

111 FERC ¶ 61,510
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

SFPP, L.P.

Docket No. IS05-327-000

ORDER ACCEPTING AND SUSPENDING TARIFFS,
SUBJECT TO REFUND AND CONDITIONS

(Issued June 30, 2005)

1. On May 31, 2005, SFPP, L.P. (SFPP) filed FERC Tariff Nos. 112, 113, 114, 115, 116, and 117 pursuant to the Commission's indexing methodology adopted under Order No. 561¹ and set forth in section 342.3 of the Commission's regulations.² SFPP also filed FERC Tariff No. 118, which is an Index of Tariffs. SFPP proposes that the tariffs be effective July 1, 2005.

2. BP West Coast Products LLC and ExxonMobil Oil Corporation (jointly, Protesters) protested SFPP's filing, arguing that SFPP does not qualify for an indexed rate increase because such an increase is substantially in excess of any actual cost increases incurred by SFPP. Southwest Airlines Co. (Southwest) and Valero Marketing and Supply Company (Valero) filed comments asking the Commission to reject SFPP's filing or, in the alternative, to accept it subject to refund.

¹ In Order No. 561, the Commission adopted a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30, 985 (1993), 58 F.R. 58753 (Nov. 4, 1993); *order on reh'g*, Order 561-A, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,000 (1994), 59 F.R. 40242 (Aug. 8, 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*, 102 FERC ¶ 61,195 (2003).

² 18 C.F.R. § 342.3 (2004).

3. The Commission concludes that SFPP's filing generally is consistent with the Commission's indexing regulations. However, as discussed below, the Commission will accept and suspend SFPP's proposed tariffs 112, 113, 114, 115, 116, and 117 to be effective July 1, 2005, subject to refund, and subject to other conditions. The Commission also will accept FERC Tariff No. 118 to be effective July 1, 2005. This order benefits customers because it ensures that the increased rates reflected in SFPP's proposed tariff sheets have been determined in accordance with the indexing methodology established by the Commission.

Description of the Filing, Protest, Comments, and Responses

4. SFPP describes its proposed tariff sheets as follows:

FERC Tariff No. 112 covers SFPP East Line interstate movements (cancels FERC Tariff No. 105). The proposed rate increases range from 1.22 cents per barrel to 2.81 cents per barrel.

FERC Tariff No. 113 covers SFPP West Line interstate movements (cancels FERC Tariff No. 106). The proposed rate increases range from 3.9 cents per barrel to 6.08 cents per barrel.

FERC Tariff No. 114 covers SFPP Oregon Line interstate movements (cancels FERC Tariff No. 107). The proposed rate increase is 9.8 cents per barrel.

FERC Tariff No. 115 covers SFPP interstate movements from Watson and East Hynes to Calnev Pipe Line, L.L.C. (cancels FERC Tariff No. 108). The proposed rate increase is .97 cents per barrel.

FERC Tariff No. 116 covers SFPP interstate movements from Sepulveda Junction to Watson (cancels FERC Tariff No. 109). The proposed rate increase is .19 cents per barrel.

FERC Tariff No. 117 covers SFPP North Line interstate movements (cancels FERC Tariff No. 111). The proposed rate increase is 5.06 cents per barrel.

FERC Tariff No. 118 – Index of Tariffs (cancels FERC Tariff No. 110). This tariff sheet does not contain any rates.

5. On June 15, 2005, Protesters filed their motion to intervene and protest. Protesters argue that SFPP does not qualify for an index adjustment to its rates. Protesters cite page 700 of SFPP's FERC Form 6 for 2004, stating that SFPP's cost of service increased by 3.97 percent or \$4,182,549 from 2003 to 2004, which Protesters contend exceeds the permitted indexing increase, which is 3.6288 percent. Further, according to Protesters,

SFPP claims a tax allowance increase from 2003 to 2004 of \$5,282,744 or 63 percent. Protesters claim that, in the absence of consideration of the income tax allowance increase, SFPP's cost of service actually decreased by \$1,100,195. Protesters cite *BP West Coast Products v. FERC*,³ claiming that the decision precludes consideration of an income tax allowance for SFPP.

6. In the alternative, Protesters maintain that the Commission cannot permit the income tax allowance under the terms of its *Policy Statement on Income Tax Allowances (Policy Statement)*,⁴ which they argue sets a policy that a "pass through" entity like SFPP is entitled to a full income tax allowance only if the pipeline can demonstrate that its owners have actual or potential income tax liability on any income flowed through to the partners or other form of owners. Protesters argue that SFPP fails to make such a showing. Moreover, Protesters assert that shippers cannot determine the dollar amount of SFPP's claimed return on equity, although Protesters acknowledge that SFPP is not obliged to furnish this information. Protesters attach an Offer of Proof to their protest expanding their tax arguments.

