

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 5, 2003

In Reply Refer To:

SFPP, L.P.

Docket Nos. OR92-8-020

OR92-8-021

OR92-8-022

SFPP, L.P.

500 Dallas Street, Suite 1000

Houston, TX 77002

Attention: Thomas A. Bannigan

Reference: Recalculation of Reparations and East Line Base Rate Surcharge

Ladies and Gentlemen:

1. By order issued January 29, 2003 (January 29 Order),<sup>1</sup> the Commission addressed a prior compliance filing by SFPP, L.P. (SFPP) by denying rehearing and clarification of the underlying order. The January 29 Order directed SFPP to revise the surcharge applied to base common carrier tariff rates that recover certain Opinion 435-B costs and recalculate the gross reparations owed to certain shippers. SFPP submitted on February 13, 2003, in Docket No. OR92-8-020, revised tariff sheets reflecting its recalculation of refunds. That same day, SFPP also filed, in Docket No. OR92-8-021, FERC Tariff No. 81 which cancels FERC Tariff No. 77.<sup>2</sup> SFPP further revised its compliance filing for addressing the recalculation of refunds on March 7, 2003, in Docket No. OR92-8-022.

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<sup>1</sup> SFPP, L.P., 102 FERC ¶ 61,073 (2003). SFPP's prior compliance filing, tendered October 28, 2002, responded to the Commission's September 26, 2002 order. SFPP, L.P., 100 FERC ¶ 61,353 (2002). The September 26 order addressed a compliance filing submitted November 20, 2001, in response to Opinion No. 435-B, SFPP, L.P., 96 FERC ¶ 61,281 (2001), as clarified and corrected on November 7 and December 7, 2001, respectively.

<sup>2</sup> FERC Tariff No. 81 contains petroleum product pipeline transportation rates that reflect the recalculations required by the January 29 Order. See 102 FERC at 61,181 P 3.

2. As more fully discussed below, the Commission accepts SFPP's Docket No. OR92-8-020 compliance filing of February 13, 2003, and rejects the Docket No. OR92-8-022 compliance filing of March 7, 2003. The Commission also accepts FERC Tariff No. 81 as filed, to be effective February 13, 2003 on less than one day's notice. This letter order benefits the public because it effectuates just and reasonable transportation rates for petroleum products on SFPP's East Line and provides for refunds and reparations to shippers consistent with the Commission's January 29 Order.

3. The Commission's January 29, 2003 order directed SFPP to revise its refund methodology by including interest calculated at regulatory rates, establish a new refund schedule and file tariffs reflecting the new amounts.<sup>3</sup> In its Docket No. OR92-8-020 filing of February 13, 2003, SFPP indicated the only substantive change was to include interest in the calculation of gross reparations level shown on line 1 of Schedule 35. SFPP stated that, absent any protests that may require further Commission action, it would pay the reparations and refunds within 60 days of the February 13 filing.

4. On March 7, 2003, in Docket No. OR92-8-022, SFPP revised its February 13 compliance filing by changing the indexing factor used to develop the rates. In the February 13 filing, SFPP used the Producer Price Index (PPI), less 1 per cent indexing methodology. The March 7, 2003 filing uses a PPI indexing factor, without the minus 1 per cent adjustment, purportedly to reflect the Commission's Order on Remand (Remand Order) in Docket Nos. RM00-11-000 and 001 issued February 24, 2003.<sup>4</sup> In recalculating the refunds and reparations due, SFPP applied this revised index retroactively to July 1, 2001. This recalculation using the revised index results in considerably lower reparations in Line 1 of Schedule 35 from the amounts originally calculated and listed in the initial Docket No. OR92-8-020 filing of February 13, 2003.

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<sup>3</sup>The January 29 order also required SFPP to recalculate the surcharges authorized by the Commission's September 26, 2002 order, and file a new tariff reflecting revised surcharge rates, if any, to be effective as of August 1, 2000. SFPP filed F.E.R.C. Tariff No. 81 in Docket No. OR92-8-021 to comply.

<sup>4</sup> The Commission revised the oil pipeline pricing index for the current five-year period by deleting the minus 1 per cent adjustment applied to the Producer Price Index for Finished Goods, seasonally adjusted. See Five-Year Review of Oil Pipeline Pricing Index, 102 FERC ¶ 61,195 (2003).

5. Valero Marketing and Supply Company (VMSC) and Ultramar Inc. (Ultramar) intervened in the Docket No. OR92-8-020 filing of February 13, 2003. They requested the Commission expedite approval of the February 13 compliance filing and incorporate into its order, SFPP's commitment to pay reparations and refunds within 60 days of the February 13, 2003, submission date. VMSC and Ultramar also filed to intervene in Docket No. OR92-8-021.

6. On March 24, 2003, BP West Coast Products LLC (BP) filed a protest contending the Docket No. OR92-8-022 filing proposes to reduce the reparations that would apply to the East Line rates based on SFPP's index adjustments in Docket No. IS03-131-000.<sup>5</sup> BP requests that the Commission reject the March 7 compliance filing, or alternatively, make any acceptance of that filing subject to the outcome of the proceedings in Docket No. IS03-131-000.<sup>6</sup> BP also requests that the March 7 compliance filing be rejected because SFPP's February 13 compliance filing has not yet been acted on by the Commission and the appropriate level of SFPP's East Line rates remains subject to adjustment.

