137 FERC ¶ 61,005
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

ConocoPhillips Company Docket No. OR11-13-000
v.
SFPP, L.P.

Chevron Products Company Docket No. OR11-16-000
v.
SFPP, L.P.

Tesoro Refining and Marketing Company Docket No. OR11-18-000
v.
SFPP, L.P.

ORDER ON COMPLAINTS AND ESTABLISHING FURTHER PROCEDURES

(Issued October 3, 2011)

1. This order addresses three complaints filed individually by Chevron Products Company (Chevron), ConocoPhillips Company (ConocoPhillips), and Tesoro Refining and Marketing Company (Tesoro) (collectively Complainants) challenging the justness and reasonableness of the interstate rates on SFPP, L.P.'s (SFPP) pipeline system. Specifically, Complainants challenge the rates and charges contained in SFPP's FERC Tariff Nos. 194.0.0, 195.0.0, 196.2.0, 197.0.0, 198.2.0, 199.0.0, and 200.0.0, and all predecessor tariffs, supplements, and re-issuances (Base Rates).[1] Complainants ask the

[1] Specifically, the tariffs set the following rates: FERC Tariff No. 195.0.0 (Sepulveda Line), 196.2.0 (West Line – Watson/East Hynes to Calnev Pipe Line LLC), 197.0.0 (East Line), 198.2.0 (West Line – Watson/East Hynes to Colton Transmix Facility and Phoenix), 199.0.0 (North Line), and 200.0.0 (Oregon Line). SFPP's FERC Tariff No. 194.0.0 (Rules and Regulations) contains SFPP's terms and conditions of service.

Commission to establish new just and reasonable rates for SFPP's interstate transportation services, and award reparations and refunds, with interest. Chevron and ConocoPhillips also challenge the portion of SFPP's rates that are grandfathered under the Energy Policy Act of 1992, Pub. L. 102-486 § 1803, 106 Stat. 2776, 3011 (1992) (EPAct). The three complaints are virtually identical. The Commission therefore addresses them in a single order. As discussed below, the Commission establishes further procedures, including requiring SFPP to provide Complainants with its 2010 FERC Form No. 6 data contained on page 700 segregated by SFPP's six individual "Lines,"[2] and permitting Complainants to file amended complaints. These further procedures will allow the Commission to fully evaluate the merits of the amended complaints in determining whether to dismiss or set each complaint for hearing.

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 has four separate pipeline segments which are commonly referred to as the West, East, North, and Oregon Lines. The West Line originates at Watson Station and East Hynes near Los Angeles, California and delivers to Phoenix, Arizona. The West Line also interconnects with Calnev Pipe Line, LLC (Calnev), an affiliate of SFPP, at Colton, California for further deliveries to Las Vegas, Nevada. 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. SFPP has two other jurisdictional charges which affect West Line shipments. One is the rate for transportation over the Sepulveda Line which connects Sepulveda Junction with Watson Station for further transportation on the West Line. The other is the Watson Volume Deficiency Charge for volumes entering Watson Station which do not meet minimum flow rate and pressure requirements.

3. Complainants state they are past, current, and future shippers of refined petroleum products on all of SFPP's interstate facilities.

[2] For purposes of this order, the Commission uses the term "Lines" to collectively refer to SFPP's West, East, North, Oregon, and Sepulveda Lines as well as Watson Station.

II. Pleadings

A. Complaints

4. Complainants challenge the justness and reasonableness of SFPP's Base Rates for interstate transportation pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 C.F.R. § 343.2; and the Interstate Commerce Act (ICA).[3] In support of their complaints, Complainants assert Page 700 of SFPP's 2010 Form No. 6 demonstrates that SFPP's total revenues exceeded its total cost-of-service by approximately $32.6 million, which represents a 22.7 percent system-wide over-recovery of costs. Complainants argue that a 22.7 percent over-recovery of costs is *prima facie* evidence that at least some of SFPP's rates are unjust and unreasonable. Tesoro further notes that SFPP's substantial over-recovery is underscored by the fact that, when compared to the previous year, SFPP's cost-of-service decreased by $6 million, or four percent, while its revenue increased by over $27.9 million, or 18.8 percent.

