

139 FERC ¶ 61,266
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.

Docket No. IS12-388-000

ORDER ACCEPTING AND SUSPENDING TARIFF FILING, SUBJECT TO
REFUND, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 29, 2012)

1. On May 31, 2012, SFPP, L.P. (SFPP) filed FERC Tariff Nos. 196.7.0 and 198.7.0¹ to implement an index-based rate increase under the indexing procedures in section 342.3 of the Commission's regulations² and FERC Tariff No. 201.4.0³, which contains an Index of Tariffs. SFPP requests the Commission permit the proposed tariff records to become effective July 1, 2012. This order accepts and suspends SFPP's tariff records to become effective July 1, 2012, subject to refund, and establishes hearing and settlement judge procedures.

I. Subject Filing, Protests, and Answer

2. SFPP's proposed tariffs would increase its West Line interstate transportation rates effective July 1, 2012, by 8.6 percent pursuant to the Commission's oil pipeline rate indexing regulations.⁴ Motions to intervene and protests were filed by BP West Coast

¹ SFPP, L.P., FERC Oil Tariff, SFPP Tariff Database, Calnev Line, FERC 196.7.0, 196.7.0, West Line, FERC 198.7.0, 198.7.0.

² 18 C.F.R. § 342.3 (2011). See also *Notice of Annual Change in the Producer Price Index for Finished Goods*, 139 FERC ¶ 61,123 (2012).

³ SFPP, L.P., FERC Oil Tariff, SFPP Tariff Database, Index of Tariffs, FERC 201.4.0, 201.4.0.

⁴ SFPP is a common carrier refined products pipeline located in six Western and Southwestern states: Arizona, California, Nevada, New Mexico, Oregon and Texas. SFPP comprises four non-contiguous pipeline segments named the West, East, North and Oregon Lines. The West Line originates in the Los Angeles and terminates in Arizona.

Products LLC, Phillips 66 Company, Tesoro Refining and Marketing Company and, jointly, Delta Air Lines, Inc., Continental Airlines, Inc., Southwest Airlines Co., US Airways, Inc., Chevron Products Company and Valero Marketing and Supply Company (collectively, the “Indicated Shippers”). On June 20, 2012, SFPP filed a response to the protests.

3. The protesting parties assert SFPP’s proposed index rate increases are so substantially in excess of the actual cost increases incurred by SFPP that the proposed rates are unjust and unreasonable. In support of this allegation, the protesting parties state SFPP’s FERC Form No. 6 for Quarter 4 of 2011 does not show actual cost increases that would justify the proposed rate increases. They note that page 700 of SFPP’s FERC Form No. 6 demonstrates SFPP’s total interstate cost of service actually decreased by \$6.57 million or 4.48 percent from 2010 to 2011. Since SFPP proposes to increase its transportation rates by the 8.6 percent index adjustment, this coupled with the 4.48 percent reduction in cost, results in an increase of approximately 13 percent, which the Commission finds may be unjust and unreasonable.

4. The protesting parties further allege that based on the Page 700 2010 to 2011 comparison, and on reported 2011 interstate cost of service (totaling \$140.1 million) and 2011 interstate operating revenue (\$158.4 million), SFPP is currently substantially over-recovering its cost of service by 11.6 percent. They assert that the proposed 8.6 percent rate increase would substantially exacerbate that over-recovery, and accordingly the Commission should summarily reject SFPP’s proposed index-based rate increase, or in the alternative, require the Commission to suspend the index rate increase, subject to refund, and establish a hearing to determine its reasonableness.

5. In its response, SFPP argues its proposed index-based rate increase is just and reasonable because, based on its proffer of extensive cost-of-service data, the West Line allegedly under-recovered its 2011 cost of service by \$9.8 million when it filed to apply the index adjustment to its existing rates. Thus, SFPP contends, it is entitled to apply the full current index of 8.6 percent to its rates. SFPP states its data show the West Line’s 2011 interstate cost of service was \$49,727,000, but it only received 2011 revenues of approximately \$39,888,000.⁵ SFPP requests the Commission to dismiss the protests, but if the Commission accepts the protests, the Commission should hold this proceeding in abeyance pending final resolution of Docket No. IS08-390-002, on rehearing of Opinion No. 511-A, which is the most recent cost of service rate proceeding involving the West Line.

