

*SFPP, L.P.*

ORDER ON INDEX-BASED RATE INCREASE FILING

127 FERC ¶ 61,312 (2009), *order on reh'g*, 130 FERC ¶ 61,081 (2010)

In this case, SFPP, L.P. (SFPP), on May 29, 2009, filed for index-based rate increases for several lines to be effective July 1, 2009. The specific index was 7.6025 percent. SFPP proposed to use as the ceiling level from which to compute the index-based rate increase for the East Line a previously filed tariff rate. Various shippers intervened and protested. They argued, among other things, that SFPP was not entitled to an increase because it was over-recovering its costs-of-service for the various lines before applying the index, and an increase would substantially exacerbate the over-recoveries. They challenged as well certain elements in the costs-of-service as questionable and claimed that the Commission's indexing protocols did not allow provision of sufficient information to adequately assess an oil pipeline's claim for an index-based rate increase. They maintained as well that for the East Line, the applicable ceiling rate was the rate established in a recent settlement, and not the previous tariff rate now proposed by SFPP. With one modification, the Commission accepted the index-based rate increase filings, noting that SFPP's actual cost increases exceeded the revenue that would be generated by application of the index factor. The Commission agreed, though, with the shipper-argument that the applicable ceiling rate for the East Line was the rate that had been set in a recent settlement as it had taken effect on May 1, 2009, which was during the pertinent index year. The Commission reiterated that it will not review the appropriateness of individual elements of an oil pipeline's cost-of-service on the basis of protests in an index-based rate filing proceeding. The Commission sustained its rulings on rehearing in *SFPP, L.P.*, 130 FERC ¶ 61,081 (2010), indicating, among other things, that the protestors' "substantially exacerbate" contention was relevant only in complaint proceedings.

127 FERC ¶ 61,312  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

SFPP, L.P.

Docket No. IS09-375-000

ORDER ON INDEX-BASED RATE INCREASE FILING

(Issued June 30, 2009)

1. This order addresses the tariffs SFPP, L.P. (SFPP) filed in Docket No. IS09-375-000 to increase a number of its rates under the Commission's oil pipeline indexing methodology.<sup>1</sup> The tariffs have a proposed effective date of July 1, 2009. The increases are protested on a number of grounds. The Commission accepts the proposed tariff sheets as filed and clarifies how SFPP's ceiling rate must be defined as of July 1, 2009.

**I. The Pleadings**

**A. The Protests**

2. The tariffs at issue provide for an indexed-based rate increase of 7.6025 percent to SFPP's West, East, North, Oregon, and Sepulveda Line rates and certain rates for shipments between Watson Station and East Hynes to SFPP's interconnection with Calnev Pipe Line L.L.C.<sup>2</sup> The proposed increases do not affect SFPP's Watson Station Drain Dry rates. The 7.6025 percent increase is the maximum amount permitted under the Commission's indexing methodology for the index year commencing July 1, 2009. The increases for all but the East Line rates are based on the ceiling rates in effect for those rates as of July 1, 2008, and as such establish the new ceiling rates for the West,

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<sup>1</sup> FERC Tariff No. 175; FERC Tariff No. 176; FERC Tariff No. 177; FERC Tariff No. 178; FERC Tariff No. 179; FERC Tariff No. 180; and FERC Tariff No. 181.

<sup>2</sup> The tariffs were filed pursuant to 18 C.F.R. § 385.213 (2008).

North, Oregon, and Sepulveda Line rates. SFPP maintains that the current East Line rates are below the ceiling level for those rates and proposes to index these rates to a level below what it claims is the new ceiling level for those rates as of July 1, 2009.

3. Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co. (Southwest), and US Airways, Inc. (US Airways) (collectively the Airline Shippers) filed a motion to intervene and request for clarification. ConocoPhillips Company (ConocoPhillips), and Valero Marketing and Supply Company (VMSC) and Southwest collectively filed a motion to intervene, protest, and request for clarification. Western Refining Company, L.P. (Western), ExxonMobil Oil Corporation (ExxonMobil) and Navajo Refining Company, L.L.C. (Navajo), Chevron Products Company (Chevron), Tesoro Refining and Marketing Company (Tesoro), and BP West Coast Products LLC (BP) filed motions to intervene and protest.<sup>3</sup> SFPP filed a reply to the protests on June 17, 2009.

