123 FERC ¶ 61,317
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P. Docket No. IS08-302-000

ORDER ON TARIFF FILINGS

(Issued June 30, 2008)

1. On May 29, 2008, SFPP, L.P. (SFPP) filed FERC Tariff Nos. 165-170 to increase most of its interstate rates[1] by approximately 5.2 percent pursuant to the Commission's oil pipeline indexing methodology,[2] to be effective July 1, 2008. SFPP also updates its list of interstate tariffs in effect on July 1, 2008. The filing is protested. The Commission accepts SFPP's filing to be effective on July 1, 2008, and subject to refund as regards SFPP's West Line, North Line, and Sepulveda Line rates, but not the Oregon Line rates.

The Pleadings

2. As noted, SFPP is making the instant filing pursuant to the Commission's oil pipeline indexing regulations. The proposed tariffs cover all of SFPP's interstate rates except for its East Line rates between El Paso, Texas, and Phoenix, Arizona. An intervention and protest was filed by Chevron Products Company (Chevron). Interventions and requests for clarification were filed jointly by U.S. Airways, Inc., Southwest Airlines Co., Continental Airlines, Inc., and Northwest Airlines, Inc. (the Airlines) and by Valero Marketing and Supply Company (Valero). The Airlines and Valero request clarification that the proposed increase to SFPP's West, North, and Sepulveda Line rates will be subject to refund because the underlying rates are now subject to refund.

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[1] FERC Tariff Nos. 165-170 cancelling FERC Tariff Nos. 155, 164, 163, 159, 160, and 161 respectively.

[2] 18 C.F.R. § 342.3 (2007).

3. Chevron requests that the proposed increases to the North, West, Sepulveda, and Oregon Line rates be made subject to refund. It asserts that the Oregon Line rates are subject to investigation in response to complaints filed in Docket No. OR03-5-000, *et al*., and Docket No. OR07-4-000. Chevron also asserts that the proposed increases will result in rates that are unjust and unreasonable because SFPP is already substantially over-recovering its costs. Specifically, it states that SFPP's FERC Form No. 6 showed 2007 interstate revenues of $148.9 million and a 2007 interstate cost of service of $143.2 million, or an over-recovery of $5.7 million. Chevron contrasts this to interstate revenues of $139.2 million and a 2006 interstate cost of service of $123.6 million, an over-recovery of $15.6 million. It asserts that the $19.6 million increase in SFPP's cost of service between 2006 and 2007 is not justified because there is no indication that SFPP is not recovering its overall cost of service. In addition, Chevron argues that litigation in Docket No. IS05-230-000 established that SFPP's current North Line rate exceeds its 2005 costs and that the rate should be substantially reduced. It further argues that cost of service testimony submitted in Docket No. OR03-5-000, *et al*., establishes that SFPP's West Line rates were substantially over-recovering the relevant costs for the years 2003 through 2007. It thus concludes that there are no grounds for increasing SFPP's West Line rates.

4. On June 18, 2008 SFPP, L.P. filed an answer to the protests pursuant to Rule 343.3(b) of the procedural rules applicable to oil pipeline proceedings and Rule 213 of the Commission's Rules of Procedure.[3] SFPP asserts that its proposed increase is consistent with the Commission's standards, and that in particular its cost increase exceeded the permitted percentage increase for index year at issue. It asserts that the permitted index change was 5.1653 percent and the actual percentage increase in its interstate cost of service was about 15.87 percent. It further asserts that protestants' dollar over-recovery approach has been consistently rejected by the Commission and thus should be rejected here. It further asserts that under Commission precedent cost of service issues that may have been raised in other proceedings are not relevant here.

<u>Discussion</u>

5. The Airlines, Valero, and Chevron are correct that SFPP's West, North, and Sepulveda Line underlying rates are currently subject to refund in the context of an investigation. Therefore the Commission will make the proposed indexed-based increases to those rates subject to refund. However, the Commission will not make the proposed index-based increase to SFPP's Oregon Line rates subject to refund. The Commission has ruled that an index-based increase will be subject to refund only if the

[3] 18.C.F.R § 343.3(b) (2008) and 18 C.F.R. 385.213 (2008), respectively.

underlying rates are subject to refund during an investigation.[4] While SFPP's Oregon Line rates are subject to a complaint, the underlying rates are not subject to refund because they are presumed just and reasonable until the investigation of the complaint against those rates is completed and then only if the Commission requires that new rates be filed. As discussed in *SFPP, L.P.*, if the proposed increase to SFPP's Oregon Line rates is accepted subject to refund, this would extend the refund obligation to shippers that had not filed a complaint against the underlying rates.[5]

6. Chevron's remaining arguments are without merit. As the Commission has stated on numerous occasions, a protest to an index-based filing must establish that the rate increase resulting from such a filing is so substantially in excess of the pipeline's actual cost increases that the rate is unjust and unreasonable.[6] In the instant case, SFPP proposes a 5.2 percent increase in all of its rates. Based on its 2007 FERC Form No. 6, Page 700 cost of service, this would result in a revenue increase of some $7.446 million compared to cost increases between 2006 and 2007 of $19.6 million. As was stated in no less than four recent orders, if the pipeline's actual annual cost increases exceed the amount permitted the annual indexing factor, it is literally impossible to meet the standard contained in Commission's regulations.[7]

7. Moreover, as Chevron's own arguments indicate, SFPP's 2007 over-recovery was some $5.7 million on a 2007 interstate cost of service of $143.9 million based on SFPP's 2007 FERC Form No. 6, or an over-recovery of about 3.98 percent. This is below the standard the Commission applies as a threshold in determining whether there are reasonable grounds to conclude that an oil pipeline's rates are unjust and unreasonable. Finally, the fact that there may have been grounds in prior years, or in case-specific litigation, to conclude that some of SFPP's rates were unjust and unreasonable does not establish that they are unreasonable now. The index methodology is a simplified method

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[4] *See* 18 C.F.R. 342.3(a) (2008), which provides that "a filing under this section proposing to change a rate that is under investigation and subject to refund, must take effect subject to refund." (Emphasis added)

[5] *SFPP, L.P.*, 121 FERC ¶ 61,163, at P 5-6 (2007).

[6] *See* 18.C.F.R. § 343.2(c)(1) (2007) and footnote 5, *infra*.

[7] *See SFPP, L.P.*, 119 FERC ¶ 61,330, at P 4-6 (2007); *Tesoro Refining and Marketing Company v. Calnev Pipe Line, L.L.C.*, 121 FERC ¶ 61,142, at P 6-7 (2007); *BP West Coast Products, et al. v. SFPP*, 121 FERC ¶ 61,195, at P 4, 7 (2007) ; *BP West Coast Products v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 4 (2007), *order on rehearing*, 123 FERC ¶ 61,121, at P 6-8 (2008).

for recovering cost increases and is applied to all the rates the pipeline elects to increase.[8] Chevron's own arguments indicate that SFPP's over-recovery declined by almost $10 million in 2007 compared to 2006. Given this, there is no need to depart from the Commission's established practice and any issues of over-recoveries will be addressed in the proceedings addressing SFPP's North, West, and Sepulveda Line base rates.

The Commission orders:

(A) The Commission accepts SFPP's proposed FERC Tariff Nos. 165, 167, and 168, to be effective July 1, 2008, subject to refund.

(B) The Commission accepts SFPP's proposed FERC Tariff Nos. 166,169, and 170, to be effective July 1, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[8] *Id.*