

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.

Tesoro Refining and Marketing Company

Docket No. OR07-1-000

v.

SFPP, L.P.

ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued February 9, 2007)

1. On December 1, 2006, Tesoro Refining and Marketing Company (Tesoro) filed a complaint against certain aspects of SFPP, L.P.'s (SFPP) North Line rates. SFPP's North Line transports petroleum products between Richmond, California, and Reno, Nevada, as well as to intermediate points in California. The complaint alleges that SFPP's North Line rates are unjust and unreasonable for the portion of rate in excess of \$1.10 per barrel, the so-called grandfathered rate. While the complaint, as filed, does not claim to challenge the portion of the existing North Line rate that is less than \$1.10 per barrel, Tesoro asserts that certain cost components should not be embedded in those rates or have been incorrectly designed. Such components include an income tax allowance, purchase accounting adjustments, the equity and debt cost of capital, and the allocation of overhead costs between SFPP and its parent partnership. Tesoro's assertions in this regard are based on the analysis in an initial decision in Docket No. IS05-230-000 dated September 25, 2006,¹ and on additional adjustments contained in an affidavit to its complaint. Tesoro requests reparations for a period two years before the filing of the complaint.

2. Public notice of Tesoro's complaint specified January 2, 2007, as the date for respondent's answer and motions to intervene. SFPP filed an answer to the complaint on January 2, 2007. It asserts that the complaint improperly relies on the cost analysis in the

¹ See *SFPP, L.P.*, 116 FERC ¶ 63,059 (2006).

September 25 initial decision now before the Commission on exceptions. SFPP asserts that the Commission has authorized it to pursue an income tax allowance in other orders, and that in any event, many of the rulings in the initial decision have been challenged on exceptions. It concludes that the initial decision therefore provides no reliable basis for Tesoro's complaint. SFPP further argues that the additional adjustments urged in the complaint are unsound and the rate adjustments it has taken above the \$1.10 grandfathered rate are fully justified under the Commission's indexing regulations. It concludes that as such Tesoro has not established that the cost increases reflected in the indexed North Line rate are so substantially in excess of the actual costs SFPP has incurred that the resulting rate is unjust and unreasonable. It urges that the complaint should be summarily rejected, or denied on the merits, or at least held in abeyance until the Commission resolves the cost issues raised by the September 25 initial decision.

3. On January 2, 2007, Chevron Products Company and ConocoPhillips Company filed motions for intervention, as did BP West Coast Products and ExxonMobil Oil Corporation, filing jointly. On January 17, 2007, Tesoro filed a motion seeking leave to answer SFPP's answer. An answer to an answer is normally prohibited, but Tesoro argues that SFPP's answer is more in the nature of a motion to dismiss and therefore a response should be permitted. In this case the proposed answer clarifies certain aspects of the complaint and the Commission will accept Tesoro's January 17, 2007 filing. On January 22, 2007, SFPP filed an answer to Tesoro's January 17 filing arguing that the filing was improper and that it should be rejected, or alternatively, that SFPP be permitted to answer. Since Tesoro raised some new arguments in its January 17 motion, the Commission will accept SFPP's motion to answer.

4. Tesoro's January 17 filing asserts that under the Commission's indexing decisions a complaint is entitled to challenge the entire rate, not just the indexed portion, and that its complaint is directed to the entire North Line rate. Tesoro's supplementary filing asserts that the cost analysis in the September 26, 2006 initial decision is meritorious and addresses the structure of the entire rate. Tesoro claims that the adjustments adopted in the initial decision and the additional ones raised in the complaint are sufficient to show, as least on an initial basis, that the North Line rate is so in excess of the SFPP's actual costs as to be unjust and unreasonable. Tesoro cites *ARCO v. Calnev Pipe Line LLC*² for the proposition that a challenge to the index rate can challenge the fact that the resulting base rate is too high. It further argues that the information in the September 26 initial decision is more reliable than the data contained in Page 700 of SFPP's Form 6, and as such it is the analysis in that decision that should be used in evaluating the complaint. Consequently, Tesoro argues that the complaint contains adequate and reasonable assertions that SFPP's North Line rates are unjust and unreasonable. Tesoro therefore requests its complaint be set for hearing.

² 97 FERC ¶ 61,057 (2001) (*Calnev*).

5. In its January 22 answer SFPP again argues that the cost of service analysis in the September 26 decision was incorrect, as are the adjustments by Tesoro's cost expert. It also asserts that even if these two sources of adjustment were credible, the complaint would be inadequate because it does not fully address the grandfathering issue involved in its North Line rates and the difference between the costs embedded in a grandfathered rate and increases taken under the indexing methodology

6. The Commission will hold this complaint in abeyance. The complaint is based in large measure on cost rulings in an initial decision now before the Commission. Many of those rulings have been challenged on exceptions and thus a reversal or modification of those rulings by the Commission would materially affect certain elements of the complaint. In addition, the complaint raises matters related to income tax allowance, grandfathering and reparation issues that are now under review by the D.C. Circuit in *ExxonMobil Oil Corporation, et al. v. FERC*, Nos. 04-1102, *et al.* The rulings on these appeals would likewise materially affect the complaint at a threshold level. The Commission thus concludes it is premature to set this complaint for hearing at this time.

The Commission orders:

For the reasons stated in the body of this order, Tesoro's complaint in the instant docket is held in abeyance pending further action by the Commission.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.