

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP West Coast Products, LLC,
Chevron Products Company, and
ExxonMobil Oil Corporation,

Docket No. OR07-4-000

Complainants

v.

SFPP, L.P.,
Kinder Morgan GP, Inc.
Kinder Morgan, Inc.

Respondents

ORDER HOLDING COMPLAINT IN ABEYANCE

(Issued March 28, 2007)

1. On January 5, 2007, BP West Coast Products, Chevron Products Company, and ExxonMobil Oil Corporation (the Complainants) filed a complaint against virtually all of SFPP, L.P.'s (SFPP) oil pipeline rates.¹ The complaint alleges that most of SFPP's rates are unjust and unreasonable and none are grandfathered under section 1803 of the Energy Policy Act of 1992. The Complainants assert that the numerous cost components should not be embedded in those rates or that those components have been incorrectly designed. These include: (1) the provision of an income tax allowance; (2) the calculation of any allowance for deferred income taxes; (3) the failure to exclude certain purchase accounting adjustments; (4) an inappropriate capital structure; (5) that SFPP's cost of

¹ These include SFPP's West, East, North, Oregon Line rates, the Sepulveda Line rates, and a potential complaint against the Watson Station Drain Dry charges.

equity is improperly premised on inclusion of master limited partnerships in any proxy group; (6) a debt structure that does not include all long term debt; and, (7), an improper allocation of overhead costs between SFPP and its parent partnership. The Complainants also challenge the increases SFPP filed under the Commission's indexing regulations in 2005 and 2006, claiming that these resulted in increased rates that were substantially in excess of SFPP's actual cost increases, that the current rate levels violate the so-called barrel mile test, and that there is excess profit from SFPP's current rates. In this regard the Complainants request reparations for a period two years before the filing of the complaint. The Complainants also assert that respondents Kinder Morgan GP, Inc. and Kinder Morgan, Inc. (jointly Kinder Morgan) are responsible for potential refunds that may be due Complainants by SFPP and request the Commission to so hold.

2. On January 30, 2007, Navajo Refining Company, L.P., filed a motion to intervene, as did Western Refining Company, L.P. and ConocoPhillips Company on February 5, 2007. SFPP filed an answer to the complaint on February 5, 2007. SFPP asserts that the complaint is so general that it is difficult to answer its particulars, and that in any event the complaint lacks the specificity required by the Commission's complaint regulations.² SFPP asserts that the complaint does not properly recognize that its North and Oregon Line rates are grandfathered, nor do the Complainants properly analyze the relationship between the grandfathering provisions of the Energy Policy Act of 1992 and the Commission's indexing regulations. In this regard it asserts that its index-based increases in 2005 and 2006 did not result in rates that were substantially in excess of its actual cost increases, and that the barrel-mile approach is inappropriate in addressing the issue of its indexed increases. Moreover, the calculations advanced with regard to that and other methods are internally inconsistent and technically flawed.

3. SFPP further asserts that the Commission has authorized SFPP to pursue an income tax allowance in other orders and that its current rates are consistent with the Commission's prior rulings on income tax allowance issues. It concludes that in any event, many of the cost-based arguments upon which the complaint is based are under consideration by the Commission in earlier proceedings involving SFPP's oil pipeline rates and should be resolved there.³ Kinder Morgan asserts that it is not an oil pipeline carrier as a matter of law and that the Commission has no jurisdiction to order the Kinder Morgan respondents to provide refunds or reparations to the Complainants. All the respondents therefore urge that the complaint should be denied on the merits or held in abeyance until such threshold legal issues as grandfathering and income tax allowances are resolved.

² *Citing* 18 C.F.R. § 385.206 (2006).

³ *E.g. SFPP, L.P.*, 117 FERC ¶ 61,285 (2006).

4. On February 20, 2007, the Complainants filed a motion seeking leave to answer SFPP's and Kinder Morgan's answers. They first argue that SFPP's and Kinder Morgan's answers are more in the nature of a motion to dismiss, and that they should be permitted to answer as a matter of right. They also reiterate the allegations included in the complaint with further general arguments on the deleterious involvement of the Kinder Morgan respondents in the oil pipeline common carrier industry. In this instance the proposed answer adds little to the clarity to the complaint and the Commission therefore denies the Complainants' February 20, 2007 motion.

5. The Commission will hold the complaint in abeyance. The complaint raises cost of service issues that turn on income tax allowance, grandfathering and reparation issues that are now under review by the D.C. Circuit in *ExxonMobil Oil Corporation, et al. v. FERC*, Nos. 04-1102, *et al.* The rulings on these appeals could materially affect the complaint at a threshold level, as may the Commission's ultimate determinations on cost of service issues in the dockets that are before the court in the cited appeal. The complaint also raises jurisdictional issues that are most efficiently addressed through a single order addressing all matters contained in the complaint. The Commission thus concludes it is premature at this time to determine whether to order an investigation and to set this complaint for hearing.

The Commission orders:

The complaint filed in the instant docket is held in abeyance pending further action by the Commission for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.