

149 FERC ¶ 61,097  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

HollyFrontier Refining & Marketing LLC,  
Southwest Airlines Co.,  
Tesoro Refining and Marketing Company,  
US Airways, Inc.,  
Valero Marketing and Supply Company, and  
Western Refining Company, L.P.

Docket No. OR14-35-000

v.  
SFPP, L.P.

Chevron Products Company

Docket No. OR14-36-000

v.  
SFPP, L.P.

ORDER ON COMPLAINTS

(Issued October 31, 2014)

1. On June 27, 2014, Joint Complainants<sup>1</sup> filed a complaint pursuant to sections 343.2 and 206 of the Commission's regulations and the Interstate Commerce Act<sup>2</sup> challenging the 2012 index rate increases for SFPP, L.P.'s (SFPP) East and West Lines and the 2013 index rate increases for SFPP's East, West, North, Oregon, and Sepulveda Lines. On June 30, 2014, Chevron Products Company (Chevron) filed a similar complaint against SFPP's 2012 and 2013 index rate increases. As discussed further below, the Commission will hold these proceedings in abeyance pending the resolution of other ongoing proceedings involving SFPP's rates.

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<sup>1</sup> HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Tesoro Refining and Marketing Company, US Airways, Inc., Valero Marketing and Supply Company, and Western Refining Company, L.P.

<sup>2</sup> 49 U.S.C. app. § 1 *et seq.*

## I. Background

2. SFPP is a common carrier oil pipeline that transports refined petroleum products in interstate commerce in Texas, New Mexico, Arizona, California, Nevada, and Oregon. SFPP's West Line originates at Watson Station and East Hynes near Los Angeles, California and delivers to Phoenix, Arizona. The Sepulveda Line connects Sepulveda Junction with Watson Station for further transportation on the West Line. The East Line originates in El Paso and Diamond Junction, Texas and delivers to Lordsburg, New Mexico, and Tucson and Phoenix, Arizona. The North Line originates at Richmond and Concord, California, and delivers to the Reno, Nevada area. Finally, the Oregon Line originates at Portland, Oregon and delivers to Eugene, Oregon.

3. Pursuant to section 342.3 of the Commission regulations, oil pipelines may increase their ceiling levels every July 1 to reflect the most recent index adjustment published by the Commission.<sup>3</sup> A pipeline may, at its discretion, also increase its rates pursuant to the Commission's indexing regulations up to these new ceiling levels.<sup>4</sup> 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.<sup>5</sup>

4. On May 31, 2012, SFPP filed its 2012 index rate increase on its East Line of 5.4 percent, which became effective July 1, 2012.<sup>6</sup> On July 5, 2012, SFPP filed its 2012 index increase on its West Line of 5.4 percent which became effective August 5, 2012.<sup>7</sup>

5. SFPP also filed two 2013 index increases. On May 31, 2013, SFPP filed its 2013 index based rate increases for its East, West, North, Oregon, and Sepulveda Lines to be effective July 1, 2013. Because some of SFPP's rates were below the ceiling levels, SFPP increased rates on some of its systems by more than the 2013 index adjustment of 4.49 percent. Thus, SFPP proposed to increase its West Line rates by 7.7 percent, East Line rates by 4.49 percent, the North and Oregon Line rates by 9.43 percent, and the

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<sup>3</sup> 18 C.F.R. § 342.3(d) (2014).

<sup>4</sup> *Id.* § 342.3(a).

<sup>5</sup> *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,954 (1993).

<sup>6</sup> *SFPP L.P.*, 139 FERC ¶ 61,267 (2012), *reh'g denied*, 143 FERC ¶ 61,140, at P 6 (2013).

<sup>7</sup> *SFPP, L.P.*, 140 FERC ¶ 61,106 (2012), *reh'g denied*, 143 FERC ¶ 61,141 (2013).

Sepulveda Line rates by 8.6 percent. These increases became effective July 1, 2013.<sup>8</sup> On July 3, 2013, SFPP filed for an additional 1.5 percent index-based rate increase for its West Line rates, which became effective on August 3, 2013.<sup>9</sup>

## II. Complaints

6. On June 27, 2014, Joint Complainants filed a complaint against the 2012 index rate increases for SFPP's East Line (Tariff No. 197.4.0) and West Line (Tariff Nos. 196.9.0 and 198.9.0) and the 2013 increases for SFPP's East Line (Tariff No. 197.6.0) and West Line (Tariff Nos. 196.10.0, 198.10.0, 196.12.0 and 198.12.0), North Line (Tariff No. 199.4.0), Oregon Line (Tariff No. 200.4.0), and Sepulveda Line (Tariff No. 195.4.0). On June 30, 2014, Chevron also filed a complaint raising the same objections to SFPP's 2012 and 2013 index rate increases.

