

137 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

SFPP, L.P.

Docket Nos. IS11-585-000
IS11-444-000
(not consolidated)

ORDER DENYING PROTESTS AND MOTIONS TO CONSOLIDATE

(Issued October 20, 2011)

1. On September 20, 2011, SFPP, L.P. (SFPP) filed, pursuant to section 341.13(b) of the Commission's regulations,¹ notice withdrawing its suspended tariffs for its East, North, Oregon, and Sepulveda Lines and its Watson Volume Deficiency Charge, which tariffs reflected SFPP's index-based rate increase for 2011 filed in Docket No. IS11-444-000 (2011 Index Rates). Subsequently, multiple shippers filed motions to intervene, protests, and motions to consolidate Docket Nos. IS11-585-000 and IS11-444-000. The protests challenge the index ceiling levels listed in SFPP's tariff rates summary table, which was attached to SFPP's withdrawal notice. In this order, the Commission denies the protests and motions to consolidate.

I. Background

2. On May 27, 2011, in Docket No. IS11-444-000, SFPP filed FERC Tariff Nos. 194.1.0, 195.1.0, 196.3.0, 197.1.0, 198.3.0, 199.1.0, 200.1.0, and 201.1.0 to implement an index-based rate increase under section 342.3 of the Commission's regulations.² Multiple shippers protested SFPP's tariff filing. By order dated June 30, 2011, the Commission accepted and suspended SFPP's tariffs to become

¹ 18 C.F.R. § 341.13(b) (2011).

² *Id.* § 342.3.

effective July 1, 2011, subject to refund,³ and established hearing and settlement judge procedures.

3. On July 8, 2011, in Docket No. IS11-524-000, SFPP filed suspension notice tariffs as required by section 341.4 of the Commission's regulations.⁴

4. On September 20, 2011, in Docket No. IS11-585-000, SFPP filed FERC Tariff Nos. 194.3.0, 195.3.0, 197.3.0, 199.3.0, 200.3.0, and 201.3.0 withdrawing, except with respect to SFPP's West Line, its 2011 Index Rates. SFPP withdrew these tariffs pursuant to section 341.13(b) of the Commission's regulations,⁵ which governs withdrawals of tariffs subject to investigation. SFPP states in its withdrawal notice that under section 341.13(b)(2), by withdrawing the tariffs that reflected the 2011 index rate increase, the previous tariff rates (i.e., the rates that were in effect on June 30, 2011) are reinstated, effective immediately. SFPP further noted pursuant to section 341.13(b)(1), SFPP's withdrawal of the tariffs terminates any proceedings related to the withdrawn tariffs. SFPP also acknowledged that in compliance with section 341.13(b)(3), any amounts collected under the withdrawn tariffs in excess of the reinstated tariff rates shall be refunded with interest within 30 days of the withdrawal. SFPP included with its filing a summary table of SFPP tariff rates. The summary table includes SFPP's 2010 and 2011 index ceilings, the rates in effect on June 30, 2011, the currently effective indexed West Line rates, and the reinstated rates for the remaining SFPP interstate movements, i.e., the East, North, Oregon, and Sepulveda Lines and the Watson Station Charge.

5. Subsequently, in Docket No. IS11-585-000 multiple SFPP shippers filed substantively identical protests and motions to consolidate. Specifically, on October 3, 2011 and October 5, 2011, the following shippers or groups of shippers filed Motions to Intervene, Protests, and Motions to Consolidate in Docket Nos. IS11-585-000 and IS11-444-000: (i) BP West Coast Products, LLC, Holly Frontier Refining & Marketing Co., LLC, Navajo Refining Co., L.L.C., Valero Marketing and Supply Co., and Western Refining Co., L.P.; (ii) ConocoPhillips Co.; (iii) the Airlines⁶ and Chevron Products Company; and (iv) Tesoro Refining and Marketing Company (collectively referred to as the Shipper Protestants).

³ *SFPP, L.P.*, 135 FERC ¶ 61,274 (2011).

⁴ 18 C.F.R. § 341.4(f) (2011).

⁵ *Id.* § 341.13(b).

⁶ The Airlines are Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., and U.S. Airways Inc.