7. In its response to the protest, SFPP contends that Protesters have not alleged that SFPP's proposed indexed rates violate the applicable ceiling levels, instead resting their entire argument on the claim that the proposed indexing increase is substantially in excess of the increases in the pipeline's actual costs. SFPP states that the Commission has rejected similar protests in evaluating SFPP's previous indexing adjustments.⁵ SFPP acknowledges that it was necessary for it to update the income tax allowance figures shown on Page 700 of SFPP's 2004 FERC Form 6 to be consistent with the *Policy Statement's* approach to calculating the income tax allowance. However, even applying the updated figures, SFPP submits that its proposed increases are not so substantially in excess of its cost increases as to render the increased rates unjust and unreasonable. Finally, SFPP contends that Protesters' arguments appear to be an improper collateral attack on the *Policy Statement*.

³ 374 F.3d 1263 (D.C. Cir. 2004).

⁴ 111 FERC ¶ 61,139 (2005).

⁵ SFPP cites *SFPP, L.P.*, 96 FERC ¶ 61,332 (2001); *SFPP, L.P.*, 102 FERC ¶ 61,344 at P 12 (2003); *SFPP, L.P.*, 107 FERC ¶ 61,334 at P 8 (2004).

8. Valero and Southwest filed comments asserting in general that SFPP's proposed indexed rate filing seeks to increase rates that are currently subject to challenge and investigation and that the majority of such rates already have been found to be unjust and unreasonable.⁶ However, if the Commission accepts the instant filing, Valero and Southwest maintain that it should do so only subject to refund, consistent with 18 C.F.R. § 342.3(a) and its ruling in Docket No. IS04-323-000.⁷

9. SFPP filed a response refuting the comments of Valero and Southwest. SFPP argues that its indexing increase is fully justified under the Commission's standard for reviewing such rate increases. Further, SFPP maintains that the comments do not allege reasonable grounds for asserting that the indexing adjustment is unjustified. For example, SFPP states that none of the proceedings cited by Valero and Southwest addresses the issue before the Commission in the instant proceeding: whether the proposed indexing rate increases violate the applicable ceiling levels or whether they are so substantially in excess of SFPP's cost increases that the resulting rates are unjust and unreasonable. SFPP states that the Commission requires that protests of indexed filings should address only the increment of the adjustment rather than the underlying rates to which the adjustment is applied.⁸ Finally, SFPP submits that its filing should be accepted without a refund obligation. SFPP points out that it is seeking rehearing of the

⁶ Valero and Southwest cite *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004) (*affirming* Opinion No. 435, *et seq.*); the series of complaints consolidated under Docket Nos. OR96-2, *et al.*; and previous SFPP tariffs filed pursuant to the Commission's indexing policy in Docket Nos. IS04-323-000 and IS05-230-000.

⁷ *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004).

⁸ *Id.* at P 8-10; *SFPP, L.P.*, 96 FERC ¶ 61,490 at 62,272 (2001); *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order 561-A, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,000 at 31,104 (1994).

Commission's order addressing its 2004 index rate filing, in which the Commission did impose a refund obligation.⁹ SFPP seeks to distinguish application of the index to rates that are under investigation and subject to refund from rates that are subject to a complaint proceeding.¹⁰

Discussion

10. The Commission bases its index system on the annual change in the Producer Price Index for Finished Goods (PPI). The PPI index reflects year-to-year changes in oil industry costs in general and therefore, reflects the change in the "average" oil pipeline company's cost of service. The percent change in the PPI from 2003-2004 was 3.6288 percent.¹¹ This is the percent multiplier the Commission permits pipelines to use to increase their index ceiling levels that will apply from July 1, 2005, through June 30, 2006, and SFPP's proposed increases result in rates that are at or below the applicable index ceiling levels.

⁹ *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004).

¹⁰ SFPP cites *SFPP, L.P.*, 96 FERC ¶ 61,332 at 62,272 (2001); *Calnev Pipe Line LLC*, 96 FERC ¶ 61,350 at 62,304 (2001); *SFPP, L.P.*, 82 FERC ¶ 61,268 at 62,060 (1998), in which the Commission stated:

In complaint proceedings, rates are not subject to refund. If rates are determined to be unjust and unreasonable in a complaint proceeding, the change ordered in the rates is prospective only. Therefore, the underlying rates in this proceeding are not subject to refund, and the provision of Section 342.3(a) that such filings must be accepted subject to refund does not apply.

While refunds are not ordered in complaint proceedings, a pipeline may be ordered to pay reparations for amounts collected above the just and reasonable level. If the base upon which the index is applied in this proceeding is found to be inappropriate as a result of the complaint proceeding, then the amount of increase permitted as just and reasonable may also change since it is a multiple of the base rate. Therefore, the complaint proceeding provides West Line Shippers adequate protection against unjust rates through the payment of reparations, as appropriate.

