

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

SFPP, L.P.

Docket No. IS04-323-000

ORDER ACCEPTING AND SUSPENDING  
TARIFFS SUBJECT TO REFUND

(Issued June 30, 2004)

1. On May 20, 2004, SFPP, L.P. (SFPP) filed several tariffs<sup>1</sup> pursuant to the Commission's oil pipeline rate indexing methodology, 18 C.F.R. § 342.3 (2003), to be effective July 1, 2004. The tariff filings would apply the determinations made in a recent Commission Order on Remand addressing the Commission's indexing methodology.<sup>2</sup> The filing is protested. The Commission concludes SFPP's filing is generally consistent with its indexing regulations. However, because the filing is being made subject to the outcome of certain other proceedings, the Commission will accept and suspend the tariffs listed in footnote No. 1, and will permit the tariffs to become effective on July 1, 2004, subject to refund.

**Procedural Background**

2. On May 20, 2004, SFPP proposed rate increases of approximately 3.2 percent, to become effective July 1, 2004. Interventions and protests were filed by Northwest Airlines, Inc. (Northwest), BP West Coast Products LLC, and ExxonMobil Oil Corporation (Indicated Shippers). Valero Marketing and Supply Company, Ultramar Inc., and ConocoPhillips Company (VUC) intervened and filed joint comments on June 4, 2004. On June 9, 2004, SFPP answered the protests and on June 15, 2004, Indicated Shippers responded to SFPP's answer. The Commission's regulations do

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<sup>1</sup> FERC Tariffs Nos. 104 through 110.

<sup>2</sup> Five-Year Review of Oil Pipeline Pricing Index, 102 FERC ¶ 61,195 (2003), *aff'd sub nom.* Flying J. Inc. v. FERC, 363 F.3d 496 (D.C. Cir. 2004).

not provide for responses to answers to protests, and as Indicated Shippers June 15, 2004 answer provides no useful information, it is rejected.

3. Indicated Shippers assert the Commission has already determined present rates on SFPP's East and West Lines are unjust and unreasonable in Docket No. OR96-2-000, *et al.* Indicated Shippers further state SFPP's cost-of-service and revenues shows that SFPP has "excess profits" that are more than 100 percent of the profit levels allowable under the Commission's regulatory standards. Indicated Shippers also state that the cost-of service contained on Page 700 of SFPP's 2003 Form No. 6 is tainted by unauthorized and unlawful "write ups" of SFPP's books. Indicated Shippers further assert that SFPP's operation and maintenance expense, return on equity, and claimed income tax allowance included in SFPP's Page 700 are too high. Northwest likewise asserts the Commission has found that the West Line rates are unjust and unreasonable, and that the cost-of-service reflected on page 700 of SFPP's 2003 FERC Form No. 6 includes impermissible acquisition "write ups" that result in inflated rates. Northwest also claims that SFPP fails to explain or support the more than \$11 million increase in its cost-of-service between 2002 and 2003. VUC also comments that the Commission has held SFPP's underlying West and East Line rates are unjust and unreasonable.

### **Additional Pleadings**

4. SFPP states its indexing adjustment is fully justified by the facts and consistent with the Commission's prior application of indexing regulations. The Commission's indexing methodology permitted ceiling rates to increase 3.17 percent from 2002 to 2003. Over this same period, SFPP claims that its actual interstate cost of service increased from \$94,168,000 to \$105,412,000, an 11.9 percent increase. SFPP argues that protesters and commentators attack the overall revenue and cost of service, focusing on the whole rate rather than the increment of the indexing adjustment and corresponding incremental change in the cost of service. SFPP further argues the Commission has not decided what the future just and reasonable rates should be in the Docket No. OR96-2-000, *et al.* proceeding.

### **Discussion**

5. Section 343.2(c) (1) of the Commission's regulations provides as follows:

A protest or complaint filed against a rate proposed or established pursuant to §342.3 of this chapter must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or 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.<sup>3</sup>

6. The list of tariff schedule changes attached to SFPP's May 20, 2004, filing demonstrates that SFPP's proposed indexed rates do not violate the applicable ceiling levels. Under section 343.2 (c)(1), for a party to successfully challenge SFPP's proposed indexed rate increase, it must show that the proposed rate increase is so substantially in excess of the pipeline's actual cost increase that it renders the resulting rate unjust and unreasonable. The Commission here finds that protesters failed to make the showing required by this standard.

