

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

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

Tesoro Refining and Marketing Company

Docket No. OR11-20-000

v.
SFPP, L.P.

ORDER DISMISSING COMPLAINT

(Issued November 22, 2011)

1. This order dismisses Tesoro Refining and Marketing Company's (Tesoro) August 2, 2011 complaint challenging the justness and reasonableness of SFPP, L.P.'s (SFPP) North Line rates under SFPP Tariff Nos. 179, 189, and 199.0.0.

I. Background

2. SFPP is a common carrier oil pipeline that transports refined petroleum products in interstate commerce. SFPP has four separate pipeline segments which are commonly referred to as the West, East, North, and Oregon Lines. The North Line, the subject of Tesoro's complaint, originates at Richmond and Concord, California and delivers to the Reno, Nevada area.

3. 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),¹ Tesoro challenges the justness and reasonableness of SFPP's North Line rates.² In general, Tesoro seeks reparations and refunds, with interest, from May 1, 2010 to present, as well as new just and reasonable rates.

¹ 49 U.S.C. app. § 1 *et seq.*

² Tesoro does not appear to challenge the justness and reasonableness of the grandfathered portion of the North Line rates.

4. In support of its complaint, Tesoro conducted a cost of service analysis using an updated version of the cost of service model Tesoro presented in a previous North Line rate proceeding, Docket No. IS05-230-000. To develop its cost of service, Tesoro's consultant Mr. Peter K. Ashton used 2010 as the base period and the first nine months of 2011 as the test period. Tesoro asserts its cost of service analysis shows a base period cost of service of \$15,278,000 and a test period cost of service of \$15,477,000. Tesoro states that using actual 2008 volumes, that a just and reasonable rate for the base and test periods would be \$1.2724 and \$1.2889, which rates are less than SFPP's actual rates of \$1.7977 and \$1.8269. Based on the foregoing analysis, Tesoro states that SFPP is over-recovering its cost of service by 41.3 percent in the base period and 41.7 percent in the test period.

5. On September 1, 2011, SFPP filed a timely answer to Tesoro's complaint. SFPP argues the Commission should dismiss Tesoro's complaint for failure to comply with Rule 206(b)(8) of the Commission's Rules of Practice and Procedure.³ Rule 206(b)(8) requires the complainant to include all documents that supports the facts in the complaint. SFPP notes that Tesoro bases its complaint on a cost of service analysis performed by its consultant, Mr. Ashton, but that Tesoro failed to include with the complaint either Mr. Ashton's cost of service analysis or any of his supporting calculations. SFPP argues that without this supporting documentation, SFPP cannot fully analyze and respond to Tesoro's allegations.

6. In the alternative, SFPP urges the Commission to dismiss Tesoro's complaint on the merits. SFPP notes that the North Line rates are comprised of three components: (1) the rate that was grandfathered by the Energy Policy Act of 1992; (2) a cost of service rate increase SFPP made in 2005 in Docket No. IS05-230; and (3) subsequent rate increases made pursuant to the Commission's indexing regulations. SFPP argues that Tesoro fails to meet the Commission's standard for challenging the grandfathered portion of the North Line rates as Tesoro fails to even attempt to satisfy the substantially changed circumstances standard.⁴ Next, with respect to the non-grandfathered portion of the rates, SFPP asserts Tesoro fails to show that this portion of the rate is unjust and unreasonable or that it leads to an over-recovery of SFPP's costs. SFPP asserts that Tesoro's cost of service analysis is flawed and unreliable, stating that Mr. Ashton cherry-picked from prior SFPP initial decisions whenever their application would serve to reduce the cost of service for the North Line. SFPP further argues that Tesoro's request for reparations and damages for overcharges from May 1, 2010 to present is overly broad and improper.

³ 18 C.F.R. § 385.206(b)(8) (2011).

⁴ See *Tesoro Refining and Marketing Co. v. Calnev Pipe Line LLC*, 134 FERC ¶ 61,214, at P 3 (2011) (articulating the threshold standard for challenging the grandfathered portion of a carrier's rates).

7. On September 14, 2011, Tesoro filed a motion for leave to reply and unauthorized reply to SFPP's answer.

II. Commission Determination

8. Notice of Tesoro's complaint issued on August 4, 2011. No motions to intervene have been filed. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵ prohibits an answer to an answer unless otherwise ordered by the decisional authority. Accordingly, the Commission denies Tesoro's motion for leave to reply to SFPP's answer.

9. Tesoro filed this complaint against the North Line rates less than two weeks after filing a complaint against SFPP in Docket No. OR11-18-000, challenging the justness and reasonableness of all of SFPP's interstate transportation rates including the North Line rates.⁶ Specifically, in Docket No. OR11-18-000, Tesoro challenged 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. In Docket No. OR11-18-000, Tesoro requested the Commission prescribe new just and reasonable rates and sought refunds from July 1, 2010. On October 3, 2011, the Commission issued an order addressing Tesoro's and the other two complainants' complaints.⁷

10. In the October Order, the Commission recognized that because the FERC Form No. 6 does not identify costs for each individual SFPP line, the complainants could not determine which of SFPP's particular rates may be unjust and unreasonable.⁸ Accordingly, the Commission gave the complainants, including Tesoro, 60 days from the date SFPP provides certain cost-of-service data specified in the October Order, to file amended complaints that make a *prima facie* showing for each of the individual rates

⁵ 18 C.F.R. § 385.213(a)(2) (2011).

⁶ Tesoro filed its complaint in Docket No. OR11-18-000 on July 20, 2011. In the same general timeframe, two other shippers, ConocoPhillips Company (ConocoPhillips) and Chevron Products Company (Chevron) filed complaints challenging all of SFPP interstate transportation movements that are substantively identical to Tesoro's complaint in Docket No. OR11-18-000. These two complaints are docketed as OR11-13-000 (ConocoPhillips) and OR11-16-000 (Chevron).

⁷ *ConocoPhillips Co. v. FERC*, 137 FERC ¶ 61,005 (2011) (October Order).

⁸ The Commission also noted that Tesoro did not challenge the justness and reasonableness of the grandfathered portion of the North or Oregon Line rates.

challenged.⁹ Thus, the Commission's October Order gives Tesoro an opportunity to more precisely challenge SFPP's North Line rates by filing an amended complaint. The Commission further noted the amended complaints must specify the requested timeframe for reparations and any reparation request should conform to any settlement agreements to which complainants are a party.¹⁰

11. Accordingly, Tesoro already has an open complaint proceeding (Docket No. OR11-18-000) in which it asserts a general challenge against the justness and reasonableness of SFPP's North Line rates, the same subject of Tesoro's complaint in this proceeding, Docket No. OR11-20-000. As noted above, in Docket No. OR11-18-000 Tesoro will have the opportunity to amend its complaint against SFPP's interstate transportation rates to amplify and focus its challenges. Because the issue of the justness and reasonableness of SFPP's North Line rates are already the subject of an open proceeding in Docket No. OR11-18-000, addressing the merits of Tesoro's challenge to the North Line rates here would be duplicative and unnecessary, and waste the resources of the Commission and the parties, particularly since the October Order held identical complaints in abeyance in anticipation of the complainants filing revised complaints after receipt of additional data. We therefore dismiss Tesoro's duplicative complaint in the above-captioned proceeding.

The Commission orders:

Tesoro's complaint is dismissed.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ October Order, 137 FERC ¶ 61,005 at P 33.

¹⁰ *Id.* P 33.