

129 FERC ¶ 61,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

SFPP, L.P.

Docket No. IS09-437-000

ORDER ON CERTIFIED QUESTION

(Issued October 22, 2009)

1. On September 24, 2009, the Presiding Administrative Law Judge (ALJ) certified a question to the Commission, pursuant to Rule 714 of the Commission's Rules of Practice and Procedure.<sup>1</sup> The question certified to the Commission was:

[W]hether [in Paragraph 20 of the order setting this proceeding for hearing] the Commission intended to modify the filed base and test periods, what these periods will be, whether the effective date will remain January 1, 2010 and whether the hearing should be held in abeyance.<sup>2</sup>

2. As discussed below, the Commission clarifies that it did not intend to alter the base period, which ended June 30, 2009, and the test period, which will end March 31, 2010, both of which were established in SFPP L.P.'s (SFPP) filing. The Commission also confirms that the effective date for the tariff at issue will continue to be January 1, 2010. As a result, the current procedural schedule should not be revised.

**Background**

3. On July 31, 2009, SFPP submitted FERC Tariff No. 182 with a cost-of-service (COS) justification that proposed rate increases for all petroleum products movements on SFPP's East Line from El Paso or Diamond Junction, Texas, to Lordsburg, New Mexico, Tucson, Arizona, and Phoenix, Arizona. SFPP proposed an effective date of September 1, 2009, for the tariff. Several shippers protested the filing, arguing that SFPP had not provided adequate support for the filing. The Commission accepted and

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<sup>1</sup> 18 C.F.R. § 385.714 (2009). *SFPP, L.P.*, 128 FERC ¶ 63,019 (2009) (ALJ's Certification Order).

<sup>2</sup> *SFPP, L.P.*, 128 FERC ¶ 63,019, at P 1 (2009).

suspended the tariff to become effective January 1, 2010, subject to refund, and set the matter for hearing.<sup>3</sup>

4. At the September 16, 2009 prehearing conference, Commission Trial Staff (Trial Staff) asserted that Paragraph 20 of the Hearing Order is not clear and asked that a question be certified to the Commission to obtain clarification. Trial Staff submitted a memorandum with proposed language on the question to be certified to the Commission.<sup>4</sup> SFPP also submitted a statement of its views.<sup>5</sup>

### **Discussion**

5. Trial Staff contended that the language of Paragraph 20 is not clear, especially whether the Commission intended to refer to June 30, 2009, as a base period instead of a test period. Trial Staff suggested that the paragraph appeared to raise the possibility of extending the base period to December 31, 2009. According to Trial Staff, if the Commission was referring to base periods in that paragraph, this would raise additional issues, including that the scheduled hearing would end before the end of the new test period so that the current procedural schedule would not be appropriate.

6. SFPP did not take a position concerning the use of the terms “base period” or “test period.” However, it argued that the Commission did not intend to alter the base and test periods that SFPP established in its filing. SFPP cited section 346.2(a)(i) and (ii) of the Commission’s regulations,<sup>6</sup> stating that they require the carrier to establish base and test periods in its filing. While it disagreed with the four-month suspension imposed by the Commission, SFPP contended that the January 1, 2010 effective date should not be altered.

7. The ALJ also cited the Commission’s regulations and pointed out that the Commission did not find specific fault with SFPP’s filing. She asked the Commission to clarify the intent of Paragraph 20 of the Hearing Order.

8. The Commission clarifies that, in Paragraph 20 of the Hearing Order, it did not intend to alter the test and base periods established in SFPP’s filing, which conformed to the Commission’s regulations. The base period ended June 30, 2009, and the test period

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<sup>3</sup> *SFPP, L.P.*, 128 FERC ¶ 61,214 (2009) (Hearing Order).

<sup>4</sup> Trial Staff’s memorandum is attached as Attachment B to the ALJ’s Certification Order.

<sup>5</sup> SFPP’s statement is attached as Attachment C to the ALJ’s Certification Order.

<sup>6</sup> 18 C.F.R. § 346.2(a)(i) and (ii) (2009).

ends March 31, 2010. As the Commission stated in Paragraph 19 of the Hearing Order, a fourth-month suspension will sufficiently mitigate the effects of SFPP's proposed rate increase in light of concerns about the state of the economy. Accordingly, no modification of the procedural schedule for this matter is necessary.

The Commission orders:

The certified question is resolved as discussed above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.