5. Complainants note because the data compiled in SFPP's FERC Form No. 6 is reported on a system-wide basis and does not separately identify costs incurred to operate each of SFPP's Lines, it is impossible to determine which of SFPP's particular rates may be unjust and unreasonable. Complainants note the cost, volume, and other data contained in the Form No. 6 are all reported on a combined total system basis, including the operating expense data, the carrier property and depreciation data, and the balance sheet and income statement data. Thus, Complainants state discovery and hearing are necessary to obtain, verify, and evaluate the pertinent segment data underlying individual rates and to measure the possible over-recovery of the individual segment costs.

6. Complainants Chevron and ConocoPhillips also argue that to the extent the Commission deems SFPP's North Line and Oregon Line rates "grandfathered" pursuant to EPAct, there are reasonable grounds to conclude there may be substantially changed economic circumstances to the grandfathered portion of those rates. With respect to the North Line, Chevron, and ConocoPhillips assert that evidence submitted in Docket No. OR03-5-001 indicates SFPP's North Line experienced a substantial change in economic circumstances of its rates as of 2003. Applying the test for measuring changed economic circumstances as recently announced by the Commission in *Tesoro Refining and Marketing Co., et al. v. Calnev Pipe Line LLC*,[4] Chevron's and ConocoPhillips' expert witness, Matthew P. O'Loughlin, concludes the post-EPAct increase in SFPP's

---

[3] 49 U.S.C. app. § 1 *et seq.*

[4] 134 FERC ¶ 61,214 (2011) (*Tesoro v. Calnev*).

North Line "real" rate of return on equity was 60 percent as of 2003, which is well above the 25 percent threshold required in *Tesoro v. Calnev*. With respect to the Oregon Line, Chevron and ConocoPhillips assert that evidence submitted in Docket No. OR03-5-001 indicates this line experienced a substantial change in economic circumstances of its rates as of 2003. Applying the *Tesoro v. Calnev* test for measuring changed economic circumstances, Mr. O'Loughlin concludes the post-EPAct increase in SFPP's Oregon Line "real" rate of return on equity in 2003 was 136 percent, more than five times the 25 percent threshold. Tesoro did not assert in its complaint that any of SFPP's rates are grandfathered by EPAct, and did not set forth any evidence regarding substantially changed circumstances.

7. Chevron and ConocoPhillips note the lawfulness of SFPP's East Line rates are at issue in the pending consolidated proceedings in Docket No. IS09-437-000 and the lawfulness of SFPP's West Line rates are at issue in the pending proceeding in Docket No. IS08-390-002 (together, East/West Cases). However, they assert that the East/West Cases do not address the system-wide over-recovery of costs reported by SFPP for 2010 as raised in their complaints. Chevron and ConocoPhillips go on to note the potential rate reductions and refunds in the East/West Cases could mitigate their injury with respect to the East and West Lines, but rate reductions and refunds in the East/West Cases would not provide relief if Commission review attributes SFPP's system-wide over-recovery to the North Line, Oregon Line, Sepulveda Line, or Watson Station.

8. The Complainants state that their complaints comply with section 343.2(c)(1)[5] and other applicable regulations. Complainants generally assert that Alternative Dispute Resolution is unlikely to resolve their complaints, thus they ask the Commission to set the complaints for hearing. Complainants also seek the following relief. They request the Commission prescribe new just and reasonable rates for the shipment of refined petroleum products on the SFPP pipeline system. Tesoro seeks refunds, reparations and damages, plus interest, for shipments made to Tesoro since July 1, 2010. Chevron and ConocoPhillips seek reparations, including interest, for all amounts they paid in excess of the rates and charges determined to be just and reasonable for the applicable reparation period.

[5] 18 C.F.R. § 343.2(c)(1) (2011). Section 343.2(c)(1) requires that a complaint filed against an established rate must allege reasonable grounds for asserting that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable.

