

121 FERC ¶ 61,163  
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. IS04-323-002

ORDER ON REHEARING

(Issued November 14, 2007)

1. On June 30, 2004, the Commission issued an order accepting and suspending SFPP's index-based rate increases, effective July 1, 2004.<sup>1</sup> The Commission rejected protests directed to the amount of the increases, but suspended the proceeding, subject to refund, in light of other proceedings involving SFPP that were then pending before the Commission. Indicated Shippers and SFPP filed requests for rehearing. The Commission denies Indicated Shippers' request for rehearing, grants SFPP's request, and limits the suspension and refund provisions to only a portion of SFPP's rates.

2. The June 30 Order found that SFPP's May 20, 2004 index filing was generally consistent with the Commission's indexing regulations. This was because SFPP's costs increased by 11.9 percent between 2002 and 2003 and the permitted index increase for the same period was 3.17 percent.<sup>2</sup> The Commission rejected Indicated Shippers' assertion that the Commission should reject the proposed increases because SFPP was already over-recovering its costs and SFPP improperly defined certain of the cost-of-service factors underpinning Page 700 of its FERC Form No. 6 for 2002 and 2003 that could have resulted in unjust and unreasonable rates. Finally because SFPP's rates were under review in a complaint case, Docket No. OR96-2-000, *et al.*, the Commission made the filing subject to refund and to the outcome of that docket. On rehearing here, Indicated Shippers renews their argument regarding the SFPP's over-recovery.

3. The Commission has consistently held that in the protest phase, it relies only on the comparison of the FERC Form No. 6 page 700 reports for the relevant years.<sup>3</sup> The Commission has also consistently held that shippers must advance any challenges to the

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<sup>1</sup> *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004) (June 30 Order).

<sup>2</sup> *Id.* P 4, 7.

<sup>3</sup> *See SFPP, L.P.*, 119 FERC ¶ 61,330 (2007) and cases cited therein.

veracity of the numbers contained in any FERC Form No. 6 by complaint.<sup>4</sup> In any event, the decision not to investigate is not reviewable.<sup>5</sup> Indicated Shippers' rehearing request is therefore denied.

4. SFPP's rehearing request argues that the Commission erred in suspending the filing and subjecting the increases to refund when the related proceeding is a complaint case. It asserts that this is inconsistent with the Commission's regulations, which provide that index increases are automatically subject to refund if the underlying rates are subject to an investigation and refund. SFPP further asserts that this action departed from the Commission's past practice, without explanation.

5. The Commission will grant rehearing, but for a reason that was not clearly articulated by SFPP. While the Commission's regulations only address proceedings in which the base rates are already subject to investigation and refund, there is a more fundamental issue involved here. In a complaint case, only the shippers that have filed a complaint are entitled to reparations if the Commission determines the challenged rate to be unjust and unreasonable. If the pipeline applied the permitted index increase to the rate, consistent with the Commission's regulations, the remedy is as follows. First, the base rates are recalculated at just and reasonable levels for the complaint year. The approved index factor is then applied to the reduced base rate and is carried forward to the date on which the revised rates become effective. However, if the index factor has been accepted by the Commission and has not otherwise been challenged, the percentage amount of the index increases is not modified. Rather, the change in the dollar amount comes from applying the approved index percentage to the lower base rate. This reduces the total amount of the revised rate and increases the reparations, which provides the appropriate remedy.

6. The carrier's obligation to provide refunds inures to all shippers regardless of whether a particular shipper filed a complaint. In contrast, the carrier's obligation to provide reparations is only available to those shippers that file a complaint.<sup>6</sup> Thus, by attaching a refund obligation to a complaint proceeding, the Commission may have inadvertently extended the reparation remedy to shippers that had not filed a complaint. This was unintended and the Commission corrects and clarifies this aspect in this order. For the complainant shippers, the remedy occurs through their reparations to the extent

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<sup>4</sup> *Id.*

<sup>5</sup> *ExxonMobil Oil Corporation v. FERC*, unpublished decision dated February 27, 2007, (D.C. Cir. No. 05-1471.)

<sup>6</sup> *See ExxonMobil v. FERC*, slip op. issued May 29, 2007 (No. 04-1102 D.C. Cir.) at p. 39; *accord BP West Coast Products, LLC v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004) at 1311.

they are eligible. As discussed elsewhere, the Commission will determine whether reparations are appropriate in the complaint proceeding and not through a secondary remedial device such as a refund obligation in an index proceeding where the Commission has otherwise found that the index increase was just and reasonable. As the Commission's regulations state, the refund obligation attaches only to rates in those proceedings in which the Commission is investigating an underlying rate that was part of a pipeline rate filing.

7. At the time the June 30 Order issued, only some of SFPP rates were subject to investigation in a pipeline tariff filing proceeding. These were the Sepulveda Line rates and the Watson Station Drain Dry charges. Therefore the Commission lifts the suspension and refund obligation that the June 30 Order erroneously imposed on rates other than the Sepulveda Line rates and Watson Station Drain Dry charges, since only these latter two rates were subject to suspension and investigation at the time.

The Commission orders:

(A) Indicated Shippers' request for rehearing is denied.

(B) SFPP's request for rehearing is granted as stated in the body of the order.

(C) The suspension and refund obligation imposed in this docket is lifted with the exception of SFPP's Sepulveda Line rates and Watson Station Drain Dry charges.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.