4. VMSC and Southwest contend that the Commission clarify that the indexed rate increases associated with SFPP's West Line, North Line, and Sepulveda Line contained in SFPP's proposed Tariff Nos. 178, 179, and 175, should be accepted subject to refund<sup>4</sup> as the underlying rates on these lines have been subject to refund.<sup>5</sup> The Airline Shippers contend that the indexed rate increases associated with SFPP's West Line should, if accepted, be subject to refund because SFPP's underlying West Line rates are currently subject to refund.<sup>6</sup> Airline Shippers also note that they currently have complaints and protests pending before the Commission challenging SFPP's interstate pipeline rates on the West Line in Docket Nos. OR04-3-000 and IS08-390-002. ConocoPhillips also notes that it has complaints pending against all of SFPP's interstate pipeline rates in Docket Nos. OR96-2-000, *et al.*, and OR03-5-000, *et al.*

5. ConocoPhillips, VMSC, and Southwest argue that in calculating the ceiling rates applicable to interstate service on the East Line proposed by SFPP in Tariff No. 177, SFPP should have used certain settlement rates set forth in Tariff No. 174 as the 2008 ceiling rates and used that rate as the basis for calculating the 2009 ceiling level.<sup>7</sup> They

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<sup>3</sup> The various protesting shippers are collectively referred to as Protesting Parties.

<sup>4</sup> *Citing SFPP, L.P.*, 117 FERC ¶ 61,271, at P 7 (2006).

<sup>5</sup> *Citing SFPP, L.P.*, 115 FERC ¶ 61,125 (2006); *SFPP, L.P.*, 111 FERC ¶ 61,299 (2005); *SFPP, L.P.* 81 FERC ¶ 61,177 (1997).

<sup>6</sup> *Citing SFPP, L.P.*, 115 FERC ¶ 61,125 (2006).

<sup>7</sup> The Commission approved the settlement rates of all pending litigation against

asserts that SFPP should not have used as the 2008 ceiling rates previously filed in Tariff No. 162 that were effective subject to refund on December 1, 2007, and use that rate as the basis for calculating the 2009 ceiling level. They assert that SFPP improperly based its July 1, 2009 ceiling rate on FERC Tariff No. 173, which became effective on August 1, 2008, which was materially higher than FERC Tariff No. 174. Western, and ExxonMobil and Navajo similarly contend that SFPP's East Line ceiling levels under Tariff No. 177 are overstated and erroneous because SFPP's analysis utilizes the wrong base rate to compute the appropriate July 1, 2009 ceiling levels. These Protesting Parties therefore request that the Commission require that the ceiling levels for SFPP's East Line rates contained in Tariff No. 177 be set at the settlement rate, as indexed by the current index factor, pursuant to 18 C.F.R. § 342.3(d)(5).<sup>8</sup> This would result in a ceiling rate that is consistent with the holding in the *MarkWest* case<sup>9</sup> that a settlement rate that goes into effect during the index year is the ceiling rate for that year.

6. Chevron also asserts that SFPP's accounts are incorrect. These assertions include that SFPP should have reported certain retirements in 2008 rather than 2007, and that SFPP's rate base is not properly calculated. Chevron further asserts that SFPP improperly indexed its Watson Station Drain Dry charges, which is inconsistent with the settlement governing those rates. Chevron also states that SFPP is over-recovering its cost of service and has been doing so for several years, and the unreasonableness of its rates is established by cost-of-service evidence in a number of pending rate proceedings. It asserts that the proposed increase should be denied given SFPP's over-recovery of its costs. Tesoro also requests that the Commission reject SFPP's May 2009 tariffs because its rates are excessively high, or alternatively, suspend the rates and investigate into their lawfulness.

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SFPP's East Line rates on January 29, 2009 in *SFPP, L.P.*, 126 FERC ¶ 61,076 (2009) (January 2009 Settlement).

<sup>8</sup> See 18 C.F.R. § 342.3(d)(5) (2008):

When an initial rate, or rate changed by method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year.

<sup>9</sup> *MarkWest Michigan Pipeline Company, L.L.C.*, 126 FERC ¶ 61,300 (2009) (*MarkWest*).

7. BP requests that the Commission reject SFPP's index filing. If the filing is not rejected it requests that the Commission investigate the rate increase, suspend the tariff filing for the maximum statutory period, subject to refund, with interest, and subject to the outcome of the audit complaint that it filed contemporaneously in Docket No. OR09-12-000. It also requests in the alternative that the Commission permit the index-based increase only for the East Line. In this regard, BP argues that the increases for SFPP's other lines are distorted by a large increase in 2007 in SFPP's East Line rate base. It concludes that this large increase in East Line costs was the primary source of the percentage increase applied on July 2008. However, BP asserts that increase was applied to all of SFPP's other rates, which resulted in increases to those rates that exceeded any realistic increase in their costs. It notes that it presently has a rehearing request before the Commission on this issue and that it filed one of two complaints on the same issue.

8. BP further asserts that SFPP is substantially over-recovering its costs and that allowing the indexed-based increase will substantially exacerbate that over-recovery. It also argues that SFPP is estopped from applying the 2008 index factor here because it is using a zero inflation rate in developing a cost of service in a different case based on recent information available for 2009. BP also argues that there are questionable calculations in SFPP's FERC Form No. 6 for 2008, including its rate of return, rate base, and income tax allowances. It also asserts that SFPP's West Line rates are not eligible for an index-based increase because the existing rates are new rates effective in 2008 and were premised on a full cost of service that supported SFPP's filing in Docket No. IS08-390-000. BP also includes a long exegesis of why the Commission's indexing protocols provide inadequate information and remedies to oil pipeline shippers and how they fail to address cumulative increases resulting in a pipeline's over-recovery of its cost of service.

