

143 FERC ¶ 61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.

Docket No. IS13-416-000

ORDER ACCEPTING TARIFF FILING SUBJECT TO REFUND

(Issued June 28, 2013)

1. On May 31, 2013, SFPP, L.P. (SFPP) filed tariff records¹ to implement an index-based increase to its rates and ceiling levels pursuant to section 342.3 of the Commission's regulations.² As explained below, the Commission accepts SFPP's proposed FERC Tariff Nos. 196.10.0, 198.10.0, and 197.6.0 to be effective July 1, 2013, subject to refund and further order of the Commission in certain ongoing proceedings. The Commission accepts the other tariff records filed by SFPP to be effective July 1, 2013.

Background

2. Oil pipelines may increase their ceiling levels every July 1 to reflect the most recent index adjustment published by the Commission.³ A pipeline may, at its discretion, also increase its rates pursuant to the Commission's indexing regulations up to these new ceiling levels.⁴ A rate that is not increased to the ceiling level in a given year may nonetheless be increased to the ceiling level at a later time.⁵

¹ See Appendix.

² 18 C.F.R. § 342.3 (2012).

³ *Id.* § 342.3(d).

⁴ *Id.* § 342.3(a).

⁵ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act*, Order No. 561, FERC Stats. & Regs. [Regs. Preambles, 1991-1996 ¶ 30,985, at 30,954 (1993)].

3. In this proceeding, SFPP has filed to increase its index ceiling levels by 4.5923 percent consistent with the index adjustment published by the Commission. SFPP has also proposed various rate increases pursuant to the Commission's indexing regulations. Some of these rate increases are up to the new ceiling level while other rates are below the ceiling level. Finally, SFPP proposed housekeeping changes to its rules and regulations tariff.

Interventions, Protests, and Answer

4. On June 17, 2013, Phillips 66 Company; HollyFrontier and Western (jointly, Holly/Western; and BP and US Airways (jointly BP/US Airways) filed protests. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before issuance of this order are granted.

5. Phillips 66 Company and BP/US Airways argue that SFPP cannot increase its rates beyond the index adjustment of 4.5923 percent. Thus, they object to SFPP's proposal to increase its West Line rates in Tariff No. 198.10.0 by 7.77 percent. BP/US Airways state that SFPP is seeking this additional increase now because, in 2012, SFPP did not increase its rates up to the index ceiling. Thus, BP/US Airways assert SFPP maintained a divergence under the percentage comparison test of less than 10 percent between its (a) 2011 to 2012 total cost changes reported on page 700 and (b) SFPP's reduced 2012 proposed rate increase. By keeping the divergence under 10 percent, they state that SFPP avoided further scrutiny of its 2012 rate increase. BP/US Airways contend that SFPP should not be able in 2013 to increase its rates both to include the rate increase that SFPP declined to take in 2012 and the 2013 increase in the ceiling level.

6. The protests state that SFPP's rates which are currently subject to ongoing proceedings should be accepted subject to refund and the outcome of those proceedings. Specifically, Phillips 66 Company and BP/US Airways state that SFPP's West Line rates in Tariff No. 198.10.0 are currently subject to ongoing proceedings in Docket Nos. IS08-390-000, *et al.*, and IS11-444-000, *et al.* They note that in Docket No. IS11-444-000, *et al.*, the Commission recently directed SFPP to lower the base rates used to calculate the indexed rates in this proceeding. They urge the Commission to direct SFPP to lower the rates in its filing consistent with Docket No. IS11-444-000.⁶ Similarly, HollyFrontier/Western state that SFPP's East Line rates in proposed FERC Tariff No. 197.6.0 are subject to ongoing proceedings in Docket Nos. IS09-437-000, *et al.* and IS10-572-000, *et al.*

⁶ BP/US Airways Protest at p. 6 (citing *SFPP, L.P.*, 143 FERC ¶ 61,213 (2013)).

7. On June 24, 2013, SFPP filed an answer. In its answer, SFPP alleges that its 2013 index adjustment to its West Line rates is consistent with Commission regulation and precedent. SFPP emphasizes that none of its rates exceed the ceiling level. SFPP emphasizes that its decision to forgo a rate increase to its ceiling level in 2012 does not prohibit it from increasing its rate to the ceiling level in a later year.⁷ SFPP emphasizes that shippers have benefited over the last year from the lower rates that resulted from SFPP's decision in 2012 not to raise rates to the ceiling level. SFPP adds that it is only trying to increase its rates prospectively, and it is not seeking to recoup the revenue it would have collected had it raised rates to the ceiling rate last year. SFPP also states that applying the Commission's percentage comparison test, the divergence produced by the index percentage increase (7.934 percent) and the cost decrease (0.56 percent) is 8.3534 percentage points, a divergence that is less than 10 percent and within the bounds of what the Commission has accepted within the past. SFPP agrees with the protests that to the extent any of its underlying rates are currently subject to ongoing proceedings, those rates should be accepted subject to refund and the outcome of those proceedings. SFPP adds that it will be making a compliance filing shortly in Docket No. IS11-444-000, *et al.*, which contains the rate decrease directed by the Commission.

Discussion

8. The Commission accepts SFPP's proposed rate increase subject to refund and the outcome of ongoing proceedings relating to SFPP's existing rates. Section 342.3(a) provides that "[a] rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level...." SFPP's proposed rates are either equal to or less than the new ceiling level following the application of the 2013 index increase.