B. SFPP's Answer

9. SFPP filed timely answers to the complaints.[6] SFPP asks the Commission to (1) dismiss the complaints against the North and Oregon Line rates because Complainants failed to meet the threshold standard for challenging grandfathered rates under EPAct, and (2) hold the challenges against SFPP's remaining rates in abeyance pending further orders in the East/West Cases.

10. With respect to the North and Oregon Line rates, SFPP states the portion of those underlying rates in effect as of October 24, 1992 are grandfathered and, therefore, are not subject to challenge except under the substantially changed circumstances test set forth in EPAct. SFPP asserts Complainants fail to show there are reasonable grounds to find substantially changed circumstances to the grandfathered portion of the North and Oregon Line rates.[7] SFPP states that under the Commission's substantially changed circumstances test articulated in *Tesoro v. Calnev*, the complainant must demonstrate a minimum 25 percent change in the achieved rate of return on equity and must further show there has been a consistent and sustainable increase in the pipeline's rate of return on equity prior to the complaint year.[8]

11. SFPP states the appropriate method to determine whether the 25 percent threshold is met is to measure the change in the achieved rate of return on equity in the complaint year as compared to the achieved rate of return on equity in the year in which the basis for the rate was established and in the twelve-month period preceding the passage of EPAct (October 1991 – October 1992) (the pre-EPAct period). Expressed algebraically, the change in the achieved rate of return on equity is assessed using the formula (C-B)/A, where "A" represents the economic basis at the time the grandfathered rate was initially filed, "B" represents the economic circumstances in the pre-EPAct period, and "C" represents the economic circumstances in the complaint period. If the value of "B" is less than "A" the (C-B)/A formula is replaced with the formula (C-A)/A.[9]

---

[6] SFPP filed a joint answer to Chevron's and ConocoPhillips' complaints on July 5, 2011 and filed an answer to Tesoro's complaint on August 9, 2011.

[7] SFPP Answer to Chevron/ConocoPhillips at 4 (citing *Tesoro v. Calnev*, 134 FERC ¶ 61,214 at P 3)

[8] *See Tesoro v. Calnev*, 134 FERC ¶ 61,214 at P 61.

[9] SFPP Answer to Chevron/ConocoPhillips at 4 (citing *ARCO Prods. et al. v. SFPP, L.P.*, 106 FERC ¶ 61,300, at P 24-26, 64 (2004)).

12. SFPP contends the calculations performed by Chevron's and ConocoPhillips' expert on substantially changed circumstances, Matthew P. O'Loughlin, are flawed. SFPP argues the cost-of-service Mr. O'Loughlin uses to calculate a return on equity in the "A" and "B" periods have inconsistencies and that he employed the wrong formula, using (C-B)/A instead of (C-A)/A.

13. SFPP states that even accepting Mr. O'Loughlin's methodology, but using publically-available data for 2004 (as opposed to the 2003 data Mr. O'Loughlin applied), the calculation shows a significant decline in the economic performance on the North Line in 2004 compared to the return on equity. Specifically, SFPP asserts that using publically available data for the formula calculation results in a 61 percent decrease in the North Line's achieved equity rate of return as of 2004 and a decrease of 52 percent as of 2005. Thus, SFPP argues the 57 percent change Mr. O'Loughlin calculated is not a sustained change and, as such, fails to establish substantially changed circumstances under the Commission's standard enunciated in *Tesoro v. Calnev*. SFPP further states its volume throughput declined since 2004 resulting in a continued decline in economic performance on the North Line since 2004. SFPP asserts that based on this documented decline in economic performance, the Commission should dismiss the complaints with regard to SFPP's North Line rates.

14. With respect to the Oregon Line, SFPP asserts Mr. O'Loughlin erroneously ignored available data from 2004 as well as data that would have allowed him to calculate a return on equity in 1985, the year Oregon Line rates were established (i.e., the "A" period). SFPP argues that if Mr. O'Loughlin had used the available data for the "A" period when conducting his substantially changed circumstances calculation, he would have found the economic circumstances on the Oregon Line declined by 17.5 percent since the rates were set, not the 136 percent improvement Mr. O'Loughlin found. SFPP also noted that in a March 2004 order, the Commission found that "the Oregon Line underperformed for many years and has only recently begun to achieve design capacity and likely volumes and revenues that were the economic basis of the rates."[10] Finally, SFPP shows that if one employs the appropriate "(C-A)/A" calculation using publicly available information for both 2003 and 2004, Oregon Line rates reflect a 17.5 percent decrease in the achieved equity rate of return as of 2003 and a 34.6 percent decrease for 2004. SFPP asserts that based on this documented decline in economic performance, the Commission should dismiss the complaints against the Oregon Line rates.

