

124 FERC ¶ 61,102
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 Nos. IS08-389-000
IS08-28-000

ORDER ON TARIFF FILING

(Issued July 29, 2008)

1. On June 30, 2008, SFPP, L.P. (SFPP) filed FERC Tariff No. 173 to decrease its East Line rates¹ pursuant to the Commission's oil pipeline indexing methodology,² to be effective August 1, 2008. The filing is protested. The Commission accepts FERC Tariff No. 173, to become effective August 1, 2008, subject to suspension and refund, and the outcome of the ongoing settlement proceedings in Docket No. IS08-28-000. Docket Nos. IS08-389-000 and IS08-28-000 are consolidated.

SFPP's Filing

2. As noted, SFPP is making the instant filing to reduce its East Line rates which is allowed pursuant to the Commission's oil pipeline indexing regulations. The proposed FERC Tariff No. 173 decreases all of SFPP's interstate East Line rates from El Paso and Diamond Junction, both in El Paso County, Texas, to Lordsburg, Hidalgo County, New Mexico; Tuscon, Pima County, Arizona; and Phoenix, Maricopa County, Arizona. SFPP

¹ FERC Tariff No. 173 cancels FERC Tariff No. 162, effective August 1, 2008.

² 18 C.F.R. § 342.3(a) (2008), *Rate changes*. A rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level established by paragraph (d) of this section, upon compliance with the applicable filing and notice requirements and with paragraph (b) of this section. A filing under this section proposing to change a rate that is under investigation and subject to refund, must take effect subject to refund.

reduced the rates from the two origin points by 9.38 percent, 9.56 percent and 9.63 percent to Lordsburg, Tuscon and Phoenix, respectively.

3. FERC Tariff No. 173 also cancels FERC Tariff No. 162, which was filed in Docket No. IS08-28-000 on October 30, 2007. FERC Tariff No. 162, which increased SFPP's East Line rates effective December 1, 2007, was filed to recover a portion of the construction and increased operating costs related to completion of the Phase II expansion of the East Line. FERC Tariff No. 162's rate increase was protested. In a November 29, 2007 order,³ the Commission accepted and suspended FERC Tariff No. 162, subject to refund, and as requested by the parties and consistent with Commission regulations,⁴ set the Docket No. IS08-28-000 filing for negotiation before a settlement judge. The Commission also set Docket No. IS08-28-000 for hearing, but held the hearing in abeyance pending proceedings before the settlement judge. SFPP and the shipper parties currently are in settlement negotiations.

Interventions and Protests

4. On July 15, 2008, an intervention was filed by BP West Coast Products LLC and Exxon Mobil Oil Corporation. On July 15, 2008, protests were filed by ConocoPhillips Company, Navajo Refining Company, L.L.C., Western Refining Company, L.P., and jointly by Chevron Products Company, Southwest Airlines Co., and Valero Marketing and Supply Company (collectively, the protestants). The protestants make many of the same assertions, which are briefly summarized here. Although they welcome the rate reduction, the protestants believe that a greater reduction is required to bring the East Line rates down to just and reasonable levels. The protestants state that SFPP has not provided sufficient data to demonstrate that the proposed rates are supported by a cost-of-service calculated in accordance with the Commission's regulations. Further, because none of the cost-of-service and rate design issues in Docket No. IS08-28-000 have been finally adjudicated and/or resolved by the Commission, the protestants state the rates included in FERC Tariff No. 162 cannot be considered to have been shown to be just and reasonable, and hence, no valid claim can be made that the rate reductions in FERC Tariff No. 173 are just and reasonable. Therefore, the protestants request the Commission accept and suspend FERC Tariff No. 173, make the rates subject to refund and investigation, and consolidate the instant docket with the ongoing settlement discussions in Docket No. IS08-28-000.

³ SFPP, L.P. 121 FERC ¶ 61,211 (2007), issued November 29, 2007.

⁴ 18 C.F.R. § 343.5 (2008).

Discussion

5. SFPP simultaneously submitted a filing to increase its West Line rates,⁵ stating in its transmittal letter concerning its East Line expansion (Docket No. IS08-28-000), “This expansion increased the East Line’s capacity to Phoenix from 99,000 barrels per day (“bpd”) to 143,000 bpd. In response to this expansion, deliveries to Phoenix through the East Line have increased significantly, rising from an average of 95,170 bpd in 2007 to 121,330 bpd in the first five months of 2008.” SFPP did not file any cost of service data. As inferred by the Protestants, the proposed rate reductions appear to be the result of SFPP using the same cost of service filed in Docket No. IS08-28-000 and the increased 2008 volumes. The underlying rates are currently subject to refund in the context of an investigation. The Commission has ruled that a proposed change to a rate that is under investigation and subject to refund, must take effect subject to refund.⁶ The Commission will consolidate the instant docket with the ongoing proceeding involving the east Line rates given the commonality of many of the cost of service issues in the two proceedings. As the rate decrease is beneficial to shippers, the proposed rates in FERC Tariff No. 173 are accepted and suspended, subject to refund, effective August 1, 2008. The Commission clarifies that the consolidation does not affect the existing refund condition in Docket No. IS08-28-000, but will take no further action in the instant docket pending the outcome of negotiations in the consolidated dockets.

The Commission orders:

(A) The Commission accepts and suspends SFPP’s proposed FERC Tariff No. 173, to be effective August 1, 2008, subject to refund.

(B) The Commission consolidates Docket No. IS08-389-000 with SFPP’s previous East Line rate filing in Docket No. IS08-28-000.

⁵ Docket No. IS08-390-000, filed June 30, 2008.

⁶ See footnote 2.

(C) The Commission holds in abeyance further action in Docket No. IS08-389-000, pending the results of the ongoing settlement negotiations in dockets consolidated by this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.