

104 FERC ¶ 61,163  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

SFPP, L.P.

Docket No. OR02-13-001

ORDER ON REHEARING

(July 23, 2003)

1. On January 30, 2003, the Commission issued an order granting in part SFPP, L.P.'s (SFPP) petition for a declaratory order regarding SFPP's proposed expansion of its East Line facilities between El Paso, Texas, and Phoenix and Tucson, Arizona.<sup>1</sup> Navajo Refining Company (Navajo) filed a request for rehearing, which is denied. This order is in the public interest because it affirms the assurances requested by SFPP to facilitate construction of the needed expansion of its East Line.

**Background**

2. On October 19, 2002, SFPP filed a petition for a declaratory order requesting the Commission address several issues regarding SFPP's proposal to significantly increase the capacity of its existing East Line between El Paso, Texas, and Phoenix and Tucson, Arizona. After stating that its existing lines were now regularly curtailed 25 to 35 percent of existing demand and that demand is expected to increase sharply in the near future, SFPP asserted that it intended to increase its capacity by approximately 53,000 barrels a day between El Paso and Tucson, and by approximately 44,000 barrels a day between Tucson and Phoenix. SFPP also estimated the cost of the expansion at \$180 million and asserts this would more than quintuple the East Line's rate base.

3. In light of this proposed investment, SFPP requested the Commission declare that: (a) a substantial divergence, pursuant to Section 18 C.F.R. 342.4(a), can be based on capital investment as proposed here; (b) if an investment resulted in cost-of-service rates that exceeded SFPP's current indexed East Line rates by more than 20 percent, this would constitute a substantial divergence; and (c) if any such rates were filed with the Commission and protested, those rates would be made effective as of the date proposed by SFPP, subject to refund. Intervening parties supported and opposed SFPP's request.

---

<sup>1</sup>102 FERC ¶ 61,089 (2003).

4. The January 30, 2003 order granted the petition in part. The order found that SFPP's petition was an appropriate subject for a declaratory order, and that if cost-based rates were filed, that a minimum suspension would be appropriate. The order also stated that the Commission was not determining whether any such rates that might be filed would be just and reasonable, and that any proposed cost-based rates must be supported by a filing consistent with the procedural requirements of the Commission's cost-of-service regulations.

5. Subject to that caveat, after referencing the cost of the proposed expansion, the Commission held that SFPP could file cost-based rates to recover the projected capital costs of increasing the capacity of its East Line. The Commission rejected those protests that argued that any rates SFPP filed to recover the costs of its proposed expansion should be calculated on an incremental basis. The Commission held that the use of incremental rates in this instant context would not conform to Commission policies governing oil pipeline rates and would be inconsistent with the anti-discrimination provisions of the Interstate Commerce Act (ICA).<sup>2</sup>

### **The Rehearing Request**

6. Navajo's request for rehearing first queries whether the January 30 order was intended to preclude further consideration of the incremental versus rolled-in issue at such time as SFPP files its cost-based rates. While conceding that oil pipelines are common carriers, Navajo then asserts that the Commission provided no basis for its conclusion that the use of incremental rates would violate the anti-discrimination provisions of the ICA. Rather, Navajo argues, as it argued in its protest, the use of rolled-in rates would discriminate against the existing East Line shippers by requiring them to subsidize the new shippers using the increased capacity. Navajo further asserts that the Commission incorrectly concluded that the use of incremental rates would be anti-competitive because it would make the transportation of additional volumes to Arizona excessively costly when compared to existing suppliers such as Navajo.

7. Furthermore, Navajo again argues, use of rolled-in rates would unfairly damage its position as a relatively small competitor that is dependent on the Arizona market as its principal outlet. Navajo asserts that the new shippers would be large national firms that have no such limitations and would have much greater flexibility in dealing with transportation issues. Navajo further argues that the use of rolled-in rather than incremental rates overlooks the fact that the ICA was explicitly designed to protect small

---

<sup>2</sup>Id. 61,245.

shippers. Given the subsidization that the new shippers will receive, Navajo concludes that use of rolled-in rates would violate the undue preference and anti-discrimination provisions of the ICA. It requests the Commission require SFPP to use incremental rates.

## Discussion

8. The Commission first clarifies that the January 30 order was a definitive and conclusive declaratory ruling that it would permit SFPP to file cost-based rates to recover the costs of its proposed East Line expansion. Such cost-based rates would be designed on a rolled-in basis and would be subject to review by the Commission to determine if those rates are just and reasonable. While the January 30 order may have noted that no party can be prevented from filing whatever position it desires, if Navajo pursues its arguments regarding incremental and rolled-in rates at the time SFPP files its proposed cost-based rates, those arguments will be rejected for the reasons stated in this and the prior order.