15. Finally, SFPP contends Tesoro also challenges the grandfathered portion of the North and Oregon Line rates based solely on Tesoro's statement asking the Commission

---

[10] Exhibit No. RGV-1 at P 19 (quoting *ARCO Prods. et al. v. SFPP, L.P.*, 106 FERC ¶ 61,300 at P 67).

to find EPAct "does not prevent Tesoro from filing [its] Complaint or the Commission from ordering the relief requested. . . ."[11] Next, SFPP argues the Commission should dismiss Tesoro's challenge to the grandfathered portions of the North and Oregon Line rates because Tesoro does not even attempt to meet the threshold showing of substantially changed circumstances.

16. Regarding SFPP's remaining interstate rates (the East Line, West Line, Sepulveda Line and the Watson Station Charge), SFPP asserts the Commission should hold the complaints in abeyance pending further Commission orders in the East/West Cases given the following. In Docket No. IS08-390-000, SFPP's West Line rates are subject to investigation and were collected subject to refund during 2010. On February 17, 2011, the Commission issued Opinion No. 511, an order on initial decision on the West Line rates.[12] Requests for rehearing of Opinion No. 511 are pending before the Commission. SFPP notes the wide range of changes sought by the Complainants in their rehearing requests, if granted, would significantly increase SFPP's estimated refunds for 2010. In Docket No. IS09-437-000, SFPP's East Line rates are subject to investigation and were collected subject to refund during 2010. A initial decision on the East Line rates issued on February 10, 2011. SFPP states that until the Commission acts on the East Line initial decision and the exceptions taken, there is no definitive guidance on determining the scale of refunds that SFPP may owe with regard to the East Line rates for 2010. SFPP further argues that any evaluation of the relationship between costs and revenues is further complicated by the fact that, while 2010 revenues do not yet reflect the impact of the pending East/West Cases, SFPP's 2010 cost-of-service reflected on Page 700 has been calculated based on the rulings in Opinion No. 511, as has the 2009 cost-of-service. Thus, while SFPP's costs on Page 700 have been revised downward to reflect Opinion No. 511, SFPP's revenues, as discussed above, have not.

17. SFPP argues that because the pending East/West Cases will alter SFPP's calendar year 2010 revenues and costs, it would be inefficient and unfair to base an assessment of the justness and reasonableness of SFPP's 2011 base rates on those figures. Specifically, SFPP states that pending further orders in the East/West Cases, it is impossible to determine whether (1) the cumulative increases from the index-based increases over the years now exceed the cumulative increases in the pipeline's actual costs to the point that the resulting rates are unjust and unreasonable or (2) the cost components embedded in the pipeline's cost-of-service are improperly defined or no longer accurately measure the pipeline's costs. Accordingly, SFPP states the Commission should hold in abeyance

---

[11] SFPP Answer to Tesoro Complaint at 3 (quoting Tesoro Complaint at P 30(e)).

[12] *SFPP, L. P.*, 134 FERC ¶ 61,121 (2011) (Opinion No. 511).

these complaints against the non-grandfathered rates pending further orders in the East/West Cases.

18. SFPP also argues that Complainants' requests for reparations are overly broad, largely because of settlements entered into between SFPP and Complainants. SFPP asserts that pursuant to the terms of the "Historic Cases Settlements" the Complainants are barred from seeking reparations with respect to any of SFPP's interstate rates prior to May 28, 2010 as to ConocoPhillips and Tesoro and prior to March 15, 2011 as to Chevron.[13] SFPP does acknowledge that Tesoro, by limiting its request for reparations to the period July 1, 2010 and forward, does not appear to run afoul of the Historic Cases Settlement limitations. SFPP further asserts that other settlements also limit potential reparations to Complainants.[14]

19. In addition, SFPP asserts the jurisdictional status of shipments on the Oregon Line was disputed in the past and continues to be today. SFPP states Complainants bear the burden to provide which volumes, if any, on the Oregon Line were shipped in interstate commerce. To meet this burden, SFPP states Complainants must show that for each shipment of refined petroleum products on the Oregon Line, the shippers' fixed and persisting intent was to move the shipment in interstate commerce. SFPP argues Complainants fail to make this showing.