#### **B. SFPP's Answer**

9. In its answer, SFPP asserts that its index-based filing conforms to the Commission's regulations and policies. It first states that the increase in its costs in 2008 exceeded the 7.6025 percent increase permitted this year under the indexing methodology. Thus, SFPP contends that the proposed indexing adjustment to its rates does not substantially exceed SFPP's cost increase because SFPP's actual interstate cost of service increased from \$143,198,806 in 2007 to \$183,406,724 in 2008, an increase of \$40,207,918, or about 28.08 percent. SFPP therefore concludes that the Protests should be rejected and SFPP's filing should be accepted because the indexed rate increases filed by SFPP are not so substantially in excess of the actual cost increases incurred by SFPP that the rates are unjust and unreasonable.

10. SFPP further asserts that under Commission policy the assertion that it may be over-recovering its cost of service at this juncture is irrelevant for two reasons. First, the Commission only reviews the numerical relationship between the dollar increase resulting from the application of the index method and the actual dollar increase in the

pipeline's cost upon complaint. Second, the dollar increase generated by the application of the index is relevant only if the increase substantially exacerbates the existing over-recovery. SFPP argues that this is not possible here as SFPP's actual dollar increase in its costs in 2008 was greater than the additional revenues that will be generated by the application of the 7.6025 percent index-based increase.<sup>10</sup>

11. SFPP therefore argues that in the context of the specific annual index-based filing at issue here there is no relevancy to the various arguments that SFPP has been consistently over-recovering its costs. SFPP further argues that the Commission has consistently held that it will not address challenges to cost factors embedded in the pipeline's cost of service in the protest phase of an indexed-base rate increase. It argues that the Commission requires a complaint be filed against the pipeline's existing rates to review such factors.<sup>11</sup> SFPP therefore concludes that there is no support in establishing an investigation in this docket because claims regarding cumulative indexing adjustments and/or challenges to SFPP's underlying rates must be addressed in a complaint rather than in the protests at issue in this proceeding.<sup>12</sup> Thus, it argues that BP errs in implying that it is entitled to a guaranteed hearing because section 343.2(c)(1) of the Commission's indexing regulations limits challenges to proposed indexed rates solely to a comparison of the proposed indexing rate change and the change in costs from one year to the next.<sup>13</sup> Rather, SFPP asserts that, in determining whether a protest meets section 343.2(c)(1), the Commission compares the Page 700 cost data contained in the company's annual FERC No. 6 to the data that is reflected in the index filing for a given year with the data for the prior year.<sup>14</sup> Thus, it claims the Commission has consistently rejected the repetitive protests filed by BP and others against SFPP's indexing adjustments.<sup>15</sup>

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<sup>10</sup> Citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 10 (2007); *Tesoro Refining and Marketing Company v. Calnev*, 121 FERC ¶ 61,142, at P 6 (2007).

<sup>11</sup> Citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243 (2007).

<sup>12</sup> Citing *SFPP, L.P.*, 119 FERC ¶ 61,330, at P 7 (2007) ("If ... believe that SFPP has not accurately calculated the index based on its existing costs ..., they may file a separate complaint to that effect.").

<sup>13</sup> Citing 18 C.F.R. § 343.2(c)(1) (2008).

<sup>14</sup> Citing *BP West Coast Products LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007).

<sup>15</sup> Citing *SFPP, L.P.*, 102 FERC ¶ 61,344, at P 12 (2003); *SFPP, L.P.*, 107 FERC

(continued...)

12. SFPP argues that in any event the increase in its return on equity reflects recent increases in its rate base and an increase in the overall cost of equity during the 2008 calendar year. It states that since return on equity is a fundamental cost factor, Chevron's effort to adjust SFPP's cost of service by excluding any increase in return makes no sense. SFPP argues that Chevron is mistaken in alleging that SFPP erroneously booked retirements in 2008 while observing that SFPP's East Line Expansion was placed in service in December of 2007 because the recording in 2008 of retirements related to major expansion completed in December 2007 is not unreasonable and such a time lag in financial reporting has no bearing on SFPP's rate base as reported on Page 700. It also states that, contrary to Chevron's assertions, it did not increase its Watson Station Drain Dry charges. SFPP further argues that BP errs in claiming that SFPP has violated Instruction 6 of Page 700 since SFPP has prepared Page 700 in accordance with the Commission's Opinion No. 154-B methodology and did not change its application of that methodology from the prior year.

