

139 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

SFPP, L.P.

Docket No. IS12-390-000

ORDER ACCEPTING TARIFF FILING SUBJECT TO REFUND

(Issued June 29, 2012)

1. On May 31, 2012, SFPP, L.P. (SFPP) filed a tariff record¹ comprising FERC Tariff No. 197.4.0 to implement an index-based rate increase for its East Line under section 342.3 of the Commission's regulations.² SFPP requests the Commission permit the tariff record to become effective July 1, 2012. In this order, we accept SFPP's tariff to become effective July 1, 2012, subject to refund, and the outcome of Docket No. IS09-437-000.

I. Subject Filing, Protests, and Answer

2. SFPP's proposed tariff would increase its East Line rates effective July 1, 2012 by 5.4 percent. Motions to intervene and protests were filed by Phillips 66 Company (Phillips); Chevron Products Company, Southwest Airlines Co., US Airways, Inc., and Valero Marketing and Supply Company (collectively, the Indicated Shippers); and HollyFrontier Refining & Marketing Company LLC and Western Refining Company, L.P. On June 20, 2012, SFPP filed a response to the protests.

3. The protesting parties assert SFPP's proposed index rate increases are so substantially in excess of the actual cost increases incurred by SFPP that the proposed rates are unjust and unreasonable and ask the Commission to reject the rate increases. In the alternative, the protesting parties urge the Commission to make the index rate

¹ SFPP, L.P., FERC Oil Tariff, SFPP Tariff Database, [East Line, FERC 197.4.0, 197.4.0](#).

² 18 C.F.R. § 342.3 (2011).

increases subject to refund and set them for investigation and hearing to determine their reasonableness.

4. In support of their request for rejection, the protesting parties state SFPP's Form No. 6 does not show actual cost increases that would justify the proposed rate increases. They note that a comparison of Page 700 of SFPP's FERC Form No. 6 from 2010 to 2011 demonstrates SFPP's total interstate cost of service decreased by \$6.57 million or 4.48 percent from 2010 to 2011. As a result, SFPP's proposed increase to its East Line rates of 5.4 percent coupled with its cost of service decrease of 4.48 percent results in a total revenue increase of 9.88 percent. The protesting parties assert this total revenue increase, when applied to the Commission's percentage comparison test for index-based rate filings, demonstrates SFPP's index-based rate increase substantially exceeds its costs and is therefore unjust and unreasonable. The protestors state the Commission previously ordered the investigation of index-based rate increases with similar divergences between cost changes and rate increases as those proposed by SFPP in this proceeding.³

5. The Indicated Shippers further argue SFPP's FERC Form No. 6 cost of service is overstated and its revenues are understated. The Indicated Shippers note SFPP reduced its 2011 revenues by \$7.1 million in anticipation of future refunds it may owe to its shippers as a result of Opinion No. 511-A. However, SFPP did not actually pay any refund amounts in 2011. In addition, the Indicated Shippers assert SFPP increased its cost of service in anticipation of a future projected increase in its right-of-way rental payments to Union Pacific Railroad as a result of a Tentative Statement of Decision issued by the California Superior Court.

6. In its response to the protests, SFPP argues its proposed index-based rate increase is not substantially in excess of its change in actual costs. In support of this argument, SFPP states the total percentage-point divergence of 9.88 percent proposed by SFPP in this proceeding is "within the bounds of what the Commission has found acceptable."⁴ According to SFPP, the Commission only accepts protests to index-based rate increases when the total divergence exceeds ten percent.⁵

7. SFPP also responded to Indicated Shippers' argument that it overstated its cost of service and understated its revenues. SFPP counters that whether its revenues are understated is irrelevant since the use of revenues is not germane to the analysis of index-based rate filings except in the case of a pipeline under-recovering its cost of service.

³ See, e.g., Indicated Shippers Protest at P 12.

⁴ SFPP Answer at p 4.

⁵ SFPP Answer at p 4-5.

Furthermore, SFPP contends it properly accrued costs associated with its right-of-way rental payments. SFPP states the accrual of additional costs, consistent with the findings of the California Superior Court, properly aligns costs with the year in which they were incurred. Accordingly, SFPP states the Indicated Shippers' argument concerning its revenues and cost of service lack merit.

II. Discussion

8. 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 unreasonable⁶

9. 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."⁷ 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 [the] prior year. . . ."⁸ This test is the "preliminary

⁶ 18 C.F.R. § 343.2(c)(1) (2011).

⁷ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) and *SFPP, L.P., et al.*, 129 FERC ¶ 61,228, at P 7 (2009). 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. *See id.* P 11 (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at PP 8-9 (2007)).

⁸ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082 at P 10; *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.

screening tool for pipeline [index-based] rate filings,”⁹ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.¹⁰

10. SFPP’s FERC Form No. 6 Page 700 shows a total cost of service decrease between 2010 and 2011 of approximately 4.48 percent.¹¹ A 4.48 percent decrease in costs combined with the proposed index-based rate increase of 5.4 percent for all the transportation rates would provide SFPP an approximately 9.88 percent revenue increase under its transportation rates. This magnitude of a divergence between the pipeline’s change in costs, as expressed in percentage terms, is not sufficient for the protests to satisfy the criteria of section 343.2(c)(1). The Commission has never found an index rate increase to be “substantially in excess” of actual cost changes under section 343.2(c)(1) when the difference between the proposed index rate increase and the pipeline’s actual change in cost is less than 10 percent.¹² At 9.88 percent, SFPP’s proposed rate increase is

⁹ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 Fed. Reg. 59,137 (Nov. 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh’g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

¹⁰ *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.”).

¹¹ SFPP’s revised FERC Form No. 6, page 700 reports a total cost of service for 2010 of \$146,686,070 and \$140,112,765 for 2011, a decrease of \$6.57 million, which represents a 4.48 percent decrease.

¹² In the proceedings in Docket No. IS11-444, the Commission noted in a footnote a 9.6 divergence between SFPP’s proposed cost increase (5.6 percent) and a cost decrease (4.0 percent) relating to the Watson Volume Deficiency Charge. *SFPP, L.P.*, 135 FERC ¶ 61, 274 at n.10. As a result, the protestors contend that any divergence over 9.6 percent is “substantially in excess.” However, the Commission was referring to the divergence of 10.9 percent between SFPP’s proposed rate increase (6.9 percent) and cost decrease (4.0 percent) on SFPP’s other systems when it stated that such a divergence “raises an issue of reasonableness that the Commission will investigate.” *Id.* P 11.

not so substantially in excess of the actual cost increases incurred by the carrier that the rate adjustment should be disallowed.

11. SFPP's currently effective base rates underlying its index-based rate filing are under review currently in Docket No. IS09-437-000. As a result, the proposed indexed rates in the instant proceeding are subject to adjustment pending the resolution of that proceeding. The Commission therefore accepts SFPP's indexed rates subject to refund and the outcome of Docket No. IS09-437-000.

The Commission orders:

SFPP's tariff record comprising FERC Tariff No. 197.4.0 is accepted, effective July 1, 2012, subject to refund and further order of the Commission in Docket No. IS09-437-000.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.