154 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Chevron Products Company, HollyFrontier Refining & Marketing LLC, US Airways, Inc., Valero Marketing and Supply Company, and Western Refining Company, L.P.

v.

SFPP, L.P.

Docket No. OR16-6-000

ORDER ON COMPLAINT ESTABLISHING HEARING

(Issued March 23, 2016)

1. On December 4, 2015, Joint Complainants[1] filed a complaint against SFPP, L.P., (SFPP) pursuant to section 13 of the Interstate Commerce Act (ICA)[2] and section 206 of Commission regulations[3] contending that SFPP's East Line[4] rates in Tariff No. 197.8.0 are not just and reasonable. As discussed below, the Commission will set the complaint for hearing procedures.

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[1] Joint Complainants include Chevron Products Company; HollyFrontier Refining & Marketing LLC; US Airways, Inc.; Valero Marketing and Supply Company; and Western Refining Company, L.P.

[2] 49 U.S.C. App. § 13(1).

[3] 18 C.F.R § 385.206 (2015).

[4] The East Line originates in El Paso, Texas, moving westward to Lordsburg, New Mexico; Tucson, Arizona; and Phoenix, Arizona.

I. The Complaint and SFPP's Answer

2. The Joint Complainants estimate that SFPP's East Line 2014 revenues exceed its costs by 47 percent. Because SFPP's Form No. 6 page 700 only includes company-wide data[5] and not data by segment, Joint Complainants explain that they must rely upon estimates to assess potential over-recoveries on SFPP's East Line. In deriving this estimate, the Joint Complainants rely upon a combination of (a) 2014 and 2015 data in SFPP's Form No. 6 filings and (b) 2009 data from SFPP's compliance filing in Docket No. IS09-437.[6]

3. Public notice of the complaint was issued December 4, 2015, and SFPP filed an answer on January 4, 2015.[7] In its answer, SFPP asserts that the Commission should hold this proceeding in abeyance pending the outcome of other ongoing proceedings involving SFPP's East Line rates, including the OR11 Complaints,[8] the OR14 Indexing Complaints,[9] and ongoing compliance proceedings in Docket Nos. IS09-437.[10] SFPP asserts that once the ongoing matters are resolved and SFPP's East Line rates are adjusted accordingly, the apparent gap between SFPP's 2014 costs and 2014 rate levels may

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[5] SFPP transports refined petroleum products over four pipeline separate segments, the West, East, North and Oregon Lines. On a system-wide basis (including every segment), page 700 of SFPP's Form No. 6 for 2014 shows SFPP's revenues exceeding its cost-of-service by 20 percent.

[6] The methodology for deriving the estimate is provided in the affidavit of Daniel Arthur in Appendix D of the complaint.

[7] Rule 385.213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to answers unless otherwise ordered by the decisional authority. Accordingly, the Commission rejects the Joint Complainants' answer filed in response to SFPP's Answer and all subsequent answers.

[8] The OR11 Complaints were filed in Docket Nos. OR11-13, OR11-16, and OR11-18.

[9] The OR14 Indexing Complaints were filed in Docket Nos. OR14-35 and OR14-36.

[10] SFPP adds that these and other ongoing matters could also affect policy determinations involving the calculation of SFPP's East Line costs. For example, SFPP states that the Commission's income tax allowance policy is currently pending review before the United States Court of Appeals for the District of Columbia Circuit.

disappear.[11] SFPP also criticizes the estimates used by the Joint Complainants, and SFPP states that once the other ongoing proceedings related to SFPP's East Line rates have been resolved, SFPP could submit a segmented cost-of-service for the East Line.

II. Discussion

4. The Commission finds the Joint Complainants have presented a *prima facie* case supporting their claims that SFPP's East Line rates are not just and reasonable. Because the complaint raises issues of material fact, the Commission will set the complaint for hearing procedures.