7. The complaints filed by Joint Complainants and Chevron (together, Complainants) raise nearly identical issues. Complainants allege that SFPP's 2012 and 2013 index rate increases are "so substantially in excess of the actual cost increases incurred by the carrier that the rate[s] [are] unjust and unreasonable."<sup>10</sup> Complainants acknowledge that both the 2012 and 2013 index rate filings were protested by shippers and that the Commission accepted the increases after applying the "percentage comparison" test. However, Complainants state that whereas the Commission strictly applies the percentage comparison test to protests, the Commission has held that other factors, such as the substantially exacerbate test, are considered when parties file a complaint.<sup>11</sup>

8. Complainants allege that SFPP's index-based rate increases for 2012 and 2013 should be rejected due to the substantially exacerbate test because, they allege, (1) SFPP was *substantially* over-recovering its cost of service at the time of the 2012 and 2013 index filings, and (2) that the index increases *substantially* exacerbated SFPP's over-recovery. For the year 2011 which was prior to SFPP's 2012 index filing, Complainants state that SFPP's Page 700 reported revenues which exceeded its cost of service by

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<sup>8</sup> *SFPP, L.P.*, 143 FERC ¶ 61,297 (2013), *order on reh'g*, 147 FERC ¶ 61,012 (2014).

<sup>9</sup> *SFPP, L.P.*, 144 FERC ¶ 61,091 (2013).

<sup>10</sup> Joint Complainants at 11 (citing 18 C.F.R. § 343.2(c)(1) (2014)).

<sup>11</sup> *Id.* (citing *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141 (2007); *Tesoro Refining and Marketing Co. v. Calnev Pipe Line, L.L.C.*, 121 FERC ¶ 61,142 (2007)).

13.11 percent.<sup>12</sup> Complainants estimate that SFPP's 2012 index rate increase of 5.4 percent for its West and East Lines would increase the pipeline's revenue by \$6.9 million, thus "substantially exacerbating" SFPP's over-recovery.

9. Similarly, Complainants state that SFPP's 2012 Form No. 6, Page 700 reported a cost-of-service over-recovery of \$14,323,805 or a 10.13 percent over-recovery.<sup>13</sup> They estimate that SFPP's proposed 2012 index rate increases will increase SFPP's interstate revenues by at least \$7.15 million. Thus, Complainants request that the Commission (i) reject SFPP's index-based rate increases for the 2012 and 2013 index years and (ii) order SFPP to refund the revenue associated with these index-based rate increases.

### **III. Notice and Answer to the Complaints**

10. Notices of Joint Shippers' and Chevron's complaints issued on June 30, 2014. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2014)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before issuance of this order are granted. On July 28, 2014, SFPP filed a timely answer to the complaints.

11. In its answer, SFPP asserts the percentage comparison test is the Commission's primary test for evaluating index filings, and that 2012 and 2013 index rate increases satisfy the percentage comparison test. SFPP states it is not clear that the Commission should apply substantial exacerbation test in this case. Further, SFPP states that the Complainants failed to show the substantial exacerbation test supports rejection of the 2012 and 2013 index filings. SFPP claims that its over-recoveries were not "substantial" and as a result, the index increases did not substantially exacerbate the alleged over-recovery. In support, SFPP contends that its Page 700 interstate operating revenues decreased by 1.70 percent between 2011 and 2012.<sup>14</sup> Similarly, SFPP's Page 700 interstate operating revenues only increased by 1.26 percent from 2012 to 2013.<sup>15</sup> If the Commission does not reject the complaints, SFPP argues the Commission should hold

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<sup>12</sup> Joint Complainants at 13. Specifically, Joint complainants report that on SFPP's 2011 Form No. 6, SFPP reported 2011 interstate revenues of \$158,480,884 and interstate cost-of-service of \$140,112,765.

<sup>13</sup> *Id.* at 14-15. Specifically, SFPP's 2012 Form No. 6, Page 700 reported interstate revenues of \$155,790,959 in contrast to an interstate cost-of-service of \$141,467,154. *Id.*

<sup>14</sup> SFPP Answer at 20.

<sup>15</sup> *Id.*

the complaints in abeyance pending the outcome of ongoing Commission proceedings related to SFPP's underlying rates.

12. SFPP also argues the Complainants failed to accurately quantify damages as required by Rule 206(b)(4). SFPP states that Complainants estimated damages for each shipper based upon shipper volumes used to calculate refunds in Docket No. IS08-390 for the period ending January 2012 and similar data from Docket No. IS09-437. SFPP contends these estimates likely contain inaccuracies because it is incorrect to assume individual shipper volumes change at a uniform, constant rate. Instead, SFPP argues the Complainants could have used the invoiced volume data that each shipper receives from SFPP.

#### **IV. Commission Determination**

13. The complaints filed by Chevron and Joint Complainants are held in abeyance pending further order of the Commission. SFPP's current rates are subject to several pending matters before the Commission,<sup>16</sup> and refunds in those proceedings may affect the pipeline's revenues for some of the years which Complainants allege the 2012 and 2013 index rate increases exacerbated a pre-existing over-recovery. Thus, the Commission holds these complaints in abeyance as the Commission resolves the other pending rate issues related to SFPP's filing.

#### **The Commission orders:**

The complaints filed by Chevron and Joint Complainants are held in abeyance pending further order of the Commission.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>16</sup> *E.g.*, Docket Nos. IS08-390, IS09-437, and IS11-444.