20. Last, regarding Tesoro's complaint, SFPP states the Commission should reject the complaint as to any rate on Lines on which Tesoro is not a shipper. Specifically, SFPP states that to the extent Tesoro was not a customer on a particular SFPP line when Tesoro filed its Complaint, and has never shipped any products on that line, then the Commission should dismiss Tesoro's complaint with respect to the particular line. SFPP states it is prohibited by section 15(13) of the ICA from disclosing any particular line on which Tesoro does or does not ship volumes.

21. SFPP also disputes as erroneous two statements in Tesoro's complaint. First, SFPP rejects as false Tesoro's statement that "both the Commission and the Court of

---

[13] SFPP Answer to Chevron/ConocoPhillips at 18-19.

[14] *Id.* at 19 (citing Joint Explanatory Statement Regarding Offer of Settlement in Satisfaction of Protests and Complaints, Joint Motion for Permission to Withdraw Complaints, and Joint Conditional Notice of Withdrawal of Protests, Docket Nos. IS08-28-000, IS08-389-000, OR08-13-000, and OR08-15-000 at Attachment 1, Sections III(D)(2) and III(D)(3)(b)(ii) (Oct. 22, 2008), approved, *SFPP, L.P.*, 126 FERC ¶ 61,076 (2009); and Joint Explanatory Statement Regarding Offer of Settlement, Section III(i), Docket Nos. OR92-8-025, *et al.* (May 17, 2006).

Appeals consider Calnev to be part of [SFPP's] West Line." SFPP states Calnev and SFPP are distinct companies with distinct lines and distinct tariffs on file with the Commission. Second, SFPP challenges Tesoro's statement that SFPP has "overcharged" and continues to overcharge for transportation on its pipeline system. SFPP states that "overcharges" as defined in section 16(3)(g) of the ICA, are "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission."[15]

C. Chevron's and ConocoPhillips' Answers

22. Chevron and ConocoPhillips filed virtually identical motions to leave to answer and answers to SFPP's answer (Answers). Their Answers provide additional data regarding the issue of substantially changed economic circumstances in response to SFPP's criticisms of their expert, Mr. O'Loughlin's analysis of the issue.

23. In his supplemental affidavit appended to both Chevron's and ConocoPhillips' Answers, Mr. O'Loughlin provides information supporting his conclusion that the 2003 economic circumstances on the North and Oregon Lines were not unrepresentative or anomalous. Second, Mr. O'Loughlin shows the use of 2004 data for the North Line, as championed by SFPP, would be inappropriate because financial results for that year were skewed by a large year-end rate base addition. Next, Mr. O'Loughlin argues the data for 1985 used by SFPP's expert Mr. Van Hoecke, as the economic basis for the grandfathered Oregon Line rates has no probative value. Mr. O'Loughlin also shows that using 2004 Oregon Line data results in a post-EPAct increase in equity return of 57 to 87 percent. Last, Mr. O'Loughlin asserts Mr. Van Hoecke's presentation of throughput data for the years 2005-2010 is incomplete because he does not provide any cost-of-service or revenue data for those years.

D. SFPP's Answer to Chevron's and ConocoPhillips' Answers

24. SFPP filed a motion to leave to answer and answer to Chevron's and ConocoPhillips' Answers, stating its answer responds only to the new arguments raised in Chevron's and ConocoPhillips' Answers. Specifically, SFPP responds to Mr. O'Loughlin's supplemental affidavit, in which Mr. O'Loughlin augmented his substantially changed circumstances analysis.