5. A complaint against a pipeline's base rates must demonstrate that the "discrepancy between the actual cost experienced by the pipeline and the existing rate is so substantial that the existing rate level is not just and reasonable."[12] The Joint Complainants have provided estimates that SFPP's 2014 East Line revenues exceed East Line costs by 47 percent. Although this estimate relies upon some 2009 data to supplement SFPP's company-wide 2014 data reported on page 700, SFPP has presented no evidence that the use of 2009 data has significantly skewed the Joint Complainants' estimates of 2014 East Line costs. SFPP's Answer merely responds with the vague and unsubstantiated assertion that this data "may" have changed since 2009.[13] Accordingly, the Commission concludes that the Joint Complainants estimate sufficiently establishes a *prima facie* case warranting further investigation of SFPP's East Line rates.

6. The Commission also denies SFPP's request to hold the proceeding in abeyance. Whether to hold a matter in abeyance is a matter for the Commission's discretion,[14] and we decline to impose such a delay here. First, holding the proceeding in abeyance may

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[11] SFPP Answer at 12 (citing *Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs., ¶ 30,985, at 30,949 (1993)).

[12] Order No. 561, FERC Stats. & Regs., ¶ 30,985 at 30,956. *See also BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 10 (2007).

[13] SFPP Answer at 9-10.

[14] *See, e.g., Stowers Oil and Gas Co*., 26 FERC ¶ 61,001, at 61,001 (1984) (stating the Commission is the "master of its own calendar and other procedures" and "It is within the Commission's purview to determine how best to allocate its resources for the most efficient resolution of matters before it."); *Trailblazer Pipeline Co. LLC,* 144 FERC ¶ 61,252 at P 6 (293); *Mobil Oil Corp. v. FPC*, 483 F.2d 1238, 1252 (D.C. Cir. 1983).

delay for several years the Joint Complainants' ability to seek recourse for the claimed 47 percent difference between East Line revenues and costs. Second, unlike past SFPP rate litigation that has been held in abeyance, there are no outstanding policy issues currently subject to litigation warranting delay.[15] Third, the factual issues presented in this proceeding are distinct from those in the other pending litigation involving SFPP's East Line. For example, the rate litigation in this proceeding will be based upon test period data that is several years removed from the test period data in the OR11 Complaints. This proceeding also involves considerations that differ significantly from the limited inquiry used to assess the index increases at issue in the OR14 Indexing Complaint Proceedings.

7. Finally, although the Commission recognizes that SFPP's revenues may be lowered as a result of litigation in other proceedings, the possibility of reductions to SFPP's revenue levels does not support holding this proceeding in abeyance. Because of the different time periods and standards at issue, it is not clear that the resolution of the proceedings in the OR11 Complaints and the OR14 Indexing Complaints will eliminate the over-recovery alleged by this complaint. Therefore, there is no basis to delay the investigation of SFPP's East Line rate levels when, at least upon a preliminary analysis, the Joint Complainants have established a *prima facie* case that the rates are not just and reasonable.

The Commission orders:

(A) Pursuant to the authority conferred on the Commission by the ICA, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the ICA, a public hearing shall be held concerning the complaint against SFPP's East Line rates.

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[15] For example, when the Commission held in abeyance the OR11 Complaints, the Commission emphasized that SFPP and its shippers were litigating income tax allowance policies in Docket Nos. IS08-390 and IS09-437. *ConocoPhillips Co., v. SFPP, L.P.*, 137 FERC ¶ 61,005, at P 32 (2011). Subsequently, the Commission has issued its opinions in those dockets addressing the income tax issues. Although the Commission's income tax allowance policies are currently being challenged before the United States Court of Appeals for the District of Columbia, these are still final Commission orders and do not provide a reason to delay consideration of this proceeding. Commission policies are never in a state of perfect stasis, and, should any policy changes emerge, the parties can adjust during the course of the hearing proceedings.

(B) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief ALJ, shall, within 15 days of the date of the Presiding ALJ's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The Presiding ALJ is authorized to establish procedural dates and to rule on all motions as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.