

SFPP, L.P.

ORDER ACCEPTING AND SUSPENDING FILING SUBJECT TO REFUND

119 FERC ¶ 61,330 (2007)

In this case, SFPP, L.P. (SFPP) on May 25, 2007 submitted its annual filing for an index-based rate increase to be effective July 1, 2007. Several shippers intervened and protested. They alleged that based on SFPP's Page 700 of its Form 6 for calendar 2006, SFPP was over recovering its cost-of-service by about \$15 million and to grant it the 4.3186 percent increase would exacerbate that over-recovery, or "excess profits." SFPP subsequently claimed that its actual cost increases from 2005 – 2006 were about 15.3 percent and that exceeded the allowed rate (revenue) increase of 4.3186 percent. The Commission stated that it would not, based on the protests, investigate the proposed index-based rate increase and noted that a complaint proceeding was better to address the intervenors' concerns. The Commission, however, after accepting SFPP's proposal, suspended the index-based rate increase filing subject to refund.

119 FERC ¶ 61,330
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. IS07-229-000

ORDER ACCEPTING AND SUSPENDING FILING SUBJECT TO REFUND

(Issued June 28, 2007)

1. On May 25, 2007, SFPP, L.P. (SFPP) filed FERC Tariff Nos. 155, 156, 157, 158, 159, and 160, pursuant to the Commission's oil pipeline rate indexing methodology, 18 C.F.R. §342.3 (2006). SFPP also filed FERC Tariff No. 161, which contains an Index of Tariffs. SFPP proposes that the tariffs be effective July 1, 2007. The Commission accepts and suspends these tariffs, subject to refund, effective July 1, 2007.

The Pleadings

2. SFPP's May 25, 2007 tariff filing is an annual filing to increase its rates under the Commission's indexing procedures. BP West Coast Products LLC and ExxonMobil Oil Corporation (collectively Indicated Shippers) filed a protest on June 11, 2007 and Tesoro Refining and Marketing Company filed a motion for intervention on June 8, 2007. Indicated Shippers assert that in 2006 SFPP over recovered its cost of service by approximately \$15,585,398. This assertion is derived by comparing a cost of service of \$123,587,556 to revenues of \$139,172,954 in 2006 using numbers purportedly derived from Page 700 of SFPP's 2006 FERC Form No. 6. They further claim that SFPP has had substantial excess profits over the years and that the instant filing would further increase those over recoveries. They further allege that certain cost factors are significantly overstated, particularly those derived from SFPP's relationship with its controlling partnership, Kinder Morgan Energy Partners, L.P.

3. Indicated Shippers further argue that on June 6, 2007, the Commission held in *BP West Coast, LLC v. SFPP*¹ that if there were reasonable grounds to conclude that an oil pipeline substantially over recovered its cost in the base year (which in this case is 2006), a shipper would have reasonable grounds to allege that permitting a carrier to further increase its rates under the indexing procedure would result in rates that are unjust and unreasonable. Indicated Shippers assert that given SFPP is substantially over recovering

¹ *BP West Coast, LLC v. SFPP*, 119 FERC ¶ 61,241 (2007) (June 6 Order).

its cost of service, the application of the index will only further exacerbate SFPP's existing "excess profits." As a result, Indicated Shippers assert that they have alleged reasonable grounds to conclude that the proposed July 1, 2007 increase results in rates that are unjust and unreasonable. They therefore request the Commission to reject SFPP's filing, or to at least suspend and investigate it.

4. On June 18, 2007, SFPP filed an answer to Indicated Shippers' protest. SFPP asserts that its proposed increase is fully justified under the Commission's indexing procedures and that the Commission has consistently rejected the arguments advanced by Indicated Shippers in previous annual index-based filings.² At bottom, it asserts that SFPP's proposed index adjustment is not substantially in excess of its change in actual costs. To the contrary, it states that the change in the rate index from 2005-2006 is 4.3186 percent while SFPP's actual interstate cost of service increased from \$107,184,334 to \$123,587,556 in 2006. Thus, the dollar increase was \$16,403,222 or about 15.3 percent, which greatly exceeded the permissible indexing rate increase. SFPP further asserts that the Commission has rejected protests even when the index increase exceeded the percentage change in its actual cost of service. As such, SFPP states that the protest fails to present reasonable grounds for an investigation, and that the claim of "excess profits" is overstated and irrelevant. SFPP contends that this is because the protest does not properly allow for the fact that the Page 700s for each year must be constructed using the same rate design in each year from the cost comparisons to be meaningful. SFPP also asserts that the June 6 Order is inconsistent with and undercuts the Commission's general protocols for the review of index-based rate filings, and states that it will be filing a rehearing request to address this issue. Finally, SFPP asserts that the Commission has consistently held that rate design issues are not appropriate in an index proceeding.³

Discussion

5. As with prior years, the Commission's indexing regulations apply an annual index factor to the ceiling rate in effect on June 30 of each year. SFPP correctly applied the index factor to derive its new rates. Thus the only issue here is whether the resulting rates were so in excess of the actual cost increases incurred for the index year by the carrier that the increase was unjust and unreasonable. In making that determination the hallmark of the Commission's indexing system is simplicity.⁴ This is because the indexing approach allows pipelines to establish a new rate ceiling rates without a detailed

² *Citing SFPP, L.P.*, 96 FERC ¶ 61,332 at 62,271-72 (2001) and subsequent cases in footnotes 3-5 of its answer.