¹¹ See *Notice of Annual Change in the Producer Price Index for finished Goods*, 111 FERC ¶ 61,139 (2005).

11. Section 343.2(c)(1) of the Commission's regulations provides in part as follows:

A protest or complaint filed against a rate proposed or established pursuant to [the indexing rules] must allege reasonable ground for asserting that the rate violates the applicable ceiling level, or 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....¹²

12. The indexed rate changes proposed by SFPP do not violate the applicable new ceiling levels. Section 343.2(c)(1) establishes the standard a party must meet if it is otherwise to make a successful challenge to indexed rates: the challenging party must show that the proposed indexed rate increase is so substantially in excess of the pipeline's actual cost increases that it renders the resulting rate unjust and unreasonable. As SFPP points out, the Commission applied this standard consistently in rejecting challenges to SFPP's previous indexed rates by, *inter alia*, Protesters.¹³

13. In this case, Protesters again fail to make the requisite showing. The revised index provides for an increase in rates of approximately 3.63 percent. SFPP claims that its actual cost of service increased by 0.43 percent, but it also contends that the difference between the change in the index and the change in the cost of service is not "so substantially in excess" as to render the resulting rates unjust and unreasonable. However, in footnote 2 to its June 20, 2005 response to the protest, SFPP indicates that it will file a corrected Page 700 for its 2003 FERC Form 6 "as soon as practicable." The re-calculation that will be reflected in the corrected page is important in evaluating the

¹² 18 C.F.R. § 343.2(c)(1) (2004).

¹³ See, e.g., *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004); *SFPP, L.P.*, 102 FERC ¶ 61,344 (2003); *SFPP, L.P.*, 96 FERC ¶ 61,332 (2001).

change in SFPP's actual costs and thus the indexed increase it seeks. Accordingly, the Commission will require SFPP to file the corrected page within 10 days of the date this order is issued and will permit the intervening parties to file additional comments within 10 days if they wish to do so.¹⁴

14. In addition, Protesters' claim that SFPP is not entitled to an income tax allowance in 2004 would appear to be inconsistent with allowing the full tax allowance in 2003. If the Commission disallowed an allowance for 2004, the same tax allowance treatment also would have to apply retroactively for 2003 to accurately measure changes in costs from 2003 to 2004. This Protesters did not do and thus unfairly reduced their measure of the changes in SFPP's costs from 2003 to 2004. Accordingly, the Commission will accept SFPP's filing subject to refund and subject to the other conditions stated in this order and in the ordering paragraphs below.

15. Finally, because the Commission is requiring SFPP to file the updated Page 700, as discussed above, and because SFPP's underlying base rates remain subject to challenge in a number of other proceedings in which reparations are at issue,¹⁵ the Commission will accept FERC Tariff No. 118 to be effective July 1, 2005, and will accept and FERC Tariff Nos. 112, 113, 114, 115, 116, and 117 to be effective July 1, 2005, subject to refund, subject to SFPP's filing the revised Page 700 of its 2004 FERC Form 6, and subject to the outcome of the proceedings listed in Footnote 15 of this order.

The Commission orders:

(A) FERC Tariff No. 118 is accepted to be effective July 1, 2005.

(B) FERC Tariff Nos. 112, 113, 114, 115, 116, and 117 are accepted and suspended to be effective July 1, 2005, subject to refund and subject to further order of the Commission and to the conditions established in the body of this order and the ordering paragraphs below.

¹⁴ Page 700 of FERC Form 6 was intended to be a preliminary screening tool that would permit a shipper to compare proposed changes in indexed rates against the pipeline's jurisdictional cost of service. Further, the data reported on Page 700 is intended to permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate. *See Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶ 31,006 at 31,168 (1994), 59 F.R. 59137 (November 16, 1994); *order on reh'g*, Order No. 571-A, FERC Stats. & Regs. [Regs. Preambles 1991-1996] ¶ 31,012 (1995), 60 F.R. 356 (January 4, 1995).

¹⁵ Docket Nos. OR92-6-000, et al.; OR98-2-000, et al.; OR92-6-025; OR96-2-012, et al., and IS98-1-000 (consolidated); OR04-3-000; OR05-4-000; and OR05-5-000.

(C) FERC Tariff Nos. 112, 113, 114, 115, 116, and 117 are accepted subject to the outcome of the proceedings pending in Docket Nos. OR92-6-000, et al.; OR98-2-000, et al.; OR92-6-025; OR96-2-012, et al., and IS98-1-000 (consolidated); OR04-3-000; OR05-4-000; and OR05-5-000.

(D) Within 10 days of the date this order is issued, SFPP must file revised Page 700 of its 2004 FERC Form 6. Within 10 days of the date of that filing, the intervenors in this proceeding may file additional comments.

By the Commission.

(S E A L)

Linda Mitry
Deputy Secretary