

147 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

SFPP, L.P.

Docket No. IS13-416-001

ORDER ON REHEARING

(Issued April 3, 2014)

1. On July 29, 2013, BP West Coast Products LLC, and US Airways, Inc. (collectively, BP/US Airways) filed a joint request for rehearing of the Commission's June 2013 Order which accepted, subject to refund and the outcome of certain ongoing proceedings, SFPP, L.P.'s (SFPP) filing to increase its index-based rates and ceiling levels (2013 Index Filing).¹ As explained below, the Commission denies the request for rehearing.

Background

2. Oil pipelines may increase their ceiling levels every July 1 to reflect the most recent index adjustment published by the Commission.² A pipeline may, at its discretion, also increase its rates pursuant to the Commission's indexing regulations up to these new ceiling levels.³ A rate that is not increased to the ceiling level in a given year may nonetheless be increased to the ceiling level at a later time.⁴

3. On May 31, 2013, SFPP's submitted its 2013 Index Filing, which increased its index ceiling levels by 4.5923 percent consistent with the 2013 index adjustment

¹ *SFPP, L.P.*, 143 FERC ¶ 61,297 (2013) (June 2013 Order).

² 18 C.F.R. § 342.3(d) (2013).

³ *Id.* § 342.3(a).

⁴ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act*, Order No. 561, FERC Stats. & Regs. [Regulations Preambles 1991-1996 ¶ 30,985, at 30,954 (1993)].

published by the Commission. Pursuant to the Commission's indexing regulations, SFPP also proposed various rate increases. Among these other rate increases, SFPP proposed to raise its West Line rates by approximately 7.77 percent. This increase raised the West Line rates, which had previously been below the index ceiling level, up to the new index ceiling level.⁵ In the June 2013 Order, the Commission accepted SFPP's proposed rate increase subject to refund and the outcome of ongoing proceedings relating to SFPP's existing rates.

BP/US Airways Rehearing Request

4. On rehearing, BP/US Airways argue that the Commission either should have rejected SFPP's proposed West Line increase or set the increase for hearing. They assert that the Commission failed to follow the percentage comparison test when the Commission compared (a) SFPP's 2013 West Line index rate increase (7.77 percent) to (b) to the cost decline recorded in SFPP's 2013 FERC Form No. 6 Page 700 filing (0.5651 percent). They assert that SFPP's West Line rates were below the index ceiling because SFPP declined to raise its rates up to the ceiling level in its 2012 index filing. Accordingly, BP/US Airways argue that for the portion of SFPP's 7.77 percent 2013 index rate increase which exceeds 4.5923 percent (the percent increase to SFPP's index ceiling for 2013), the Commission should apply the percentage comparison test as though SFPP had in 2012 increased its rates up to the ceiling and evaluate such a rate increase against the cost changes recorded on SFPP's 2012 FERC Form No. 6 Page 700.

Discussion

5. The Commission denies rehearing, and we affirm our decision in the June 2013 Order not to investigate SFPP's proposed 2013 index rate increase. Pursuant to the Commission's indexing regulations, protests must allege reasonable grounds for asserting either (a) the proposed index rate "violates the applicable ceiling level" or (b) the proposed index "rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable..."⁶

6. On rehearing, the BP/US Airways do not allege that SFPP has increased its rates above the ceiling levels established by the Commission's indexing regulations. The ceiling levels are cumulative, and the ceiling levels change with the index independent of

⁵ In its 2012 Index Filing, SFPP's index ceiling increased by approximately 8.6 percent whereas SFPP only increased its West Line rates by approximately 5.4 percent. *SFPP, L.P.*, 140 FERC ¶ 61,106 (2012), *reh'g denied*, 143 FERC ¶ 61,141 (2013).

⁶ 18 C.F.R. § 343.2(c)(1).

SFPP's decision to change its rates. As the June 2013 Order explained, although SFPP declined to increase its West Line rates to the ceiling level during the prior year, it can raise them to the ceiling level this year.⁷

7. BP/US Airways also fail to demonstrate that the West Line rate increases proposed by SFPP are “so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable.”⁸ The percentage comparison test is the sole means by which the Commission determines whether a protest meets the “so substantially in excess” standard articulated by the indexing regulations.⁹ The percentage comparison evaluates whether a proposed rate increase in a given index year is “substantially in excess” to the cost changes recorded in the Page 700 corresponding to that index year. The percentage comparison test does not contemplate the evaluation of prior period cost changes or rate increases as proposed by BP/US Airways. Accordingly, the June 2013 Order applied the percentage comparison test and determined that SFPP's 0.5651 percent decrease in costs as recorded in the applicable Page 700¹⁰ combined with the proposed West Line index-based rate increase of approximately 7.77 percent results in divergence of approximately 8.35 percent. As stated in the June 2013 Order, the Commission does

⁷ June 30 Order, 143 FERC ¶ 61,297 at P 9 (citing Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,954).

⁸ 18 C.F.R. § 343.2(c)(1).

⁹ *E.g., Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010).

¹⁰ June 30 Order, 143 FERC ¶ 61,297 at P 11. On Line 10 of SFPP's 2012 Form No. 6, Page 700, SFPP reports a 2012 Total Cost of Service of \$141,467,154 and a 2011 Total Cost of Service of \$142,266,554. Thus, the decline in cost is 0.5651 percent (142,266,554/141,467,154). In a typographical error, the June 2013 Order referred to a cost “increase” rather than a cost “decrease.” June 2013 Order, 143 FERC ¶ 61,297 at P 11. BP/US Airways note this error, but do not cite it as a basis for changing the holding of the June 2013 Order. BP/US Airways Rehearing at 2 n.2. The typographical error did not affect the Commission's calculations pursuant to the percentage comparison test.

not find this index rate increase to be “substantially in excess” of actual cost changes.¹¹ Rehearing is denied.

The Commission orders:

Rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹¹ BP/US Airways attempt to rely upon *SFPP*, 117 FERC ¶ 61,271 (2006), *reh’g denied*, *SFPP, L.P.*, 120 FERC ¶ 61,245 (2007) and *SFPP, L.P.*, Opinion No. 511-A, 137 FERC ¶ 61,220, at P 411 (2011). However, these cases involve situations in which, due to a cost-of-service rate case, the pipeline’s rates already incorporated actual cost changes from the prior year. That is not the case here.