UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

SFPP, L.P. Docket Nos. IS06-508-000
IS06-508-001
IS06-508-002
IS06-508-003

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND, AND ESTABLISHING HEARING PROCEDURES

(September 8, 2006)

1. On August 11, 2006, SFPP, L.P. (SFPP) filed the tariffs listed in footnote No. 1 applicable to movements of diesel fuel on its system, to be effective September 11, 2006.[1] SFPP filed a correction supplement in Docket No. IS06-508-001 on August 29, 2006.[2] On September 8, 2006, SFPP filed in Docket No. IS06-508-002 to withdraw FERC Tariff Nos. 134 and 136, the withdrawal being effective September 8, 2006. On September 8, 2006, SFPP filed in Docket No. IS06-508-003 FERC Tariff Nos. 139 and 140 in lieu of the withdrawn tariffs with an effective date of September 11, 2006 on 2 days notice. SFPP is proposing an Ultra Low Sulfur Diesel (ULSD) Recovery Fee of .75 cent per barrel on all diesel products. The Commission accepts and suspends FERC Tariff No. 133, Supplement 1 to FERC Tariff No. 133, FERC Tariff Nos. 135, 137,138,

[1] FERC Tariff No. 133 (cancels FERC Tariff No. 132); FERC Tariff No. 134 (cancels FERC Tariff No. 131); FERC Tariff No. 135 (cancels FERC Tariff No. 125); FERC Tariff No. 136 (cancels FERC Tariff No. 130); FERC Tariff No. 137 (cancels FERC Tariff No. 127); FERC Tariff No. 138 (cancels FERC Tariff No. 128).

[2] FERC Correction Supplement No. 1 to FERC Tariff No. 133, to be effective September 11, 2006, on 12 days notice. This correction does not affect the content of the earlier filing. The Commission grants a short notice effective date for this supplemental filing.

139, and 140 in Docket Nos. IS06-508-000, IS06-508-001, and IS06-508-003[3], to be effective September 11, 2006, subject to investigation and refund.

The Filing

2. SFPP filed FERC Tariff Nos. 133-138 in Docket No. IS06-508-000. FERC Tariff Nos. 134 and 136 proposed to cancel FERC Tariff Nos. 131 and 130. FERC Tariff Nos. 131 and 130, however, had been rejected by the Commission in an order issued on August 31, 2006, in Docket No. IS06-502-000.[4] On September 8, 2006, therefore, SFPP simultaneously filed FERC Tariff Nos. 139 and 140 to cancel FERC Tariff Nos. 126 and 124, which SFPP had sought to replace with the tariffs rejected in Docket No. IS06-502-000.

3. The tariffs at issue would add .75 cent per barrel Ultra-Low Sulfur Diesel (ULSD) Recovery Fee to the base rate for all of SFPP's interstate movements. SFPP asserts that the proposed fee is in addition to the existing base rates for each of the interstate lines and services it operates. It asserts that that the fee is based on the additional capital and operating costs it will incur to meet new air quality standards that the Environmental Protection Agency (EPA) recently promulgated regarding the allowable sulfur content of diesel fuel. It states that the fee will remain in effect for 10 years, the period over which it proposes to recover the incremental capital investment necessary to comply with the EPA's requirements. SFPP asserts that the filing and requested action is consistent with the Commission's earlier approval of ULSD fees in *Magellan Pipeline Company, L.P.* and *Wood River Pipe Line, LLC*.[5]

Interventions, Protests, and Reply

4. Timely interventions and protests were filed by Indicated Shippers,[6] Navajo Refining Company, L.P., Tesoro Refining and Marketing Company (Tesoro), and Western Refining Company, L.P. (Protesting Parties). Valero Marketing and Supply Company filed an intervention. The Protesting Parties assert that SFPP has not

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[3] FERC Tariff Nos. 139 (cancels FERC Tariff. No. 126) and 140 (cancels FERC Tariff No. 124).

[4] *SFPP, L.P.*, 116 FERC ¶ 61,154 (2006).

[5] 115 FERC ¶ 61,276 (2006) (*Magellan*) and Letter Order dated May 31, 2006, in Docket No. IS06-280-000 (*Wood River*).