⁵ SFPP cites to the affidavit of Thomas A. Turner submitted originally in Docket No. IS11-444-001 and resubmitted with the instant filing. However, the methodology for compiling such data is the subject of dispute in Docket No. IS11-444-001, where the parties have filed briefs on exceptions to an initial decision issued March 16, 2012, *SFPP, L.P.*, 138 FERC ¶ 63,017 (2012).

II. Discussion

6. Protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission's regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter 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 unreasonable⁶

To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the data reported in the carrier's FERC Form No. 6, page 700 data in a "percentage comparison test."⁷ The percentage comparison test is a very narrow test that "compare[s] the Page 700 cost data contained in the company's annual FERC Form No. 6 to the data reflected in the index filing for a given year with the data for [the] prior year. . . ."⁸ This test is the "preliminary screening tool for pipeline [index-based] rate filings,"⁹ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.¹⁰

⁶ 18 C.F.R. § 343.2(c)(1) (2011).

⁷ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) and *SFPP, L.P., et al.*, 129 FERC ¶ 61,228, at P 7 (2009). The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase. *See id.* P 11 (*citing BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at PP 8-9 (2007)).

⁸ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082 at P 10; *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test compares proposed changes in rates against the change in the level of a pipeline's cost of service.

⁹ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 Fed. Reg. 59,137 (November 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh'g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

¹⁰ *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 6 (2007) ("[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure.

(continued...)

For the subject 2012 index adjustment, the cost data from a pipeline's Page 700's for 2010 and 2011 are compared.

7. In this case, the protestors challenge SFPP's index-based rate increases under both the percentage comparison test as well as arguing the rate increase would substantially exacerbate an over-recovery. As noted above, the Commission does not consider arguments related to data extraneous to the prior two years' Page 700 comparison, when evaluating a protested index rate filing. Rather, the percentage comparison test is the sole screening tool the Commission applies to determine whether to investigate a protested annual index filing. To do otherwise would complicate the simplified indexing methodology with contested cost-of-service disputes. Accordingly, the Commission does not reach or need to consider the portions of the protests and SFPP's response that raise such arguments extraneous to the Page 700 year to year comparison. Turning to the percentage comparison test, SFPP's FERC Form No. 6, as filed on April 18, 2012, shows a total cost of service for 2010 of \$146,686,070 and \$140,112,765 for 2011, a decrease of \$6,573,305, which represents a 4.48 percent decrease. A 4.48 percent decrease in costs combined with the proposed index-based rate increase of 8.6 percent for all the transportation rates would still provide SFPP an approximately 13.1 percent revenue increase under its transportation rates. The Commission previously found this magnitude of a divergence between the pipeline's change in costs, as expressed in percentage terms, and the proposed rate increase raises an issue of reasonableness that the Commission will investigate.¹¹

8. We therefore find an increase of 13.1 percent, as shown from the Page 700 comparison test may be so substantially in excess of its change in actual costs that the proposed rates may be unjust and unreasonable. Based on this finding, the Commission accepts SFPP's tariff records and suspends them, to become effective July 1, 2012, subject to refund and hearing.

9. The Commission consistently encourages parties to resolve disputes of this nature through settlement, and believes that formal settlement procedures may lead to a resolution of this case. Therefore, the Commission will hold the hearing in abeyance

It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry's average annual cost increases.").

¹¹ See *Calnev Pipe Line, L.L.C.*, 115 FERC ¶ 61,387, at PP 10-11 (2006) (*Calnev*). In *Calnev*, the pipeline proposed an index-based rate increase of 6.15 percent, but had experienced a 4.8 percent cost decrease, which would have resulted in a 10.95 percent increase in revenue if the Commission allowed the index increase. The Commission concluded a 10.95 percentage increase may be unjust and unreasonable and set the matter for hearing.

pending the outcome of formal settlement procedures in this matter. If settlement discussions are unsuccessful, the presiding administrative law judge may determine if it is necessary for the hearing to be phased or further held in abeyance, in the event the issues on rehearing of Order No. 511-A in Docket No. IS08-390-002 are not yet resolved.

The Commission orders:

(A) SFPP's FERC Tariff Nos. 196.7.0 and 198.7.0 and 201.4.0, are accepted and suspended and made effective July 1, 2012, subject to refund and conditions as set forth in this order.

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

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.