7. The Commission bases its indexing methodology on the annual change in the Producer Price Index for Finished Goods (PPI).<sup>4</sup> The PPI index reflects year-to-year changes in oil industry costs in general and, therefore, reflects the change in the "average" oil pipeline company's cost of service. The percent change in the PPI from 2002-2003 is 3.1677 percent. Thus the Commission permits oil pipelines to raise transportation ceiling rates by 3.1677 percent. This is the adjustment allowance permitted for the period from July 1, 2004, through June 30, 2005, and is the amount of increase sought by SFPP.

8. Indicated Shippers assert that the Commission should not require it to challenge SFPP's indexed rates solely on a comparison of the changes in rates and costs from one year to the next as specified in the Commission's regulations. It believes it need only show that SFPP's existing underlying rates are unjust and unreasonable even absent the proposed increase. The Commission, however, specifically rejected this argument in Order No. 561-A. In response to adverse comments from two parties to that rulemaking, the Commission concluded that it is not subject to a statutory duty to examine the whole rate when an oil pipeline proposes an indexed rate change.<sup>5</sup>

9. The Commission stated that limiting challenges to the increment of the rate increase is necessary to preserve the protection for certain rates that were grandfathered under the Energy Policy Act of 1992(EP Act) and that such a limitation is consistent with the differing burdens of proof under sections 15(7), 13(1), and 15(1)

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<sup>3</sup> 18 C.F.R. § 343.2 (c)(1) (2003).

<sup>4</sup> 102 FERC ¶ 61,195.

<sup>5</sup> 96 FERC ¶ 61,332.

of the Interstate Commerce Act (ICA).<sup>6</sup> The Commission also emphasizes that, under the indexing system, existing rates, to the extent not grandfathered under the EPAct, remain subject to the complaint process in section 13(1) of the ICA.<sup>7</sup>

10. Indicated Shippers and others challenge all of SFPP's underlying rates, both those that are grandfathered and those that are not, in the ongoing complaint proceeding in Docket Nos. OR96-2-000, *et al.* Thus, the challenge by Indicated Shippers, VUC, and Northwest to SFPP's underlying rates is inappropriate in this proceeding as SFPP seeks only the incremental increase permitted by the indexing regulations. If new just and reasonable underlying rates ultimately are established in the above complaint proceedings, any adjustments to the underlying base rates will necessarily include a recalculation of ceiling levels based on those rates.

11. Indicated Shippers and others also assert that Page 700 of SFPP's 2003 Form No. 6 improperly reflect adjustments to SFPP rate base. SFPP denies this assertion, noting that while it increased the assets reflected in its Form No. 6 in 1998 under the purchase adjustment method, it did not increase the rate base used for rate making purposes and included on Page 700. This issue has been raised by a compliance filing dated April 26, 2004 made by SFPP in response to the Commission's order of March 26, 2004 in Docket No. OR96-2-000, *et al.* The protests here raise similar arguments to those submitted in response to the April 26, 2004 filing and are more appropriately resolved in Docket No. OR96-2-000, *et al.*

12. Finally, because some of the issues raised here are dependent on the outcome of rate issues involved Docket No. OR96-2-000, *et al.*, the Commission will accept and suspend the tariffs listed in footnote No. 1, effective July 1, 2004, subject to refund and the outcome of that proceeding.

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<sup>6</sup> 49 App. U.S.C. §§ 15(7), 13(1), 15(1) (1988).

<sup>7</sup> Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, Order No. 561-A, FERC Stats. & Regs., Regulations Preambles 1991-1996, ¶ 31,000, at 31,104 (1994).

The Commission orders:

The tariffs listed in footnote No. 1 are accepted and suspended, to become effective July 1, 2004, subject to refund and the outcome of Docket No. OR96-2-000 *et al.*

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.