---

[15] SFPP Answer to Tesoro Complaint at 14 (citing 49 U.S.C. app. § 16(3)(g)).

III. Commission Determination

25. Notices of Chevron's and ConocoPhillips' complaints issued on June 14, 2011. Notice of Tesoro's complaint issued on July 20, 2011. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before issuance of this order are granted.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[16] prohibits an answer to an answer unless otherwise ordered by the decisional authority. Accordingly, the answers to answers have not been considered by the Commission.

27. In this proceeding, the Complainants filed complaints generally challenging all of SFPP's rates using the consolidated, system-wide cost, volume, and other data reported in SFPP's 2010 FERC Form No. 6, page 700. The Commission recognizes that because the FERC Form No. 6 data does not identify costs for reach individual SFPP line, the Complainants cannot determine which of SFPP's particular rates may be unjust and unreasonable. Even though Complainants suggest all of SFPP's rates may not be unjust and unreasonable, because of the lack of individual data for each of the Lines, Complainants instead had to universally challenge all of SFPP's rates.

28. This lack of line-specific data also impedes Complainants Chevron's and ConocoPhillips' ability to conduct the analysis necessary to evaluate whether there are substantially changed circumstances on the North and Oregon Lines. Section 1803(b) of EPAct requires a complaint against the grandfathered portion of a base rate to establish a substantial change has occurred after the date of the enactment of EPAct in the economic circumstances of the oil pipeline which were the basis for the rate.[17] For the Commission to accept a complaint against grandfathered rates, the Complainants must allege reasonable grounds to conclude there may be substantially changed circumstance to the grandfathered portion of the pipeline's base rates.[18]

29. Chevron's and ConocoPhillips' complaints present evidence that there may have been substantially changed economic circumstances with respect to the grandfathered portion of the North and Oregon Line rates, specifically the affidavit of

---

[16] 18 C.F.R. § 385.213(a)(2) (2011).

[17] Section 1803(b)(1)(A) of EPAct.

[18] *Tesoro v. Calnev*, 134 FERC ¶ 61,214 at P 3; *America West Airlines, Inc.*, 121 FERC ¶ 61,241, at P 6 (2007).

Mr. O'Loughlin.[19] For his substantially changed circumstances calculations, Mr. O'Loughlin uses 2003 data to calculate the post–EPAct change in equity return.

30. However, the basic legal framework for determining substantially changed circumstances provides that the "C" component in the formula is the return *as of the date of the complaint*, or some reasonable approximation of that time frame.[20] Simply put, the substantially changed circumstances standard requires all proof relate to the period up to the date before the complaint was filed.[21] In this case, SFPP, Chevron, and ConocoPhillips have all relied on outdated data from 2003 and 2004 to support their arguments regarding substantially changed circumstances. The parties were forced to do so because more current data specific to the North and Oregon Lines is not publically available. Specifically, Chevron and ConocoPhillips do not have access to the specific cost-of-service and revenue data for either the North Line or Oregon Line for the years from 2004 through 2010 because SFPP reports this information in its FERC Form No. 6 on a consolidated basis reflecting all of its interstate facilities. As Mr. O'Loughlin points out, discovery is necessary for Complainants to obtain the cost, revenue, and volume data for more recent years (through 2010) on the North and Oregon Lines.

31. The Commission finds that because SFPP's cost-of-service data is reported on page 700 of FERC Form 6 on a consolidated system-wide basis, the existing record in this proceeding is insufficient to allow the Commission to determine, with respect to SFPP's rates for its individual segments, whether the Complainants have shown each of SFPP's rates may be unjust and unreasonable so that those particular rates require further examination at hearing. A pipeline's FERC Form 6, page 700 data is adequate for the purposes for which it is used, e.g., to justify a complaint against an existing or grandfathered rate, or to provide the information needed to assess "index-based" rate changes. In hearing proceedings these data are necessarily further refined depending on which segments of a pipeline are at issue. The Commission wishes to avoid the administrative inefficiency of setting the entirety of the complaints and all SFPP's rates, including the challenges to the grandfathered portion of the North and Oregon Line rates, for hearing, if only certain segments are substantially over-recovering. Instead, with the requisite line-specific data, both the complaining shippers and the Commission may

---

[19] Tesoro does not challenge the justness and reasonableness of the grandfathered portion of the North and Oregon Line rates.

