

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

BP West Coast Products, LLC,
Chevron Products Company,
ExxonMobil Oil Corporation,
Tesoro Refining and Marketing Company,
and,
Valero Marketing & Supply Company

Docket No. OR07-3-000

Complainants

v.

SFPP, L.P.,

Respondent

ConocoPhillips Company,

Docket No. OR07-6-000

Complainant

v.

SFPP, L.P.,

Respondent

ORDER DISMISSING COMPLAINTS

(Issued March 29, 2007)

1. This order addresses two complaints that were filed against a portion of SFPP's North Line rates in the captioned dockets on December 20, 2006, and January 9, 2007.¹ The complaints are based on similar theories and assert that SFPP's 2005 and 2006

¹ CononcoPhillips is the sole complainant in Docket No. OR07-6-000.

application of the Commission's indexing methodology to its North Line rates resulted in rate increases so substantially in excess of the SFPP's actual cost increases that the increases are unjust and unreasonable. The Commission concludes that SFPP's application of the indexing methodology in 2004 did not result in North Line rates that were so substantially in excess of SFPP's actual North Line costs that the resulting rates were unjust and unreasonable. SFPP's application of the index in July 2006 was appropriate given the prior conclusion. Therefore the Commission dismisses both complaints.

Background

2. On April 28, 2005, SFPP filed tariff FERC Tariff No. 111 in Docket No. IS05-230-000 to establish new interstate cost-of-service rates for the shipment of petroleum products on its North Line between Richmond, California, and Reno, Nevada. That tariff was based on a 2004 cost of service and related test period adjustments. The April 28 filing was to recover the costs of expanding and replacing a portion of the North Line between Concord and Sacramento, California. The Commission accepted and suspended the proposed tariff, to be effective June 1, 2005, and set the case for hearing.² On May 31, 2005, SFPP filed in Docket No. IS05-327-000 to index all of its rates, including the revised North Line rates, pursuant to the Commission's indexing methodology, to be effective July 1, 2005.³ The Commission accepted this second 2005 filing subject to refund on June 29, 2005.⁴ On May 31, 2006, SFPP filed in Docket No. IS06-356-000 to index all of its rates, including the North Line rates, effective July 1, 2006. The Commission accepted that 2006 index filing subject to refund.⁵ The three cited filings resulted in a total North Line rate of \$1.5328 per barrel on July 1, 2006.⁶

² *SFPP, L.P.*, 111 FERC ¶ 61,299 (2005).

³ *See* 18 C.F.R. § 342.3.

⁴ *SFPP, L.P.*, 111 FERC ¶ 61,510 (2005), *order on reh'g*, 113 FERC ¶ 61,253 (2005).

⁵ *SFPP, L.P.*, 115 FERC 61,388 (2006), *order on reh'g*, 117 FERC ¶ 61,271 (2006).

⁶ The North Line has a single jurisdictional rate to Reno, Nevada, and a nearby point in the same state.

3. On December 6, 2006, the Commission issued a rehearing order that partially modified its June 29 Order addressing SFPP's 2006 index filing. The Commission ordered SFPP to rescind the 2006 index-based increase to its East Line rates and to make refunds.⁷ The Commission held that SFPP's May 1, 2006 filing to establish new East Line rates reflected all of SFPP's actual 2005 East Line costs. As such, there were no 2005 East Line cost increases to be recovered by indexing the East Line rates on July 1, 2006. Because the East Line cost increases SFPP had incurred in 2005 were already reflected in the new East Line rates filed in May 2006, the Commission held that the July 1, 2006 increase would be so substantially in excess of SFPP's actual East Line costs that the resulting rate would be unjust and unreasonable. SFPP filed revised rates and a rehearing request of the December 6 order the Commission will address in a separate order.