³ *Cf.* June 6 Order at PP 9-11.

⁴ Order No. 561 at 30,948. *Revisions to Oil Pipeline Regulations Pursuant to the*

and comprehensive presentation and examination of the individual pipeline's cost of service in each case.⁵ Thus, pipelines are able to adjust rates to just and reasonable levels for inflation-driven costs without the need for strict regulatory review of the pipeline's individual cost of service.⁶ In fact, under this regulatory regime some divergence between the actual cost changes experienced by individual pipelines and the changes permitted by the index is inevitable.⁷ While the indexing method is an efficient method to recover the inflation-driven cost increases occurring in a given year, it is not normally adequate to determine whether any specific rate is just and reasonable. This is because a reasonableness determination requires the detailed regulatory review of the pipeline's individual cost of service and the allocation of those costs among the different services and rates stated in the pipeline's tariff, a process that is clearly not simple.⁸

6. Thus, the determination Indicated Shippers urges here is not possible in the context of a protest of an index proceeding because the specific costs necessary for such a determination are not available and in most cases a proceeding would be too protracted. For this reason, the Commission has consistently required a complaint under section

13(1) of the Interstate Commerce Act (ICA)⁹ to pursue a determination as to whether specific rates are just and reasonable.¹⁰ Section 343.2(c)(1) of the Commission's regulations provides in part as follows:

Energy Policy Act of 1992, FERC Stats. & Regs., Regs. Preambles, January 1991- June 1996 ¶ 30,985 (1993), 58 F.R. 58753 (Nov. 4, 1993), Order No. 561; *order on reh'g*, Order 561-A, FERC Stats. & Regs., Regs. Preambles, January 1991- June 1996 ¶ 31,000 (1994), 59 F.R. 40242 (Aug. 8, 1994); *aff'd*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *aff'd* *Association of Oil Pipe Lines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002) *order on remand*, *Five-Year Review of Oil Pipeline Pricing Index*, 102 FERC ¶ 61,195 (2003).

⁵ *Id.* at 30,946.

⁶ *Id.* at 30,948.

⁷ *Id.* at 30,949.

⁸ *Cf. ExxonMobil Oil Corporation v. FERC*, slip. op. dated May 29, 2007, No. 04-1102 (D.C. Cir.); *BP West Coast Products v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004).

⁹ 49 U.S.C. App. §13(1) (1988).

A protest or complaint filed against a rate proposed or established pursuant to [the indexing rules] 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....¹¹

In determining whether reasonable grounds exist the Commission has consistently based its evaluation of a proposed index-based rate increase on Page 700 of the pipeline's annual FERC No. Form 6 report. Under that procedure Indicated Shippers fail to make the requisite showing here. The revised index provides for an increase in rates of 4.3186 percent. SFPP's FERC Form No. 6 for 2006 shows an actual cost of service increase from \$107,184,334 to \$123,587,556, or about a 15.3 percent increase, while the index increase was limited to 4.3186 percent. Thus the difference between the change in the index and the change in the cost of service is not "so substantially in excess" of the actual cost increase as to render the resulting rates unjust and unreasonable.

7. Indicated Shippers may believe that the SFPP's rates on the date of filing are unjust and unreasonable, but that is not the issue here. The June 6 Order cited by Indicated Shippers is inapposite because it was a complaint case, Docket No. OR07-8-000. At bottom, Indicated Shippers argue here (1) that the accumulative increase in rates for several years of index increases unreasonably exceeds SFPP's actual increase over the same multi-year period and (2) that the base rates themselves are unjust and unreasonable. These arguments must be advanced by means of a separate complaint, not a protest filed in the suspension phase. In an index-rate adjustment proceeding the focus of an index adjustment case is only whether the index increase is so substantially in excess of cost changes for the index year. Otherwise, each proceeding is likely to evolve into litigation about the return already present in the base rates, in this case those in effect during the calendar year 2006. This would defeat the goal of administrative simplicity that is the core rationale of the indexing methodology. Accordingly, the complaint filed in Docket No. OR07-8-000 was the proper venue to address the concerns raised here. Similarly, if Protesters believe that SFPP has not accurately calculated the index based on its existing costs and its internal records of those costs, they may file a separate complaint to that effect.

8. For these reasons, the Commission will not investigate SFPP's FERC Tariff Nos. 155, 156, 157, 158, 159, 160 and 161. However, SFPP's underlying rates are under

¹⁰ See *SFPP, L.P.*, 111 FERC ¶ 61,510 (2005); *SFPP, L.P.*, 107 FERC ¶ 61,334 (2004); *SFPP, L.P.*, 102 FERC ¶ 61,344 (2003); *SFPP, L.P.*, 96 FERC ¶ 61,332 (2001).

¹¹ 18 C.F.R. § 343.2(c)(1) (2006).

investigation in various dockets. If the rates to which an index filing would apply are under investigation, any increase that results from the filing is automatically subject to refund. Under those circumstances, the Commission has accepted and suspended such filings, subject to refund, and will do so here.

The Commission orders:

SFPP's FERC Tariff Nos. 155, 156, 157, 158, 159, 160, and 161 are accepted and suspended, effective July 1, 2007, and subject to refund.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.