6. None of the Shipper Protestants challenge SFPP's withdrawal of its 2011 Index Rate tariffs. Rather, the Shipper Protestants generally protest the ceiling levels set forth in the tariff rates summary table attached to SFPP's withdrawal notice. Shipper Protestants urge the Commission to reject SFPP's ceiling levels arguing the ceiling levels will allow rate increases that are unjust, unreasonable, and unlawful under

sections 1(5), 5, 8, 9, 13 and 15 of the Interstate Commerce Act.⁷ Shipper Protestants ask the Commission to order SFPP to reinstate its prior ceiling levels. In the alternative, Shipper Protestants request that the Commission order a hearing to determine whether rates allowed by the increased ceiling levels would be just and reasonable.

7. Shipper Protestants also request that the Commission consolidate Docket Nos. IS11-585-000 and IS11-444-000, stating that both dockets involve the justification, or lack of justification, for SFPP's 2011 indexed increase in tariff rates and ceiling levels.

8. On October 11, 2011, SFPP filed an answer to the Motions to Intervene, Consolidate and Protests. SFPP notes that its September 20, 2011 withdrawal filing withdrew all of its interstate rates it had increased pursuant to the Commission's 2011 index and the associated suspension notices, except for those rates related to SFPP's West Line. SFPP further notes that the Shipper Protestants did not challenge the withdrawal of these tariffs. Rather, SFPP points out, they challenge the application of the 2011 index to derive SFPP's ceiling levels, alleging that the increased ceiling levels would allow for future rate increases that are substantially in excess of the cost increases incurred by SFPP that such rates would be unjust and unreasonable. SFPP states that the protests should be dismissed because they do not meet the Commission's section 343.2(c) requirements for filing a protest in an oil pipeline proceeding as the protests do not challenge a rate. Further, SFPP states that Shipper Protestants are not aggrieved by a ceiling level as no shipper pays a "ceiling level." Last, SFPP urges the Commission to reject the motion to consolidate.

II. Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before issuance of this order are granted.

10. First, the Commission affirms the procedural status of these two proceedings, Docket Nos. IS11-585-000 and IS11-444-000. By operation of section 341.13(b) of the Commission's regulations, SFPP's withdrawal of all of its 2011 Index Rate tariffs except the West Line tariffs, became effective on September 20, 2011, the date of SFPP's

⁷ 49 U.S.C. app. §§ 1(5), 5, 8, 9, 13, and 15.

filing.⁸ Accordingly, the previous tariff rates (i.e., SFPP's June 30, 2011 rates) were reinstated on September 20, 2011. Further, as of September 20, 2011, the hearing proceeding in Docket No. IS11-444-000 terminated with respect to SFPP's East, North, Oregon, and Sepulveda Lines and the Watson Station Charge.

11. Next, the Commission denies the protests filed in this case. The Commission's regulations governing withdrawal of oil tariffs that are subject to investigation give the filing pipeline the automatic right to withdraw tariffs; thus, there is no basis for protesting a tariff withdrawal.

12. Additionally, section 343.2(c) of the Commission's regulations provides that a party may protest: (1) rates established under sections 342.3 or 342.4 of the Commission's regulations, or (2) non-rate matters, which include operations or practices of the pipeline, other than rates. Shipper Protestants only challenge SFPP's ceiling levels. Ceiling levels, which are calculated annually pursuant to the Commission's indexing regulations,⁹ are not rates,¹⁰ nor are they a non-rate operation or practice. In sum, Shipper Protestants are not aggrieved by, and thus have no basis for protesting, the mere calculation of SFPP's ceiling levels. Should SFPP at some future point file a tariff to raise rates above its June 30, 2011 rate levels, the filing may be protested at that time. For the foregoing reasons, the protests are denied.

13. Because the protests are denied and Docket No. IS11-585-000 is terminated by operation of law as discussed above, the Shipper Protestants' Motions to Consolidate are moot.

⁸ Section 341.13(b) provides: "A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by a notice with the Commission Such withdrawal shall be effective immediately upon the submission of the notice"

⁹ See 18 C.F.R. § 342.3(d) (2011). Section 342.3(d)(1) requires carriers to compute the ceiling level for each index year by multiplying the previous index year's ceiling level by the most recent index published by the Commission. Section 342.3(d)(3) specifies that "a carrier must compute the ceiling level each index year without regard to the actual rates filed pursuant to this section."

¹⁰ See *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,985, at 30,949 (1993), where the Commission stated: "the index establishes a *ceiling* on rates – it does not establish the rate itself." (Emphasis in original).

The Commission orders:

The Shipper Protestants' protests and motions to consolidate are denied as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.