13. SFPP also states that Chevron and BP err in alleging that SFPP's West Line rates are not eligible for an index rate increase, since SFPP is fully entitled under section 342.3(d)(5) to apply, effective July 1, 2009, the 2009-2010 indexing adjustment to those rates. SFPP argues that the Commission should reject BP's claim that SFPP is not entitled to an indexing adjustment because its rate base increased as a result of the East Line expansions in 2006 and 2007. SFPP states that the Commission previously concluded that the oil pipeline index should be applied to all of a pipeline's costs, not just those costs that are driven by inflation,<sup>16</sup> and the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) specifically affirmed the Commission's decision on this issue.<sup>17</sup>

14. SFPP also claims that BP's claim that SFPP is "estopped" from applying the Commission's indexing methodology to its rates is without merit because there is no connection between the indexing adjustments, which are based on the Producer Price

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¶ 61,334, at P 8 (2004); *SFPP, L.P.*, 111 FERC ¶ 61,510, at P 2 (2005); *SFPP, L.P.*, 115 FERC ¶ 61,388, at P 10 (2006); *SFPP, L.P.*, 119 FERC ¶ 61,330, at PP 6-8 (2007); *SFPP, L.P.*, 123 FERC ¶ 61,317, at P 6-7 (2008).

<sup>16</sup> *Citing Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs. ¶ 30,985, at 30,951-52 (1993) (Order No. 561), *on reh'g*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd sub nom. Ass'n of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL v. FERC*), *aff'd, Ass'n of Oil Pipelines v. FERC*, 281 F.3d 239 (D.C. Cir. 2002).

<sup>17</sup> *Citing AOPL v. FERC*, 83 F.3d at 1436-37.

Index, and the investor-required cost of equity, which is founded on investor expectations and investors' assessments of risk and calculated using the Consumer Price Index.

15. SFPP asserts that the Commission should reject the Protestants' claim regarding SFPP's East Line indexing adjustments because (1) the East Line rates set under the East Line Phase II Settlement Agreement are clearly not "initial rates" as no new service was being offered by the carrier; (2) the settlement rates reflect reductions in existing rates as permitted under section 342.3(a); and (3) the settlement rates are not "settlement rates" under section 342.4(c) because the settlement did not include all persons using the East Line service. It also argues that the December 1, 2007 suspended rates filed in Docket No. IS08-28-000 were cost-based rates that cannot be replaced by the settlement rates. Thus, SFPP argues that the settlement rate reductions did not create a new basis for setting the ceiling level under section 342.3(d)(5). SFPP therefore concludes that *MarkWest* does not apply to the instant case because *MarkWest* dealt only with defining the ceiling rate once a settlement expired. SFPP also asserts that in the instant case the amount of any annual indexing and any discounts to such indexing are specifically controlled by the settlement terms and the ambiguity that existed in *MarkWest* is not present. In this regard, it notes that it has not discounted the indexed East Line rates, but has applied this year's 7.6025 percent increase to a lower base established by the January 2009 Settlement. SFPP asserts that this was consistent with the settlement, but should not be used to determine the new ceiling rate for 2009.

16. Finally, SFPP argues that the Commission should reject Chevron's request that SFPP's Oregon Line rate increase be accepted subject to refund since the status of the Oregon Line rate has not changed.<sup>18</sup> SFPP notes the refund obligation applies only to proceedings involving an initial rate filing by the pipeline and do not apply to rates that are only subject to a complaint proceeding. Thus, SFPP argues that a refund obligation would attach here to its West, Sepulveda, and North Line rates, but not to its East or Oregon Line rates.

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<sup>18</sup> Citing *SFPP*, 123 FERC ¶ 61,317, at P 5 (2008) and *SFPP, L.P.*, 121 FERC ¶ 61,163, at PP 5-6 (2007) ([t]he Commission will not make the proposed index-based increase to SFPP's Oregon Line rates subject to refund .... While SFPP's Oregon Line rates are subject to a complaint, the underlying rates are not subject to refund because they are presumed just and reasonable until the investigation of the complaint against those rates is completed and then only if the Commission requires that new rates be filed.).

C. Western's Answer

17. On June 23, 2009 Western filed an answer to SFPP's June 17 answer. While the Commission does not usually permit answers to an answer, it will accept Western's answer as further elucidating the issues. Western first requests that the Commission order SFPP to recompute the East Line ceiling rates to be made effective July 1, 2009. Specifically, Western argues that section 342.3(d)(5) is not limited to just initial rates, but plainly applies to an initial rate or to any rate that is changed by a method other than indexing.<sup>19</sup> Furthermore, Western contends that the settlement rate constitutes the applicable ceiling rate because it became effective during the index year. In support of its contention, Western notes that SFPP entered into a Phase II East Line Settlement with its shippers on October 22, 2008 that provided for a reduction in the Docket No. IS08-28 "filed-for" rates that were suspended and made effective on December 1, 2007, subject to refund. Western notes that the Commission approved the settlement on January 29, 2009 holding that the settlement rates were just and reasonable. In addition, Western states that SFPP filed the settlement rates on FERC Tariff No. 174 and those "reduced rates" became effective May 1, 2009, all of which happened within the July 1, 2008 to June 30, 2009 index year.

