

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.

SFPP, L.P.

Docket No. IS07-137-000

ORDER ACCEPTING AND SUSPENDING TARIFF,
SUBJECT TO REFUND, AND HOLDING PROCEEDING IN ABEYANCE

(Issued March 30, 2007)

1. On March 1, 2007, SFPP, L.P. filed FERC Tariff Nos. 143 through 148 containing an Ultra Low Sulfur Diesel (ULSD) Recovery Fee of 0.47 cents per barrel (cpb) to become effective April 1, 2007. The Commission accepts and suspends the proposed tariffs, subject to refund, effective April 1, 2007, and holds this proceeding in abeyance pending the resolution of certain issues under consideration in other proceedings. The Commission rejects that portion of SFPP's tariff filing that would create a litigation surcharge of 0.41 cents per barrel that it proposes to collect simultaneously with the ULSD Recovery Fee.

The Filing and Responsive Pleadings

2. SFPP proposes to recover the capital and operating costs it incurred to comply with the regulations of the Environmental Protection Agency (EPA) contained in Title 40 of the Code of Federal Regulations, Part 80, Subpart 1. The fee at issue is a surcharge designed to recover the costs of handling diesel products consistent with the cited EPA regulations. SFPP states that Appendix A contains a detailed cost accounting of the necessary and capital investment and operating costs. SFPP calculated the capital costs using the Commission's oil pipeline trended original cost method and included a carrying charge based on the Commission's first quarter interest rate of 8.25 percent. The recovery fee would run for five years from the effective date of the tariffs and includes a true-up charge to determine whether the costs were over or under recovered. SFPP also asserts that certain shippers have stated they will protest the proposed ULSD Recovery Fee, no matter how calculated. SFPP states that since litigation is unavoidable, it included a surcharge to recover its prospective litigation costs. It asserts that without a surcharge it will not recover litigation costs almost equal to the amount of the surcharge.

SFPP states that if the filing is not protested, or if protested and not set for hearing, it will withdraw the litigation surcharge.

3. Timely interventions and protests were filed by BP West Coast Products, LLC, Chevron Products Company, and Tesoro Refining and Marketing Company (jointly Indicated Shippers), ConocoPhillips Company, Western Refining Company, L.P., and Valero Marketing and Supply Company (collectively Interveners). In addition, Indicated Shippers include an alternative complaint section in their comments in the event the Commission does not set SFPP's tariff filing for investigation. The complaint section of their comments repeats the assertions in their comments regarding certain cost elements included in tariff filings.

4. The Interveners assert that SFPP may not use a surcharge because the instant ULSD costs are the type that SFPP may not recover through a cost of service rate filing unless SFPP can establish that there is a substantial divergence between its actual costs and the rate resulting from the application of the Commission's oil pipeline indexing methodology.¹ They assert that SFPP cannot prove this given the substantial over-recovery of its total cost of service in 2005, as reflected on Page 700 of its 2005 FERC Form No. 6. Thus, they urge that the Commission reject the tariffs on this ground alone. They also assert that SFPP has not adequately justified the specific capital and operating costs included in Appendix A. They further assert that SFPP is a partnership that is controlled by Kinder Morgan Energy Partners, L.P., a master limited partnership.

5. The Interveners assert that SFPP's tariff filing therefore contains disputed cost of service items such as an income tax allowance, allowance for deferred income taxes, debt structure, the equity cost of capital, overhead cost allocations, and purchase accounting adjustments (PAAs). They therefore request the Commission to either reject the filing or to suspend it, subject to refund, and to set it for hearing. They also assert that the proposed litigation surcharge violates Commission policy and is not based on any known and measurable costs. They argue that an open ended surcharge for litigation costs removes any incentive for the pipeline to settle because it is guaranteed its litigations expenses regardless of whether those are reasonable or prudently incurred. Interveners request the Commission to reject SFPP's proposed litigation surcharge.

Discussion

6. The Commission will accept SFPP's tariff filing to recover the 0.47 cpb ULSD Recovery Fee, subject to suspension and refund. The Commission has consistently held that the costs necessary to comply with the pertinent EPA standards are extraordinary costs that do not necessarily apply to all oil pipelines or to all products transported on such pipelines, nor are those costs attributable to shipments by all shippers on a given

¹ See 18 C.F.R. § 342.4(a) (2006).

pipeline. As such, ULSD costs are not the type of general, industry wide, or carrier-wide, costs that the Commission intends to permit recovery through the annual oil pipeline index methodology.² Thus, the fact that SFPP may have over-recovered its overall cost of service in 2005 is not at issue here. Moreover, in 2006 and 2007 SFPP significantly reduced its rates as a result of settlements or Commission orders.³ Thus, it is possible that the 2005 FERC Form No. 6 results cited by the Interveners are not relevant to this decision. Therefore the Commission denies their request to reject the instant tariffs as improperly filed.