[6] BP West Coast Products, LLC, Chevron Products Company, and ExxonMobil Oil Corporation.

adequately justified the incremental operating and capital costs it claims support the proposed .75 cent per barrel ULSD fee, and that in fact there are some SFPP lines that now transport only low sulfur fuel that complies with the EPA regulations. Tesoro also states that the fee should also reflect distance so that it does not unduly fall on certain shippers. They assert that SFPP is over-recovering its cost-of-service through its existing base rates and has no reasonable need for the additional revenue proposed here. They argue that SFPP has not complied with the requirement in the Commission's indexing regulations that it show a substantial divergence of costs above its existing revenues before filing a new rate. The Protesting Parties also assert that SFPP includes in the proposed fee an income tax allowance in violation of a recent court remand in *BP West Coast Products, LLC v. FERC,*[7] and has further incorrectly calculated its cost-of-capital.

5. SFPP replies that its base rates are under consideration in other proceedings and that over-recoveries are not at issue here since any such excess return must be addressed in those proceedings. It asserts that the proposed income tax allowance is consistent with the Commission's directions in Docket Nos. OR92-8-000 *et al.* and OR96-2-000, *et al.*, as is its calculation of the cost-of-capital. It further argues that the Commission accepted, without further investigation, ULSD fees in *Magellan* and *Wood River* and it should do so here. It also asserts that the costs involved do not vary with distance and thus a flat per barrel fee is appropriate. It further asserts that the 10 year time frame is appropriate and that the fee will be adjusted annually to reflect the manner in which the costs are actually incurred.

Discussion

6. The Commission will accept and suspend the tariffs (except for the withdrawn FERC Tariff Nos. 134 and 136) subject to refund, to be effective September 11, 2006. SFPP's citation of *Magellan* is inapposite because in that case the pertinent costs were not challenged. As in that case, the use of a surcharge or special fee is appropriate for this type of cost and the requirement in the Commission's indexing regulations to show a substantial divergence between existing revenues and costs is not relevant here. Moreover, SFPP's base rates for the East and West Lines have been reduced as of May 1, 2006 through the filing of interim rates and the extant rates for the North and Oregon lines are grandfathered at this time. The fact that SFPP may have been over-recovering its cost-of-service is simply not relevant here.

7. The Commission concludes that SFPP's filing does not adequately support the costs it asserts will be incurred to comply with the EPA's recent rules regarding low sulfur diesel fuel, or that those costs are necessarily applicable to all transportation of diesel fuel over all of its lines. The tax and cost-of-capital methodological issues raised

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[7] 374 F3d. 1263 (D.C. Cir. 2004) (*BP West Coast*).

by the filing are under review in Docket Nos. OR92-6-000 *et al.* and OR98-2-000, *et al.*, as well as the Court of Appeals.[8] Thus, the amount of annual revenue involved here does not warrant an independent determination of whether SFPP is entitled to an income tax allowance here or whether master limited partnerships (MLPs) are properly included in the proxy group used to determine the equity cost of capital. Those matters will be subject to the outcome of Docket No. OR98-2-000, *et al.*, and the judicial appeals now pending in that docket. Thus, the issues here will be limited to the incremental operating costs and capital investment required for this ULSD service, plus the current rate base, the current debt-equity structure, the current debt interest, and the calculation of the real return-on-equity rate using the standard DCF methodology, as that latter figure may be modified based on any determinations in Docket No. OR98-2-000. These are matters the Commission urges the parties to resolve through settlement given the limited number of issues involved that are set for hearing.

Suspension

8. Based upon a review of the filing, the Commission finds that the tariffs listed in footnotes Nos. 1, 2, and 3 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariffs for filing and suspend them, to become effective September 11, 2006, subject to refund.

The Commission orders:

(A) The tariffs listed in footnotes Nos. 1, 2, and 3, with the exception of FERC Tariff Nos. 134 and 136, are accepted and suspended, subject to refund and investigation, to become effective on September 11, 2006.

(B) The issues in this proceeding shall be limited as discussed in the body of this order.

(C) Pursuant to the authority of the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by SFPP's filing.

(D) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge, for the purpose pursuant to 18 C.F.R. § 375.302 (2006), shall convene a prehearing conference in this proceeding to be held within 20 days of the issuance this order in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference

[8] *See ExxonMobil Corporation, et al. v. FERC*, Nos. 04-1102, *et al.* (Consolidated) (D.C.Cir.)

shall be held to clarify the positions of the participants, and for the ALJ to establish any procedural dates for the hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.