18. Western objects to SFPP's contention that the settlement rates are not "settlement rates" under section 342.4(c) and therefore the agreed rate reductions did not create a new basis for setting the ceiling level under section 342.3(d)(5). Specifically, Western asserts that the plain language of section 342.3(d)(5) addresses any "rate" changed by method other than indexing and the regulation does not specify the method for changing a rate. Moreover, Western rejects SFPP's argument that the December 1, 2007 suspended rates in Docket No. IS08-28 were authorized cost-based rates that cannot be supplanted by settlement rates in determining a ceiling rate. It asserts that the December 1, 2007 "filed-for" rates were neither investigated nor approved by the Commission as cost-based rates, and the "filed-for" rates were not deemed just and reasonable. Western asserts that the settlement rates were found just and reasonable and replaced the suspended December 1, 2007 rates. Western postulates that, upon termination of the IS08-28 settlement, SFPP might then utilize section 342.3(a) of the regulations to install the contested and suspended December 1, 2007 rates from Docket No. IS08-28 as the new East Line general system rates without ever having to justify the cost-basis for such rates.

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<sup>19</sup> Citing section 342.3(d)(5) ([w]hen an initial rate, or rate changed by a method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year.) (Emphasis added by Western).

## II. Discussion

19. The Commission accepts the tariffs at issue here subject to one modification, which is the ceiling rate contained in FERC Tariff No. 177 governing SFPP's East Line rates. The Commission concludes that *MarkWest* should control the level of the ceiling rate. As the protesting shippers assert, that case held that a settlement rate is the equivalent of an initial rate and thus becomes the ceiling rate for the index year in which it becomes effective. SFPP's efforts to distinguish its filing from the *MarkWest* proceeding are unconvincing. First, the rates filed under the January 2009 Settlement are uniform common carrier rates applicable to all shippers. Thus, the argument that only some of its shippers were parties to the settlement is irrelevant. Second, the issue here is not what ceiling rate will control when the October 2008 settlement expires, but whether as a generic matter of policy a settlement rate is a rate changed by method other than indexing that takes effect during the index year under the Commission's indexing methodology. The Commission affirms here its conclusion in *MarkWest* that this is indeed the case and holds that the ruling in *MarkWest* is not limited to that case or to the expiration of the settlement involved there. Thus, the East Line rates that became effective under the January 2009 Settlement became the ceiling rates for the 2008 index year on the day the settlement rates became effective. Therefore, the July 1, 2009 East Line ceiling rates are to be determined by adding the 7.6025 percent index increase to the East Line settlement rates that became effective May 1, 2009. SFPP is directed to refile FERC Tariff No. 177 within 30 days after this order issues to reflect the proper calculation of the East Line ceiling rates as of July 1, 2009.

20. SFPP is correct that the Protestors' remaining arguments are inapposite. SFPP has established that the dollar amount of its actual cost increases exceeds the amount it will recover. As such, the Commission will not review SFPP's filing at this juncture. A protest lies only if the protesting party establishes that the increase in the rates generated by the application of the index results in a rate increase that is so in excess of the pipeline's actual cost increases that the resulting rates are unjust and unreasonable. It is impossible to meet this standard if the dollar increase resulting from the application of the index is less than the actual dollar increase in the pipeline's costs in the previous year, in this case calendar year 2008.<sup>20</sup> Moreover, review of the dollar amounts of the increase

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<sup>20</sup> See *BP West Coast Products, et al. v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 10 (2007); *Tesoro Refining and Marketing Company v. Calnev Pipe Line, L.L.C.*, 121 FERC ¶ 61,142, at P 6 (2007). Under these facts there is no need to address whether the increase substantially exacerbated SFPP's alleged over-recovery. This is because the over-recovery is reduced in a year in which the carrier's actual dollar cost increases exceed the amount of additional revenue generated by application of the index methodology.

occurs only in the context of a complaint. For reasons of administrative efficiency, in reviewing protests the Commission compares the percentage increase in index and the percentage increase in the pipeline's costs to determine whether the increase should be deemed to result in an unjust and unreasonable rate.<sup>21</sup>