[20] *Tesoro v. Calnev*, 134 FERC ¶ 61,214 at P 17.

[21] *Texaco Refining and Marketing, Inc. v. SFPP, L.P.*, 86 FERC ¶ 61,035, at 61,141 (1999).

readily determine whether SFPP may be substantially over-recovering its costs on a particular line, and only those particular lines would proceed to hearing.

32. Therefore, the Commission is establishing a procedure by which SFPP shall provide the Complainants the 2010 annual cost-of-service data elements[22] broken down by each of SFPP's six Lines, as it has of necessity been required to do at the hearing phase in past proceedings.[23] SFPP shall produce this data 90 days following a final order in the pending West Line rate proceeding, Docket No. IS08-390-002. As both Complainants and SFPP recognize, the 2010 data, such as revenue and costs, is subject to change pending the outcome of the East/West Cases.[24] As noted by SFPP, Complainants and the other shipper litigants in Docket No. IS08-390-002 have pending on rehearing a wide range of issues in Opinion No. 511. In addition, Complainants themselves have stated that in the East/West Cases, the parties have widely different, but strongly held, positions on several issues that have a very large economic impact on rates, most notably the income tax allowance and overhead cost allocation issues.[25] Upon issuance of a final order in Docket No. IS08-390-002, the West Line case, SFPP will be in a position to provide to the Complainants reasonably updated 2010 cost and revenue data for its individual lines, which the Complainants can then use as the basis for more specifically pleaded amended complaints in these proceedings.

---

[22] Specifically, SFPP shall provide complainant shippers with respect to each of its Lines for the end of the 2010 and 2009 calendar years the operating and maintenance expenses, depreciation expense, AFUDC Depreciation, amortization of deferred earnings, rate base, rate of return, return, income tax allowance, total cost of service, operating revenue, throughput in barrels, and throughput in barrel-miles.

[23] *See SFPP, L.P.*, 86 FERC ¶ 61,055, at p. 61,056, 61067, and 61,079-81 (1999) (Opinion No. 435).

[24] Both Chevron and ConocoPhillips state in their Complaints that potential rate reductions and refunds in the East/West Cases could mitigate their injury to the extent SFPP's system-wide over-recovery of cost is attributable to the East or West Lines.

[25] *See* Response of Shippers to the Request of SFPP, L.P. for Initiation of Settlement Process, Docket Nos. IS08-390-000, IS09-437-000, OR11-13-000, OR11-14-000, OR11-15-000, and OR11-16-000, at 9 (filed July 20, 2011). The responding Shippers, which included Complainants, note in their Response that Opinion No. 511 effectively rejected SFPP's 2008 proposed West Line rate increase, and results in West Line rates, except for one, that are reduced below SFPP's West Line rates in existence prior to SFPP's rate increase filing. *See* Shipper Response to Request for Settlement Process at 8.

33. After receiving the line-specific data from SFPP, Complainants will have 60 days to file amended complaints. The amended complaints must make a *prima facie* showing for each of the individual rates challenged, including any initial showing of whether there are substantially changed circumstances for the grandfathered portion of the North and Oregon Line rates. Complainants must establish in the amended complaints that they have actually been charged each of the rates against which they have filed a complaint. Under current Commission policy, it is insufficient to file a general complaint against all of an oil pipeline's tariffs without identifying the specific rates that are and have actually been used and therefore are at issue. Complainants' requests for reparations should be specific as to the requested timeframe and should be consistent with any settlement agreements to which Complainants are a party.

The Commission orders:

(A) SFPP shall provide, within 90 days of the date a final order issues in Docket No. IS08-390-002, to Complainants the cost-of-service data specified in the body of this order in an unconsolidated format and allocated to SFPP's East Line, West Line, North Line, Oregon Line, Sepulveda Line and the Watson Station Facility.

(B) Complainants are permitted to file amended complaints within 60 days of receipt of the data provided under Ordering Paragraph (A).

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.