7. On March 27, 2003, Navajo Refining Company, L.P. (Navajo), filed a motion in OR92-8-022 for leave to answer and an answer to BP's March 24 protest. Navajo states it considers SFPP's March 7 compliance filing improper, but that it did not file a protest out of concern that SFPP might use such a protest to argue for a delay in the payment of reparations owed by SFPP to Navajo. It was Navajo's understanding that SFPP would pay the reparations and refunds in mid-April based on the representations SFPP made in its filings. Navajo argues SFPP improperly reduced the amount of refunds owing to shippers for the period from July 1, 2001 to present. Navajo states that the Commission allowed pipelines to calculate new rates assuming that the higher index was in place as of July 1, 2001, so that pipelines could take advantage prospectively of the cumulative effect of the changed index. Navajo requests the Commission reject the March 7 filing and direct the payment of refunds and reparations within 60 days of February 13, 2003.

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<sup>5</sup>On February 26, 2003, SFPP filed FERC Tariff Nos. 82 through 88 increasing its tariff rates, effective on March 29, 2003, pursuant to the Remand Order.

<sup>6</sup>"Order Accepting Tariffs" issued March 28, 2003, 102 FERC ¶ 61,344 (2003). These tariffs implemented the Commission's Order On Remand addressing the indexing methodology. BP contends that protests filed in Docket No. IS03-131-000 demonstrate the application of increased ceiling levels is unwarranted because SFPP's total costs have either decreased by 5.4 percent, or at best, increased only .7 percent from 2000 to 2001. BP contends the Commission should find SFPP's proposed index increase unjust and reasonable because it is substantially in excess of the actual cost increases incurred by the carrier.

8. On March 31, 2003, SFPP responded to BP's protest of the March 7 filing, arguing that BP relies on the same arguments the Commission rejected in Docket No. IS03-131-000, and therefore BP's request that the Commission make its acceptance of the March 7 compliance filing subject to the outcome of the proceedings in Docket No. IS03-131-000 is now moot. SFPP also states that Tariff No. 81 filed in OR92-8-022 compliance filing contained the revisions contemplated by the Commission's January 29 Order in this proceeding and should therefore be accepted.

9. On April 2, 2003, SFPP responded to Navajo's answer to the BP's protest in Docket No. OR92-8-022. SFPP argues the Commission should deny Navajo's motion. SFPP states that in accordance with 18 C.F.R. § 343.3(b) only "[t]he carrier may file a response to a protest ..." and that Navajo's proposed answer does not challenge BP's protest but is aimed at the March 7 compliance filing itself. SFPP also states that under the Commission's rules, if Navajo wanted to challenge the March 7 compliance filing, it was required to file a protest within 15 days. SFPP further states that Navajo not only failed to do so, but affirmatively states that it decided against filing a protest. On the merits, SFPP responds, that while its proposed use of the index results in somewhat lower levels of refunds and reparations, there is no retroactivity. SFPP contends that nothing in the Remand Order foreclosed the adjustments made by SFPP in the March 7 filing in the context of this ongoing complaint proceeding.

10. All requests to intervene are granted. Navajo's motion for leave to answer VMSC's and Ultramar's motion to intervene and to answer BP's protest is denied.

11. The February 13 compliance filings in Docket No. OR92-8-020 and in Docket No. OR92-8-021 were unopposed and are accepted as filed. The Commission grants permission for SFPP to file FERC Tariff No. 81 on less than one day's notice. The request by VMSC and Ultramar to require SFPP to pay reparations and refunds within 60 days of the February 13 compliance filing, or not later than April 13, 2003, is denied. The Commission stated in its earlier September 26, order that refunds and reparations that may be due under the revised compliance filing shall be paid to the relevant parties within 60 days of any order approving the revised compliance filing.<sup>7</sup> It is appropriate to apply the same standard here. If SFPP has already paid reparations and refunds, any discrepancy between the amounts paid and any still owed as result of this order must be paid within 60 days of its issuance.

12. The Commission rejects the March 7 revised compliance filing in Docket No. OR92-8-022. This second compliance filing revised SFPP's February 13 compliance filing

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<sup>7</sup>100 FERC at 62,626, ordering paragraph (D).

by recalculating the reparations and refunds due by changing the indexing factor used to make those calculations. In the February 13 compliance filing SFPP utilized the PPI less 1 per cent indexing methodology. In contrast, the March 7 compliance filing utilized the PPI without the minus 1 per cent as adopted by the Commission's Remand Order. This was improper. The Remand Order allowed the oil pipelines to apply the revised index formula, but only prospectively on 30 days notice,<sup>8</sup> which in SFPP's case would be March 29, 2003. Therefore the revised index factor cannot be included in calculating the rates and refunds contained in SFPP's compliance filing to the Commission's January 29 Order in this proceeding. As such, SFPP must distribute refunds using the calculations contained in its February 13 compliance filing.

13. The Commission denies BP's protest. The protest first asserts that SFPP's indexing rate increases are improper because they are "substantially in excess" of SFPP's actual cost increases during the applicable period. However, BP relies on the same arguments the Commission rejected in ruling on protests against SFPP's tariffs in Docket No. IS03-131-000 and therefore this argument is denied. BP also requests that the March 7 filing be rejected because the February 13 compliance filing had not yet been acted on. This request is also denied since parties have the right to make a new filing if they believe changed facts warrant such a filing.

14. Accordingly, the February 13 compliance filing in Docket No. OR92-8-020 is accepted for filing. The March 7 revised compliance filing in Docket No. OR92-8-022 is rejected. FERC Tariff No. 81 in Docket No. OR92-8-021 is accepted as filed, effective February 13, 2003. Waiver of Section 6 of the ICA is granted allowing SFPP's FERC Tariff No. 81 to be filed on less than one day's notice. Refunds and reparations due under the

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<sup>8</sup>102 FERC ¶ 61,195 P. 31, ordering paragraph (B) (2003).

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February 13 compliance filing must be paid within 60 days of the issuance date of this order.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

cc: All Parties