21. In *BP West Coast Products LLC v. SFPP, L.P.*, the Commission also reviewed an extensive list of prior cases that made clear that it will not review the appropriateness of the individual cost factors embedded in an oil pipeline's cost of service on the basis of protests to an index-based rate filing. Such issues are to be limited to a more general complaint against the oil pipeline's rate structure.<sup>22</sup> Thus, on both grounds the various arguments directed to SFPP's alleged over-recoveries and the changes in its rate base, income tax allowance, and return are simply not before the Commission at this juncture. The Commission also concludes based on the record here that SFPP properly applied this year's index factor to all of the rates it indexed, including its East Line rates. The Commission's indexing methodology normally applies to all of the pipeline's costs regardless of whether they are affected by inflation.<sup>23</sup> Whatever impact the large scale investment SFPP made in its East Line rates in 2007 may have had on the rates for its other lines, the same argument does not appear to apply to the 2008 calendar year at issue here. Once an investment is made and the rate base increased for the year of the investment, the indexing methodology clearly assumes that inflation or deflation will affect the return components of the rate base in the subsequent years. BP West Coast's protest does not suggest a concern is directed to large scale additions to a specific portion of SFPP's rate base that may have occurred in 2008. Rather, it appears to be directed to an aggregate level of additional investment that may have applied to the entire system.<sup>24</sup> In any event, such a complex issue is hard to resolve on the basis of a protest to an index filing, which is why in a protest context the Commission conducts a narrow review of the calculations in the index filing and addresses most other issues through a complaint.

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<sup>21</sup> *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 8, 10 (2007).

<sup>22</sup> *Id.* P 5, 10-11. *SFPP, L.P.* 123 FERC ¶ 61,137 (2008).

<sup>23</sup> See Order N0. 561, FERC Stats. & Regs. ¶ 30,985, at 30,951-52, *on reh'g*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000, *aff'd sub nom. AOPL v. FERC*, 83 F.3d 1424), *aff'd*, *AOPL v. FERC*, 281 F.3d 239.

<sup>24</sup> See Motion to Intervene and Protest of BP West Coast Products LLC dated June 15 at 10-11.

22. SFPP is also correct that BP West Coast's estoppel argument is irrelevant. SFPP properly argues that the index operates on the basis of the actual inflation rate during each calendar year, which is then applied to the ceiling rate in effect on June 30 of the following year. Thus, the 7.6025 percent inflation factor is determined for the 2008 calendar year and then applied to the ceiling rate in effect on June 30, 2009. This determines the ceiling rate that becomes effective on July 1, 2009. In contrast, the inflation rate used to determine an oil pipeline's return on equity is a forward looking rate based on a test year methodology that is subject to review and challenge in the context of a specific rate proceeding. SFPP is correct about when a refund obligation attaches to an index-based rate filing. The Commission has clarified that the obligation does not attach to rates involved in a complaint proceeding and the Protestor's comments to the contrary are inapposite.<sup>25</sup> Thus, in the instant case, SFPP has ongoing proceedings for carrier determined initial rates that it filed for the West, North, and Sepulveda Lines, which rates were accepted subject to suspension, investigation, and refund.<sup>26</sup> The indexing of those carrier initiated rates is subject to refund and that obligation will be applied here. The refund obligation will not attach to the Oregon or East Line rates at this time.

23. Finally, BP West Coast's extensive criticisms of the Commission's indexing method have no relevance here because they are a collateral attack on the Commission's index-based ratemaking methodology. Those criticisms do not address the specific merits of the instant filing, and, accordingly, need not be addressed in this order in detail. This is also true for the other inapposite protests given the clarity of the Commission's recent orders on the protocols and standards for challenging an indexed-based filing.<sup>27</sup>

The Commission orders:

(A) The tariffs listed in footnote No. 1 are accepted, to be effective July 1, 2009, subject to Ordering Paragraphs B and C below.

(B) FERC Tariffs Nos. 175, 178, and 179 are accepted subject to refund.

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<sup>25</sup> See *SFPP, L.P.*, 121 FERC ¶ 61,163, at P 5-6 (2007); *SFPP, L.P.*, 123 FERC ¶ 61,317, at P 5 (2008). In the latter case the Commission explicitly rejected the argument that a refund obligation should attach to SFPP's Oregon Line rates.

<sup>26</sup> See *SFPP, L.P.*, 124 FERC ¶ 61,103 (2008), *SFPP, L.P.*, 111 FERC ¶ 61,299 (2005), and *SFPP, L.P.*, 81 FERC ¶ 61,177 (1997), respectively.

<sup>27</sup> *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243 (2007); *SFPP, L.P.*, 123 FERC ¶ 61,317 (2008).

(C) SFPP is directed to refile FERC Tariff No. 177 within 30 days to adjust the ceiling rates for its East Line rates as directed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Document Content (s)

IS09-375-000.DOC.....1-12



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130 FERC ¶ 61,081  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.

Docket No. IS09-375-002

ORDER DISMISSING REHEARING REQUEST  
AND DENYING REHEARING

(Issued January 29, 2010)

1. This order addresses the rehearing requests by Tesoro Refining and Marketing Company (Tesoro) and Chevron Products Company (Chevron) of the Federal Energy Regulatory Commission's (Commission) June 30, 2009 order<sup>1</sup> accepting SFPP, L.P.'s (SFPP) tariff filing in Docket No. IS09-375-000. In this order the Commission finds Tesoro's request for rehearing to be deficient, and therefore, dismisses its rehearing request. The Commission denies Chevron's rehearing request for the reasons discussed below.