The Pleadings

4. The instant complaints rely on the Commission's December 6, 2006 Order in Docket No. IS06-356-000. The complainants assert that in May, 2005, SFPP filed new North Line rates based on an actual 2004 cost of service, and that SFPP reflected all of the cost increases incurred in 2004 were reflected in the new North Line rates effective on June 1, 2005. In their initial pleadings, the complainants conclude that as a matter of law, as with the East Line rates in the December 2006 order, SFPP is over-recovering the equity cost-of-capital embedded in the North Line rates it filed in May 2005. The complainants request the Commission to rescind the North Line index-based increases for 2005 and 2006 and to require SFPP to refund them.⁸

5. SFPP filed answers to the complaint in Docket No. OR07-3-000 on January 9, 2007, and in Docket No. OR07-6-000 on January 29, 2007. SFPP first asserts that the Commission incorrectly interpreted its indexing regulations in the December 6, 2006 Order. Second, SFPP asserts in both answers that it designed the new North Line rates effective June 1, 2005 to result in revenues of \$19,321,000, or \$1.39334 per barrel based on the 2004 test year, compared to a cost of service of \$20,776,000 in the same period. It further asserts that even the higher July 1, 2005 indexed rate of \$1.4440 per barrel would generate only \$20,022,504 in revenue, or less than cost of service included in its April 28,

⁷ *SFPP, L.P.*, 117 FERC ¶ 61,271 (2006) (December 2006 order).

⁸ On January 29, BP West Coast Products, LLC and ExxonMobil Corporation jointly filed to intervene in Docket No. OR07-6-000, the sole interventions in the two dockets under consideration here.

2005 filing. Thus, it claims, even with the indexed increase, the North Line rates on July 1, 2005, would not be so in excess of the carrier's actual costs that the resulting rates were unjust and unreasonable. SFPP further argues that the subsequent indexing of its North Line rates on July 1, 2006, complied with the Commission's indexing regulations since the additional system-wide costs it incurred in 2005 exceed the 2005 index factor. SFPP therefore requests that the Commission deny the complaints in both dockets. On January 23 and February 13, 2007, the complainants filed answers to SFPP's January 9 and January 29 complaints. The Commission will accept these answers because they help to frame the scope of the complaints.

6. Both answers assert that an initial decision in Docket No. IS05-230-000 found that there were numerous failings with SFPP's April 25 cost-of-service filing in that docket.⁹ These include a claimed income tax allowance, the cost of equity and debt capital, the inclusion of certain costs in SFPP's rate base, and the allocation of overhead costs. They assert that since SFPP included invalid costs in the test year cost-of-service that SFPP now claims not to have recovered through its April 2005 rates, SFPP's 2005 and 2006 index filings were based on a cost structure that is already over-recovering SFPP's actual North Line costs. They argue that the complaints remain analogous to the East Line rate increase addressed by the December 6, 2006 order in Docket No. IS06-356-000, and that SFPP's 2005 and 2006 index-based North Line increases should be rescinded.

7. On February 1, 2007, SFPP filed a motion for leave answer and an answer to the January 23, 2007 pleading filed by the complainants. While the Commission does not ordinarily permit an answer to an answer, the complainants' January 23 filing makes several factual and legal assertions that go well beyond the matters contained in their initial complaint. For this reason the Commission will allow SFPP an opportunity to reply and the Commission grants its February 1 motion.

Discussion

8. The Commission reviewed the copy of SFPP's April 28, 2005 North Line rate filing that is attached to the complaints. The summary sheet of that cost of service confirms SFPP's assertions that the new North Line rates contained in the April 28, 2005 filing would yield less revenue than the cost of service supporting that tariff filing. SFPP correctly states that this continued to be the case after it indexed its North Line rates on July 1, 2005, to reflect that its costs in 2004 exceeded its 2003 costs. The Commission has consistently permitted oil pipelines to take the full index if they are not recovering

⁹ *SFPP, L.P.*, 116 FERC ¶ 63,059 (2006) (September 2006 ID).

their overall cost of service.¹⁰ This is done by comparing 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 and determining whether the pipeline is recovering its cost of service. This approach recognizes that simplicity is the hallmark of the Commission's indexing procedure and that the review of the pipeline's filing is normally limited to matters that appear on the face of page 700.¹¹ Since the July 1, 2005, indexed increase did not result in rates that exceeded the actual costs upon which SFPP's 2005 North Line rates were based, the July 2005 index increase did not result in rates so substantially in excess of SFPP's actual costs that the resulting North Line rates were unjust and unreasonable.

