



2. On November 21, 2007, the Complainant Airlines filed two additional motions. The first was to substitute U.S. Airways, Inc. (U.S. Air) for America West Airlines, Inc. (America West) as a complainant in the instant proceedings on the ground that U.S. Air absorbed America West through its merger and is entitled to successor in interest status in these proceedings. The second, November 21 motion renews the request to submit SFPP's West Line rates for hearing regardless of any ruling on the July 13 joint request for consolidation.

3. The Commission grants U.S. Air's motion to amend the complaints to substitute itself for America West under the successor in interest doctrine. The Commission sets the East and West Line rates at issue in Docket Nos. OR03-5-000, OR05-4-000, OR05-5-000, and OR04-3-000 for hearing, but will not consolidate those dockets with the ongoing proceedings involving the rates for SFPP's North and Oregon Line rates.

### **Background**

4. The complaints at issue in Docket Nos. OR03-5-000, OR05-4-000, OR05-5-000 were part of broader complaints filed against all of SFPP rates, with the exception of the complaint by the Airline Parties in Docket No. OR04-3-000, which is now pending only against SFPP's West Line rates. On February 13, 2006, the Commission severed the part of the complaints against SFPP's North and Oregon Line rates reasoning that those rates were grandfathered and therefore presented materially different issues than the portion of the complaints against the East and West Lines.<sup>1</sup> Since at that time the East and West Line rates were no longer grandfathered, the only issue regarding those rates was the reasonableness of those rates. In contrast, the complaints against the North and Oregon Line rates required (and still require) a determination of whether there were substantially changed circumstances in the economic basis of those rates, before the issue of reasonableness could be reached. The Commission also noted that there were important rate design issues then pending appeal and it would be more efficient to defer further proceedings until those issues were resolved. The Commission later noted the complaints against the East and West Lines might proceed to hearing once interim rates became effective in Docket Nos. OR92-8-024, *et al.* and OR96-1-010, *et al.*<sup>2</sup> However, in light

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<sup>1</sup> *Chevron Products Co. v. SFPP, L.P.*, 114 FERC ¶ 61,133 (2006) (Hearing Order), which established a separate docket for the North and Oregon Line rates.

<sup>2</sup> *See SFPP, L.P.*, 113 FERC ¶ 61,277 (2005) (December 2005 Order).

of numerous issues in earlier orders in those dockets that were appealed to the D.C. Circuit, the Commission chose not to proceed to hearing on these complaints.<sup>3</sup>

5. The motions requesting the Commission to set the East and West Line rates for hearing assert that several matters have changed. They state that the major outstanding issues such as the test for substantially changed circumstances and the appropriateness of an income tax allowance for master limited partnerships were resolved by *ExxonMobil*.<sup>4</sup> In their November motion the Airline Parties further assert that the long delay in hearing their complaints is unfairly denying them a hearing and an opportunity to obtain badly needed reparations from the period before May 1, 2006, when lower rates became available in Docket Nos. OR92-8-000, *et al.* and OR96-2-000, *et al.* Furthermore, in the motion to consolidate the complaints against the East and West Line rates with the ongoing proceedings against the North and Oregon Line rates, the moving parties assert that there will be efficiencies from the consolidation of all the complaints that were filed in the same time frame.

6. In its answer to both the July 13 and November 21 motions, SFPP argues that even with the result in *ExxonMobil*, the complaints against the North and Oregon Line rates involve materially different issues than those against the East and West Line rates. This is because the issue of substantially changed circumstances remains outstanding even though *ExxonMobil* has clarified a number of issues. Therefore, asserts SFPP, the reasons for keeping the proceedings separate remain valid. It further argues that setting the East and West line rates for hearing will result in duplicate records and unnecessarily complicated discovery and hearing procedures. It therefore requests that these complaints against its East and West Line rates remain in abeyance.

### **Discussion**

7. The Commission will set the East and West Line rates at issue in the captioned dockets for hearing and consolidate the Airline Parties' complaint in Docket No. OR4-3-000 with the other consolidated dockets listed in the caption since it involves only the West Line rates. However, the Commission will not consolidate the issue of the reasonableness of SFPP's East and West Line rates with the proceeding now at hearing regarding the Oregon and North Line rates in the same dockets. While the legal

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<sup>3</sup> See *ARCO Products Co., a Division of Atlantic Richfield Company, Texaco Refinery and Marketing Inc.*, 106 FERC ¶ 61,300 (2004) (March 2004 Order) and *SFPP, L.P.*, 111 FERC ¶ 61,334 (2005) (June 2005 Order), *appealed sub. nom ExxonMobil Oil Corporation v. FERC*, No. 04-1102, decided May 29, 2007, 487 F.3d 945 (D.C. Cir. 2007) (*ExxonMobil*).