**I. Background**

2. On May 29, 2009, SFPP filed FERC Tariff Nos. 175 through 180 seeking to increase its rates by 7.6025 percent effective July 1, 2009 pursuant to the Commission's indexing regulations.<sup>2</sup> Several parties, including Tesoro and Chevron, filed protests. SFPP defended its proposed index-based rate increases stating as shown in its FERC Form No. 6, its costs in 2008 exceeded the 7.6025 percent rate increase permitted for the 2009 index year.<sup>3</sup> SFPP's FERC Form No. 6, page 700 shows that SFPP's actual interstate cost of service increased from \$143 million in 2007 to \$183 million in 2008, an increase of approximately 28.08 percent.<sup>4</sup>

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<sup>1</sup> *SFPP, L.P.*, 127 FERC ¶ 61,312 (2009) (June 30 Order).

<sup>2</sup> See 18 C.F.R. § 342.3 (2009).

<sup>3</sup> June 30 Order, 127 FERC ¶ 61,312 at P 9.

<sup>4</sup> *Id.*

3. The Commission accepted SFPP's proposed index-based rate increases effective July 1, 2009, subject to SFPP modifying the ceiling rates for SFPP's East Line to reflect the settlement rates that became effective May 1, 2009.<sup>5</sup> The Commission found that, aside from the protestors' arguments regarding the East Line settlement rates, the protests were "inapposite."<sup>6</sup> The Commission supported this conclusion by stating that:

A protest lies only if the protesting party establishes that the increase in the rates generated by the application of the index results in a rate increase that is so in excess of the pipeline's actual cost increases that the resulting rates are unjust and unreasonable. It is impossible to meet this standard if the dollar increase resulting from the application of the index is less than the actual dollar increase in the pipeline's cost in the previous year, in this case calendar year 2008. [footnote omitted] Moreover, review of the dollar amounts of the increase occurs only in the context of a complaint. For reasons of administrative efficiency, in reviewing protests the Commission compares the percentage increase in index and the percentage increase in the pipeline's costs to determine whether the increase should be deemed to result in an unjust and unreasonable rate.<sup>7</sup>

## II. Requests for Rehearing

4. Tesoro and Chevron filed requests for rehearing of the June 30 Order. Subsequently, SFPP filed an answer to Tesoro's rehearing request.

5. On rehearing, both Tesoro and Chevron argue the Commission erred in relying on SFPP's FERC Form No. 6 cost of service data to conclude that SFPP's increase in its costs between 2007 and 2008 exceeded the proposed 7.6025 percent increase to SFPP's rates.<sup>8</sup> Chevron also asserts on rehearing that the Commission erred by failing to apply

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<sup>5</sup> *Id.* P 19.

<sup>6</sup> *Id.* P 20.

<sup>7</sup> *Id.* (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 8, 10 (2007)).

<sup>8</sup> *See* Tesoro Refining and Marketing Company, July 27, 2009, Request for Rehearing at 2 (Tesoro Rehearing); Chevron Products Company, July 30, 2009, Request for Rehearing at 2 (Chevron Rehearing).

the “substantially exacerbate” standard as raised in Chevron’s protest to evaluate the appropriateness of SFPP’s requested index-based rate increases.<sup>9</sup>

### III. Commission Determination

#### A. Procedural Matters

6. Rule 713(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 713(d) (2009), prohibits answers to requests for rehearing. Accordingly, we reject SFPP’s answer filed in this proceeding.

#### B. Rehearing Requests

7. We find that Tesoro’s rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule 713 of the Commission’s Rules of Practice and Procedure.<sup>10</sup> Rule 713(c)(2) requires rehearing requests to include a separate section entitled “Statement of Issues” listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.<sup>11</sup> Under Rule 713, any issue not so listed will be deemed waived. Accordingly, we dismiss Tesoro’s rehearing request.<sup>12</sup>

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<sup>9</sup> Chevron Rehearing at 3-5.

<sup>10</sup> 18 C.F.R. § 385.713(c)(2) (2009). *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh’g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006) (amending Order No. 663 to limit its applicability to rehearing requests).

<sup>11</sup> The purpose of Rule 713(c)(2) is to ensure that issues are properly identified in order to prevent wasteful litigation. *See* Order No. 663, FERC Stats. & Regs. ¶ 31,193 at P 3-4. The Commission previously has accepted requests for rehearing that failed to include a separate section entitled “Statement of Issues” because they did include a separate section entitled either “Specification of Grounds” or “Specification of Errors” in which each rehearing issue was listed in separately enumerated paragraphs. *See, e.g., Broadwater Energy LLC et al.*, 124 FERC ¶ 61,225, at P 17 (2008). Thus, the Commission found those rehearing requests sufficiently complied with Rule 713. However, in this case Tesoro’s rehearing request fails to identify or enumerate the issue or errors in any fashion.