9. The instant complaints also challenge SFPP's July 1, 2006 index-based increase of its North Line rates. Since the Commission has concluded that the 2005 indexed rate is appropriate, that rate in turn becomes the rate to which the index factor is applied on July 1, 2006. SFPP's Page 700 for the calendar year 2005 reflects an increase in costs over the costs that were embedded in 2004 cost-of-service used to design the new North Line rates that became effective on June 1, 2005.¹² As discussed earlier, the complaints against SFPP's 2006 increase of its North Line rates are premised on the unreasonableness of the 2005 index-based increase to those rates. Since this is a false premise, the complaint against the 2006 index-based increase also fails.

10. The complainants also argue that the findings of the September 2006 ID regarding SFPP's North Line rates support their conclusion that the indexed rates at issue here are unjust and unreasonable. The Commission is still reviewing the initial decision and as a general matter, initial decisions pending Commission review do not constitute binding precedent.¹³ More fundamentally, complainants now attack the embedded cost elements of the underlying 2005 North Line rates in their answers. An attack on the underlying

¹⁰ In fact, this is true even if the pipeline experienced a cost decrease in the index year at issue. *See Shell Pipe Line Company*, 102 FERC ¶ 61,350 (2003).

¹¹ December 2006 order at P 6.

¹² The 2006 index factor was 6.1485 percent and SFPP's Page 700 increase was 6.6 percent. *See SFPP, L.P.*, 115 FERC 61,138 at PP 6 and 7.

¹³ *Southern Company Services, Inc.*, 61 FERC ¶ 61,339 at pp. 62,334, n.56, 62,335 n.59 (1992), *reh'g denied*, 63 FERC ¶ 61,217 (1993); *Illinois Power Company*, 62 FERC ¶ 61,147 at p. 62,062 n.17 (1993).

cost elements of the index rate can only be done through a complaint. However, the fact-based issues advanced by the complainants in their January 23 and February 23 answers go to the merits of the issues raised by the September 2006 ID in Docket No. IS05-230-000, which addressed the reasonableness of the new North Line rates SFPP filed in April 2005.¹⁴ As such, the complainants are simply duplicating the matters at issue in that proceeding and do not raise any issues not already present in that case. Moreover, at this point it is not possible to know whether a different base rate (and related cost-of-service) is required to determine the validity of the 2005 indexed-based increase until the Commission completes its review of the September ID.

11. Finally, the Commission notes that the new North Line rates filed April 28, 2005, and effective June 1, 2005, are new base rates that are subject to investigation and refund. The Commission's indexing regulations provide that if the underlying base rate is subject to refund, any increase under the index is automatically subject to refund.¹⁵ Thus, if the Commission reduces the new North Line rates SFPP filed in 2005, the indexed increases for 2005 and 2006 may be reduced and refunds provided, the very relief sought here by the complainants.¹⁶ Since SFPP's July 2005 indexed increase did not result in an increase that substantially exceeded the cost-of-service of its North Line rates in that year, the 2006 index increase is consequently valid, and the complaints provide no other independent basis for proceeding against the cost of service of those rates. Therefore, the Commission dismisses both complaints.

¹⁴ See *SFPP, L.P.*, 116 FERC ¶ 63,059 (2006).

¹⁵ See 18 C.F.R. § 342.3(a) (2006).

¹⁶ *SFPP, L.P.*, 113 FERC ¶ 61,253 (2005), *Calnev Pipe Line, L.L.C.*, 111 FERC ¶ 61,505 (2005), and *SFPP, L.P.*, 102 FERC ¶ 61,344 (2003).

The Commission orders:

The complaints in the captioned dockets are dismissed for reasons stated in the body of the order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.