9. The Commission rejects the argument raised by BP/USAirways and Phillips 66 that SFPP increase of its West Line rates in Tariff No. 198.10.0 is contrary to the Commission's regulations. Protests challenging any rate increase pursuant to the Commission's indexing policy 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 violates the applicable ceiling level, or that the rate increase is so

⁷ SFPP Answer at 11 (citing Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,954).

substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable....⁸

The protests do not allege that SFPP has increased its rates above the ceiling levels established by the Commission's indexing regulations. The ceiling levels are cumulative, and the ceiling levels change with the index independent of SFPP's decision to increase its rates up to the ceiling level. Although SFPP declined to increase its West Line rates to the ceiling level during the prior year, it can raise them to the ceiling level this year.⁹

10. The protests also fail to demonstrate that the West Line rate increases proposed by SFPP are "so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable."¹⁰ To evaluate whether a protested filing is so substantially in excess, the Commission uses a percentage comparison test.¹¹ 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. . . ."¹² This test is the "preliminary screening tool for pipeline [index-based] rate filings,"¹³ and is the sole means by which the Commission determines whether a protest meets the

⁸ 18 C.F.R. § 343.2(c)(1).

⁹ Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,954.

¹⁰ 18 C.F.R. § 343.2(c)(1).

¹¹ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) (*Calnev*) 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) (*BP West Coast*)).

¹² *Calnev*, 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.

¹³ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 FR 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).

section 343.2(c)(1) standard to establish that a rate increase is “so substantially in excess” of cost increases to render a proposed rate unjust and unreasonable.¹⁴

11. SFPP’s FERC Form No. 6, Page 700 showed a total cost of service increase between 2011 and 2012 of approximately 0.5651 percent.¹⁵ SFPP’s 0.5651 percent increase in costs combined with the proposed West Line index-based rate increase of 7.77 percent results in divergence of approximately 8.35 percent. The Commission does not find this index rate increase to be “substantially in excess” of actual cost changes under section 343.2(c)(1). Accordingly, the Commission will accept SFPP’s filing to raise its West Line rates in Tariff 198.10.0 to the ceiling level, subject to refund and further order of the Commission as discussed below.¹⁶

12. To the extent that SFPP’s filing proposes to change a rate that is under investigation and subject to refund, the Commission is accepting SFPP’s index filing subject to refund and the outcome of those proceedings. Accordingly, SFPP’s FERC Tariff No. 197.6.0, which applies to the East Line, is accepted to be effective July 1, 2013, subject to refund and further order of the Commission in Docket Nos. IS09-437-000, *et al.*, and IS10-572-000, *et al.* Similarly, SFPP’s FERC Tariff Nos. 196.10.0 and 198.10.0, which apply to the West Line, are accepted to be effective July 1, 2013, subject to refund and further order of the Commission in Docket Nos. IS08-390-000, *et al.* and IS11-444-000, *et al.*

¹⁴ *Calnev*, 130 FERC ¶ 61,082 at P 10 (citing *BP West Coast Products*, 121 FERC ¶ 61,141 at P 6 (“[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.”)).

¹⁵ On Line 10 of SFPP’s 2012 Form No. 6, Page 700, SFPP reports a 2011 Total Cost of Service of \$141,467,154 and a 2012 Total Cost of Service of \$142,266,554. Thus, the change in cost is 0.5651 percent (142,266,554/141,467,154).

¹⁶ *ExxonMobil Oil Corp v. FERC*, 219 Fed. Appx. 3 (D.C. Cir. Feb. 27, 2007) (holding that a decision not to investigate a proposed indexed rate increase is committed to Commission discretion); *ExxonMobil Oil Corp. v. FERC*, 2007 WL 2306949, *1 (D.C. Cir. Jul 27, 2007) (same).

The Commission orders:

(A) FERC Tariff No. 197.6.0 is accepted to be effective July 1, 2013, subject to refund and further order of the Commission in Docket Nos. IS09-437-000, *et al.*, and IS10-572-000, *et al.*

(B) FERC Tariff No. 196.10.0 and FERC Tariff No. 198.10.0 are accepted to be effective July 1, 2013, subject to refund and further order of the Commission in Docket Nos. IS08-390-000, *et al.* and IS11-444-000, *et al.*

(C) FERC Tariff No. 194.5.0, FERC Tariff No. 195.4.0, FERC Tariff No. 199.4.0, and SFPP FERC Tariff No. 200.4.0 are accepted to be effective July 1, 2013.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

SFPP, L.P.
FERC Oil Tariff

Tariff records accepted July 1, 2013

[Rules and Regulations, FERC 194.5.0, 194.5.0](#)

[Sepulveda Junction, FERC 195.4.0, 195.4.0](#)

[North Line, FERC 199.4.0, 199.4.0](#)

[Oregon Line, FERC 200.4.0, 200.4.0](#)

Tariff records accepted July 1, 2013,
subject to refund and further order of the Commission in
Docket Nos. IS09-437-000, *et al.*, and IS10-572-000, *et al.*

[East Line, FERC 197.6.0, 197.6.0](#)

Tariff records accepted July 1, 2013,
subject to refund pending and further order of the Commission in
Docket Nos. IS08-390-000, *et al.*, and IS11-144-000, *et al.*

[Calnev Line, FERC 196.10.0, 196.10.0](#)

[West Line, FERC 198.10.0, 198.10.0](#)

Document Content(s)

IS13-416-000.DOC.....1-7