

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, L.L.C.

Docket No. OR07-9-000

v.

SFPP, L. P.

ORDER DIMISSING COMPLAINT

(Issued July 6, 2007)

1. On May 3, 2007, BP West Coast Products, L.L.C (Complainant) filed a complaint against SFPP, L.P. (SFPP) in the instant case. The complaint is without merit and is dismissed.

The Pleadings

2. The instant complaint stems from SFPP's March 1, 2007, filing for an Ultra Low Sulfur Diesel (ULSD) surcharge in Docket No. IS07-137-000, which the Commission accepted and suspended on March 30, 2007.¹ Complainant, as part of Indicated Shippers, included a complaint in its protest to SFPP's March 1 filing, which the Commission declined to consider. The Commission also declined to send SFPP's filing to hearing until certain generic issues that have arisen in every recent SFPP proceeding were clearer, particularly income tax allowance, if any, and the return on equity to be afforded regulated entities controlled by master limited partnerships. The instant complaint alleges that the complaint is now timely because the proposed surcharge is in effect. At bottom, the complaint further alleges that the surcharge fails to provide the notice required by the filed rate doctrine because it contains a true-up mechanism. It further asserts that this true-up is a retroactive rate adjustment prohibited by the Interstate Commerce Act.

3. SFPP filed an answer on May 23, 2007, asserting that the complaint misconstrues

¹ *SFPP, L. P.*, 118 FERC ¶ 61,267 (2007) (March 30 Order).

the Commission's March 30 Order. It notes that the Commission held:

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 here nor can one exist until the Commission takes further action on some of the cost of 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. (emphasis added).²

SFPP also asserts that its proposed surcharge does not violate the filed rate doctrine because it described the purpose and amount of the rate in its March 1 tariff filing. It further asserts that the surcharge is consistent with similar surcharges approved by the Commission, all of which include a true-up provision.

4. On June 7, 2007, Complainant filed an answer, or in the alternative, a motion for leave to file an answer. Responses to Answers are not routinely accepted by the Commission.³ The response adds nothing new to the record and the filing is rejected.

Discussion

5. SFPP is correct that the instant complaint is untimely and misconstrues the Commission's March 30 Order. As that order explains, a rate becomes final in one of two circumstances: either it is moved into effect by the carrier without review by the Commission (a legal rate) or the Commission sets the final rate (a lawful rate). The March 30 Order could not be clearer that the Commission was saying that some form of a final rate must be effective before a complaint will lie against a given rate. The ULSD surcharge the complaint addresses is subject to suspension and investigation and is not final by definition. Moreover, the Commission has approved several other ULSD surcharges in a form similar to that filed by SFPP⁴ and use of a true-up mechanism based on notice in the tariff is well established.⁵ Under these precedents, placing the true-up mechanism in the tariff is sufficient to meet the requirements of the filed rate doctrine. In other regards, SFPP submitted a filing that facially complies with the Commission's policy on ULSD fuel filings. Accordingly, the Commission will examine and address any concerns regarding the legality and the amount of the surcharge in the Docket

² *Id.* P 9.

³ *See* Rule 213(a)(2), 18 C.F.R. §213(a)(2) (2006).

⁴ March 30 Order, footnote 3.

⁵ *See Southern Star Central Gas Pipeline, Inc.*, 117 FERC ¶ 61,357 (2006) and 109 FERC ¶ 61,378 (2004).

No. IS07-137-000 proceeding. If a remedy is required, it will be provided through a partial or total refund of the revenues collected during the investigation. Therefore the complaint is dismissed.

The Commission orders:

The complaint in the instant docket is dismissed.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.