<sup>12</sup> *See, e.g., Entergy Services, Inc.*, 122 FERC ¶ 61,059 (2008); *Duke Power Co., LLC*, 116 FERC ¶ 61,171 (2006); *South Carolina Electric & Gas Co.*, 116 FERC ¶ 61,218 (2006).

8. Chevron raises two issues in its request for rehearing. Chevron first asserts the Commission erred in relying on SFPP's FERC Form No. 6 cost of service data to conclude that SFPP's increase in its costs between 2007 and 2008 exceeded the proposed 7.6025 percent increase to SFPP's rates.<sup>13</sup> Chevron states that SFPP's FERC Form No. 6 data is "doubtful" as SFPP employs "convoluted accounting methodologies" to compile its annual Form 6 data, especially on issues such as "overhead cost allocation, excessive rates of return and inflated rate bases."<sup>14</sup>

9. The Commission denies rehearing on this issue. Chevron's rehearing request essentially challenges the accuracy of the regulatory accounts underlying SFPP's index-based rate increases; i.e. the cost figures that underpin SFPP's Page 700 data of its FERC Form No. 6. The Commission has consistently ruled that Form No. 6 implementation matters are generic cost issues that address how a pipeline's cost of service is constructed and are not properly raised in a protest or complaint against an index-based rate increase.<sup>15</sup> Instead these are accounting matters that may be raised in a separate complaint that asserts credible grounds to believe that there is a significant accounting problem. The Commission will not allow Chevron to mount a general attack on SFPP's FERC Form No. 6 accounting practices through a protest in this proceeding.

10. Chevron's second allegation of error asserts the Commission failed to articulate a reasoned explanation for rejecting the argument in Chevron's protest that SFPP's 2009 index increase would substantially exacerbate SFPP's existing overrecovery of its cost-of-service.<sup>16</sup> Chevron objects to the fact that the Commission did not apply the "substantially exacerbate" standard and, instead only used the percentage comparison test.<sup>17</sup> Chevron urges the Commission to clarify on rehearing "whether it applied the 'substantial[ly] exacerbated' [standard] *sub silentio*."<sup>18</sup>

11. The Commission denies rehearing on this issue, as it properly dismissed Chevron's "substantially exacerbate" challenge to SFPP's index-based rate increases. The substantially exacerbate standard is relevant only in a complaint proceeding

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<sup>13</sup> Chevron Rehearing at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> See *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 9 (2007) and *Calnev Pipe Line, L.L.C.*, 119 FERC ¶ 61,332, at P 7 (2007).

<sup>16</sup> Chevron Rehearing at 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5.

challenging an index-based rate increase, not in the initial tariff proceeding. The Commission did not apply the “substantially exacerbate” standard *sub silentio* in the June 30 Order.

12. 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 unreasonable . . . .<sup>19</sup>

13. 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.” 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 that is reflected in the index filing for a given year with the data for prior year. . . .”<sup>20</sup> This test is the “preliminary screening tool for pipeline [index-based] rate filings,”<sup>21</sup> and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.<sup>22</sup>

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<sup>19</sup> 18 C.F.R. § 343.2(c)(1) (2009).

<sup>20</sup> *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.

<sup>21</sup> *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 FR 59137 (November 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh’g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

<sup>22</sup> *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. 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.”).

14. 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.<sup>23</sup> For example, in a complaint proceeding the Commission will consider the “substantially exacerbate” standard that was first articulated in *BP West Coast Products LLC v. SFPP, L.P.*<sup>24</sup> In this proceeding, Chevron’s protest went beyond the percentage comparison test the Commission strictly applies to determine whether to investigate a protested annual index filing. Thus, the Commission correctly declined to consider Chevron’s arguments regarding the “substantially exacerbate” standard. Accordingly, the Commission denies Chevron’s request for rehearing on this issue.

The Commission orders:

- (A) Tesoro’s request for rehearing in Docket No. IS09-375-002 is dismissed for the reasons stated in the body of this order.
- (B) Chevron’s requests for rehearing in Docket No. IS09-375-002 is denied for the reasons stated in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>23</sup> *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at P 8-9 (2007).

<sup>24</sup> 119 FERC ¶ 61,241, *order denying reh’g*, 121 FERC ¶ 61,141 (2007) (complaint challenging SFPP’s 2005 index-based rate increase). With respect to SFPP’s 2005 index proceedings, the Commission rejected BP West Coast Products LLC’s (BP West) protest based solely on application of the percentage comparison test. However, when evaluating BP West’s subsequent complaint against SFPP’s 2005 index increase, the Commission found grounds for an investigation into the index rate increase where the usual percentage comparison test would not. The Commission found that BP West’s complaint against SFPP’s 2005 index increase warranted investigation based on BP West’s showing under the substantially exacerbate standard: (1) that SFPP was substantially over-recovering its cost of service and (2) that SFPP’s index-based increase so exceeded the actual increase in SFPP’s costs that the resulting rate increase would substantially exacerbate that over-recovery.