7. The Commission concludes that certain of Interveners' other concerns have greater merit. Whether a partnership should have an income tax allowance and ADIT are being litigated in other SFPP proceedings, including Docket Nos. OR92-8-000, *et al.*, OR96-2-000 *et al.*, OR96-2-012, IS05-230-000, all of which are pending before the Commission to various degrees. A number (but not all) of these dockets include the issue of debt-equity ratios, how the Commission should determine the cost of equity for a master limited partnership, the proper allocation of overhead costs, and the adjustments to be made to purchase accounting adjustments. These are generic issues involving SFPP that are being extensively litigated in some or all of the cited dockets. It makes no sense to pursue the underlying principles in this relatively narrow proceeding when the relevant standards are to be established in more general proceedings. Therefore the Commission will not rule on those issues or set them for hearing or an investigation at this time. Rather, it will hold this proceeding in abeyance until the standards for the more generic issues are clearer. At that time the Commission will determine what, if any, adjustments should be made to the instant tariffs. Since no further litigation is contemplated at this time, the Commission rejects SFPP's proposed litigation surcharge and directs SFPP to remove it from the filing. Whether any future regulatory costs would be appropriately considered non-recurring costs and treated as such for rate making purposes need not be decided at this time.

8. In addition, the Commission will require SFPP to modify its accounting and reporting procedures. Normally, oil pipeline industry costs are addressed in the Commission's indexation of rates methodology created in Order No. 561, Revisions to

² See *Magellan Pipeline Company, L.P.*, 115 FERC ¶ 61,276 (2006); *Inland Products Pipeline*, Docket Nos. IS06-542-000 and 001, Letter Order dated September 26, 2006; *Valero Logistics Operations, L.P.*, Docket No. IS06-548, Letter Order dated September 2006.

³ See *SFPP, L.P.* 115 FERC ¶ 61,125 (2006) modifying SFPP's East and West Line rates in response to the Commission's instructions in *SFPP, L.P.*, 113 FERC ¶ 61,277 (2005); *SFPP, L.P.*, 116 FERC ¶ 61,166 (2006), reducing SFPP's Watson Station Drain Dry Charges pursuant to negotiated settlement; *SFPP, L.P.*, 118 FERC ¶ 61,192 (2007).

Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30,985 (1993). The Commission concludes here that a surcharge, rather than indexed base rates, is the proper recovery vehicle for these extraordinary, non-industry wide pipeline ULSD costs. While SFPP addresses the point in its tariff filing, the Commission reiterates the holding in *Magellan* that it is improper to include SFPP's ULSD surcharge costs in determining the industry wide oil pipeline price index. Otherwise, the data would skew the oil pipeline index that permits oil pipelines to recover normal oil pipeline industry wide costs. Thus, acceptance is conditioned upon SFPP separately accounting for all costs and revenues that relate to its ULSD surcharge. Further, we direct SFPP to footnote the amounts of dollars attributed to the surcharge invested in Carrier Plant on page 212 in FERC Form No. 6 and any revenues and expenses attributable to the surcharge on Page 700 of FERC Form No. 6 in its annual filing to the Commission, as well as footnote any current and accrued amounts in its quarterly reports to the Commission. This will back out the costs of the ULSD surcharge from the other costs used to derive the new index in the Commission's next five-year review of the Oil Pipeline Pricing Index.

9. The Commission also declines to consider the alternative complaint section included in Indicated Shippers' comments. A complaint lies only against a rate that has become effective on the motion of the carrier, a legal rate, or one that is established by Commission order, a lawful rate. There is no final rate involved here nor can one exist until the Commission takes further action on some of the cost of service elements that are at issue here. As such, Indicated Shippers' relief lies in the refund obligation and is premature on both legal and practical grounds. Finally, the Commission reiterates that it is not setting the instant tariffs for investigation and hearing.

The Commission orders:

(A) SFPP's FERC Tariff Nos. 143 through 148 are accepted and suspended, subject to refund, effective April 1, 2007, except for the 0.41 cents per barrel litigation surcharge, which is rejected.

(B) The acceptance in Ordering Paragraph A is subject to the conditions stated in paragraph 8 of this order.

(C) This proceeding is held in abeyance until further order of the Commission.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.