<sup>4</sup> *ExxonMobil Oil Corporation, et al. v. FERC*, 487 FERC F.3d 945 (D.C. Cir. 2007) (*ExxonMobil*).

standards to be applied in oil pipeline rate cases are clearer at this time due to *ExxonMobil* and another recent decision,<sup>5</sup> this does not change the fact that the current litigation over the North and Oregon Line rates requires a determination of whether there have been substantially changed circumstances affecting the basis of those rates.<sup>6</sup> That issue is different from, and must be resolved prior to any rate reasonableness issues, such as those involved in the complaints against the East and West Lines. Moreover, at this juncture the basic purpose of any hearing regarding the West and East Line rates is to carry forward the rate making principles established by the December 2007 Order<sup>7</sup> issued in response to *ExxonMobil* and SFPP's compliance filing dated March 7, 2006 in Docket OR92-8-024. This will determine if any further rate reductions or reparations are appropriate with regard to those rates, and bring them to closure.

8. The East Line rates involve a rate determination for a locked-in period since new rates were established for that line as of June 1, 2006.<sup>8</sup> The Commission notes that a settlement was recently filed with regard to certain of SFPP's new East Line rates that cover a locked-in that establishes the latest point for the application of any revised East Line rates in the instant docket.<sup>9</sup> Thus, both the issues and settlement possibilities are different for cases that involve substantially changed circumstances and those that do not. The Commission does recognize that litigation involving the North and Oregon Line rates on the one hand, and the East and West Line rates on the other, have certain cost-of-service commonalities, including the allocation of costs among SFPP's various services, the cost of capital, overhead allocations, and income tax allowance factors. The Commission has no objections to having the cost of service testimony to address the common elements in the first hearing incorporated into the instant proceeding. Such would result in cost savings and efficiencies. However it is not necessarily appropriate to combine them in a single hearing if this might delay conclusion of the East and West Line proceedings.

9. Finally, the Commission grants U.S. Air's motion to substitute itself for America West, and makes some concluding observations. At this point there are a number of proceedings involving complaints or protests against SFPP's rates over many years, or in more recent times, against its affiliate, Calnev Pipe Line, L.L.C. (Calnev). The cases

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<sup>5</sup> *SFPP, L.P.*, 121 FERC ¶ 61,240 (2007).

<sup>6</sup> *Id.* at P 18-19.

<sup>7</sup> *SFPP, L.P.*, 121 FERC ¶ 61,240 (2007).

<sup>8</sup> *SFPP, L.P.*, 115 FERC ¶ 61,279 (2006).

<sup>9</sup> See Offer of Settlement filed November 6, 2007 in Docket No. IS06-283-000, *et al.*

have been difficult to resolve due to the issues involved. However, these have been addressed recently by several detailed court and Commission decisions that have served to reduce the uncertainty that previously existed.<sup>10</sup> While this order focuses only one set of complaints involving many of the same parties, the Commission therefore urges the parties to consider settlement of *all* of the SFPP and Calnev matters now in litigation, including those cases pending before the Commission either in response to an initial decision or in the initial phases of a complaint or rate filing proceeding.

The Commission orders:

(A) The East and West Line rates at issue in the captioned dockets are set for hearing, as stated in the body of this order.

(B) The West Line rates at issue in Docket No. OR04-3-000 are consolidated with the East and West Line rates that were previously held in abeyance in Docket Nos. OR03-5-000, OR05-4-000, and OR05-5-000.

(C) The Commission denies the request to consolidate the East and West Line rate litigation addressed by this order with the North and Oregon Line rate litigation now pending in Docket No. OR03-5-001.

(D) The Commission grants U.S Air's motion to substitute itself for America West in all of the captioned dockets to which America West was a party.

(E) Pursuant to the section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2004), the Chief Administrative Law Judge shall designate a presiding administrative law judge for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and to the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>10</sup> *ExxonMobil, passim; Remand Order, passim; Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 121 FERC ¶ 61,165 (2007).