9. The Commission also affirms its prior conclusion that the use of incremental rates in the instant case would be inconsistent with Commission policies governing oil pipeline rates and the anti-discrimination provisions of the ICA. As Navajo concedes, unlike natural gas pipelines, oil pipelines shipping under a generally applicable tariff that does not identify its numerous customers are not contract carriers.<sup>3</sup> As contract carriers, natural gas pipelines enter into contracts with individual shippers for stated amounts of capacity over a stated term that entitle each such shipper to capacity on demand in accordance with the terms of the contract. The capacity entitlement cannot be reduced during the contract term without the shipper's consent or regulatory action by the Commission. If the pipeline elects to expand its capacity, the additional capacity may be priced on an incremental basis if the additional capacity benefits only a few shippers, or rolled-in if the capacity provides benefits to the system, and shippers, as whole. If the expansion costs are rolled-in, the rates of the existing shippers may increase, but their contracted for capacity may not be reduced in response to the demand for the additional capacity.<sup>4</sup>

10. In contrast, oil pipeline shippers do not have entitlement to capacity. Thus, if demand increases and the pipeline does not increase its capacity, then all shippers will

---

<sup>3</sup>In contrast, natural gas pipelines are required to include an index of customers in their tariff which states the capacity those customers are entitled to.

<sup>4</sup>Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,277 (1999); 90 FERC ¶ 62,128 (2000).

have their nominations for transportation curtailed pro-rata. While Navajo makes many arguments that existing shippers on SFPP's East Line, and particularly "small" shippers should be protected against the intrusion of larger entities, its position founders on this basic fact of oil pipeline operations. Thus, if capacity is now 100 units, total demand is 100 units, and Navajo consistently needs and is using 30 of those units, it will experience no curtailment. If additional demand from all shippers, including new shippers not previously shipping to the Arizona market, results in total demand of 150 units, all requests will be curtailed proportionately, by 1/3, and Navajo will be able to ship only 20 units. Thus, its position deteriorates whether or not SFPP's proposed expansion is built. Navajo could retain this capacity only if it has a status equivalent to a contract shipper under the Natural Gas Act,<sup>5</sup> which it clearly does not possess.

11. Moreover, if the additional capacity is built and assuming that it were priced incrementally, Navajo would not be able to obtain any preferential use to the older, less expensive capacity because it has no entitlement to that capacity. Since all shippers would nominate first for the less expensive capacity, and then for the more expensive capacity, Navajo would be forced to bear its pro-rata share of the more expensive capacity since even smaller shippers must conform to SFPP's nomination procedures.<sup>6</sup> Unless it is given preference for the older, less expensive capacity, which would clearly violate the requirement that all similarly situated shippers be treated equally, Navajo's position would be no better. The fact that Navajo is a smaller shipper also does not entitle it to a better

---

<sup>5</sup>Id

<sup>6</sup>SFPP, L.P., 86 FERC ¶ 61,022 (Opinion No. 435) (1999) upheld, in the face of a complaint, a good faith nomination procedure SFPP stated was specifically designed to prevent large shippers from over-nominating and thereby subjecting smaller shippers to a disproportionate curtailment. Moreover, the Commission required SFPP to shorten its response to nominations to 30 days to assure that greater contractual certainty would be available to shippers and assure that capacity would be awarded on a not unduly discriminatory basis. Id., 61,114-16. Thus, both SFPP and the Commission have taken steps to address the needs of smaller shippers. However, the concern addressed reflects how even small shippers must compete for the allocation of capacity on a pro-rata basis when capacity is in short supply and the pipeline is required to curtail nominations.

rate per barrel than other shippers between any two points,<sup>7</sup> its argument concerning the Elkins Act notwithstanding. Navajo's effort to benefit from incremental rates would be effective only if it had such preferential scheduling, a preference that is prohibited without regard to the relative size of the shippers using SFPP's East Line.

12. The forgoing demonstrates why the use of rolled-in rates for an oil pipeline that is serving numerous shippers under a common carrier tariff is not unjust or unduly discriminatory. Navajo may be faced with increased competition if SFPP expands its system but this would be the case under any circumstances because Navajo has no preferential right to the use of older, less expensive capacity. The competitive advantage that Navajo seeks in the El Paso to Arizona market can work only if Navajo were granted such a preference, which is prohibited under Section 3(1) of the ICA.<sup>8</sup> Absent such a preference, the only consequence of Navajo's position would be to greatly increase the cost of additional capacity that is needed to bring petroleum products from Texas and the Gulf States to Arizona. This would not be consistent with the public interest.

The Commission orders:

Navajo's request for rehearing is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

---

<sup>7</sup>This elementary point is reflected in the citations provided by SFPP in its answer dated November 5, 2002. See *United States v. Baltimore and Ohio Ry.*, 333 U.S. 169, 175 (1948); *Northern Pacific Ry. v. Mackie*, 195 F. 2d 641, 643 (9th. Cir. 1952); *Petroleum Pipelines and Public Policy*, 1906-1939 at 26 (1967).

<sup>8</sup>Id. The statutory reference is to the version of the ICA that existed as of 1977 and is cited as 49 App. U.S.C. § 3(1) (1988).