Chevron's and ConocoPhillips' complaints. SFPP states that the appropriate course of action is for the Commission to hold Chevron's and ConocoPhillips' complaints in abeyance pending the resolution of other pending proceedings, specifically Docket Nos. IS08-390-000 (investigation of SFPP's West Line rates) and IS09-437-000 (investigation of SFPP's East Line rates). SFPP argues that the Complainants' attempts to meet their burden of production under section 343.2(c) of the Commission's regulations for challenges to a pipeline's indexing adjustment cannot be fully evaluated until the West and East Line rate proceedings have been resolved. This is because the data upon which the

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[6] Tesoro's complaint uses numbers from SFPP's revised FERC Form No. 6, which was filed on June 17, 2011, which numbers the Commission relied upon in its 2011 Index Order. *See* 2011 Index Order, 135 FERC ¶ 61,274 at P 11.

Complainants rely, for example the revenue data, is subject to change as a result of the Commission's resolution of the pending East and West Line rate investigations.

9. In addition, SFPP asserts that the Complainants' requests for reparations are overly broad given the so-called "Historic Cases Settlements" that both ConocoPhillips and Chevron entered into. Last, SFPP states that while the Complainants imply that all shipments on the Oregon Line are shipped in interstate commerce, the jurisdictional status of shipments on the Oregon Line remains in dispute. Thus, SFPP argues that Complainants must prove for each shipment on the Oregon Line that their intent was to move the shipment in interstate commerce.

IV. Commission Determination

10. The Commission finds that Tesoro's, Chevron's, and ConocoPhillips' complaints against SFPP's 2011 index-based rate increase are moot given the Commission's 2011 Index Order setting SFPP's 2011 index-based rate increases for investigation and hearing.[7] Because the Complainants (as well as several other shippers) successfully obtained a ruling that SFPP's index-based rate filing in Docket No. IS11-444-000 may be unjust and unreasonable, it is unnecessary for these complaints, which challenge the same tariff changes subject to investigation in Docket No. IS11-444-000, to go forward.[8] Moreover, in the tariff filing proceeding the burden of proof lies with the carrier to show that its proposed changed rate is just and reasonable.[9] Thus, allowing the investigation and hearing to proceed in Docket No. IS11-444-000 does not prejudice the Complainants at hearing. Moreover, dismissing these complaints rather than combining them with the investigation in Docket No. IS11-444-000 will eliminate any potential confusion at hearing on burden of proof issues.

11. To be clear, the Commission is not dismissing the complaints because of any alleged deficiency in the complaints. Rather, we are dismissing the complaints because Tesoro, Chevron, and ConocoPhillips will have a full opportunity to have the issues raised in their complaints addressed in Docket No. IS11-444-000 in a procedural

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[7] 2011 Index Order, 135 FERC ¶ 61,274 at P 1, 12.

[8] Because SFPP's 2011 index-based rate increase first went into effect, subject to refund on July 1, 2011, the potential scope of reparations/refunds available to the Complainants with respect to this index-based rate increase is the same under either a complaint proceeding or the ICA section 15(7) investigation being conducted in Docket No. IS11-444-000.

[9] 49 U.S.C. App. § 15(7) (Interstate Commerce Act (ICA)).

framework that favors them with respect to burden of proof. Accordingly, the Commission dismisses all three complaints.

The Commission orders:

ConocoPhillips', Chevron's, and Tesoro's complaints filed, respectively, in Docket Nos. OR11-14-000, OR11-15-000, and OR11-19-000 against SFPP's 2011 index-based rate increases are dismissed for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.