

123 FERC ¶ 61,199
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.

SFPP, L.P.

Docket No. IS07-137-000

ORDER ESTABLISHING HEARING AND
SETTLEMENT PROCEDURES

(Issued May 23, 2008)

1. This order establishes settlement procedures in the captioned docket. On March 1, 2007, SFPP, L.P. (SFPP, L.P.) filed FERC Tariff Nos. 143 through 148 to implement a surcharge to recover capital and operating costs related to the transportation of ultra low sulfur diesel fuel (ULSD). On March 30, 2007, the Commission accepted and suspended those tariffs, subject to refund, and held the proceeding in abeyance pending resolution of certain issues under consideration in other proceedings.¹ Requests for rehearing were denied on November 15, 2007.²
2. The issues alluded to in the March 30 Order centered on income tax allowance and equity cost of capital issues. On May 29, 2007, the D.C. Circuit affirmed the Commission's income tax allowance policy regarding limited partnerships and other pass through entities.³ On December 26, 2007, the Commission issued an order providing further, detailed explanation of its income tax allowance policy and implementing methodology.⁴ Moreover, on April 17, 2008, the Commission issued a policy statement addressing equity cost of capital issues for gas and oil pipelines raised by the inclusion of

¹ See *SFPP, L.P.*, 118 FERC ¶ 61,267 (2007) (March 30 Order).

² See *SFPP, L.P.*, 121 FERC ¶ 61,162 (2007).

³ *ExxonMobil Oil Corporation v. FERC*, 487 F.3d 945 (2007).

⁴ See *SFPP, L.P.*, 121 FERC ¶ 61,240 (2007).

master limited partnerships in the proxy group.⁵ It is no longer necessary to hold this proceeding in abeyance given the guidance in the cited orders.

3. The Commission notes that parties have had some success in settling some cases related to Commission's annual oil pipeline indexing methodology. The instant case also has a relatively narrow cost of service focus and should be amenable to settlement. Therefore the Commission will set the instant docket for required settlement procedures under the Commission's oil pipeline regulations.⁶

The Commission orders:

(A) Pursuant to the authority of the Interstate Commerce Act, particularly section 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by SFPP's March 1, 2007 filing in this proceeding.

(B) The hearing established in Ordering Paragraph (A) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within 30 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days

⁵ *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

⁶ *See* 18 C.F.R. §§ 343.5 and 385.603 (2007).

thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.