157 FERC ¶ 61,186
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Tesoro Refining and Marketing Company, US Airways, Inc., Valero Marketing and Supply Company, and Western Refining Company, L.P. v. SFPP, L.P.	Docket No. OR14-35-001
Chevron Products Company v. SFPP, L.P.	Docket No. OR14-36-001

ORDER ON REHEARING AND DISMISSING COMPLAINTS

(Issued December 8, 2016)

1. On June 27 and 30, 2014, the Joint Shippers[1] filed complaints against the 2012 index rate increases for SFPP, L.P.'s (SFPP) East and West Lines and the 2013 index rate

[1] The Joint Shippers include HollyFrontier Refining & Marketing LLC, Southwest Airlines Co., Tesoro Refining and Marketing Company, US Airways, Inc., Valero Marketing and Supply Company, Chevron Products Company, and Western Refining Company, L.P.

increases for SFPP's East, West, North, Oregon, and Sepulveda Lines.[2] On October 31, 2014, the Commission held the complaint proceedings in abeyance pending the resolution of other ongoing proceedings involving the underlying rates.[3] On November 26, 2014, the Joint Shippers filed for rehearing, asserting that the Commission erred by holding complaint proceedings in abeyance. As discussed below, the Commission grants rehearing and dismisses the complaints.

I. <u>Background</u>

2. Under Commission regulations, a complaint against an index increase "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[s] [are] unjust and unreasonable."[4] The Commission has stated that a complaint may satisfy this standard using the substantially exacerbate test which involves showing that (1) "a pipeline is substantially over-recovering its cost of service" and (2) "the index-based increase so exceeds the actual increase in the pipeline's operating costs that the resulting rate increase would substantially exacerbate the over-recovery."[5]

3. The Joint Shippers seek to apply that test here. The Joint Shippers state that SFPP's 2011 FERC Form No. 6, Page 700 reported revenues exceeded its cost of service by 13.11 percent (a difference of $18,368,119).[6] The Joint Shippers allege that SFPP's 2012 index rate increase of 5.4 percent for its West and East Lines would increase the pipeline's revenue by $6.9 million, and, thus, "substantially exacerbate" the pre-existing over-recovery. Similarly, the Joint Shippers state that SFPP's 2012 FERC Form No. 6, Page 700 reported revenues exceeding total costs by 10.13 percent (a difference of

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[2] SFPP is a common carrier oil pipeline that transports refined petroleum products on four separate systems: East Line, West Line, North Line, and Oregon Line.

[3] *HollyFrontier Refining & Mtg. LLC v. SFPP, L.P.*, 149 FERC ¶ 61,097 (2014) (October 2014 Order). SFPP's rates have been subject to ongoing litigation in multiple dockets, including Docket Nos. IS09-437, IS08-390, IS11-444, and OR11-13, *et al*.

[4] 18 C.F.R. § 343.2(c)(1) (2016).

[5] Joint Shippers Complaint at 11 (citing *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141 (2007) (*BP West Coast*); *Tesoro Refining and Marketing Co. v. Calnev Pipe Line, LLC*, 121 FERC ¶ 61,142 (2007)).

[6] Specifically, SFPP's 2011 FERC Form No. 6, Page 700 reported interstate revenues of $158,480,884 and an interstate cost-of-service of $140,112,765.

$14,323,805).[7] They claim that SFPP's proposed 2013 index rate increases would increase SFPP's interstate revenues by at least $7.15 million. Thus, the Joint Shippers request that the Commission (i) reject SFPP's 2012 and 2013 index rate increases and (ii) order SFPP to refund the associated revenue.

4. In its answer and motion to dismiss, SFPP urges the Commission to deny the complaints. SFPP claims that differences between its costs and revenues were not "substantial." SFPP also asserts that the index increases did not, in fact, substantially exacerbate the alleged over-recovery.

5. On August 12, 2014, the Joint Shippers filed an answer to SFPP's motion to dismiss. Among other arguments, the Joint Shippers seek to limit the data considered in this proceeding. They argue that the Commission has established that "the only relevant evidence in indexing cases is the change in the pipeline's cost-of-service in the two years preceding the index increase… later developed data is irrelevant."[8] Thus, the Joint Shippers assert that the Commission should only consider data for the years 2010 and 2011 for evaluating the 2012 index increase and data for the years 2011 and 2012 for evaluating the 2013 index increase.

6. In the October 2014 Order, the Commission held the complaints in abeyance pending further order of the Commission.[9] The Commission explained that SFPP's current rates are subject to several pending matters before the Commission. The Commission explained that refunds in those proceedings may affect the pipeline's revenues for some of the years which Joint Shippers allege the 2012 and 2013 index increases exacerbated a pre-existing over-recovery.

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[7] Specifically, SFPP's 2012 FERC Form No. 6, Page 700 reported interstate revenues of $155,790,959 in contrast to an interstate cost-of-service of $141,467,154.

[8] Joint Shippers Answer at 14 (citing *SFPP, L.P.*, 140 FERC ¶ 61,016, at P 34 (2012)). Responding to SFPP's Motion to Dismiss, the Joint Shippers' answer also raises arguments regarding the Commission's percentage comparison test. However, the percentage comparison test is not the basis for our dismissal of the complaints here, and the Joint Shippers did not include in their complaints claims based upon the percentage comparison test. Thus, the percentage comparison test is not an issue in these proceedings.

[9] October 2014 Order, 149 FERC ¶ 61,097 at P 13.

II. The Joint Shippers' Rehearing

7. On rehearing, the Joint Shippers state that the October 2014 Order erred by holding the complaint proceeding in abeyance pending the outcome of ongoing SFPP rate litigation. They state that holding the proceeding in abeyance was inconsistent with the Commission's position in Docket No. IS11-444 that proceeded with an investigation and order addressing SFPP's 2011 West Line index rate change notwithstanding an ongoing challenge to the pipeline's base rates.[10]

III. Commission Determination

8. The Commission grants rehearing and dismisses the complaints. When the Commission has previously applied the "substantially exacerbate" test, it has held the complaint in abeyance pending ongoing cost-of-service litigation that could reduce the pipeline's revenue.[11] However, upon further review of the record in this proceeding, the Commission concludes it can address the Joint Shippers' arguments on the information available at the time of the complaints.

9. The Commission dismisses the Joint Shippers' complaints and declines to investigate further SFPP's 2012 and 2013 index rate changes. Any complaint challenging a pipeline's index rate changes on the basis of the "substantially exacerbate" test must show reasonable grounds that both (1) the pipeline is substantially over-recovering and (2) the index increase substantially increases the over-recovery.[12] The Joint Shippers' complaints fail the second part of the "substantially exacerbate" test.[13] Notwithstanding the application of the 2012 and 2013 index increases, SFPP's Page 700s on file at the time of the complaints show that the difference between SFPP's costs and

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[10] Joint Shippers Rehearing at 6-7 (citing *SFPP, L.P.*, 140 FERC ¶ 61,016 at P 34; *SFPP, L.P.*, Opinion No. 527, 143 FERC ¶ 61,213, at P 91 (2013)).

[11] *E.g.*, *BP West Coast Products, LLC v. SFPP, L.P.*, 119 FERC ¶ 61,241, at P 12, *order on reh'g*, 121 FERC ¶ 61,141 (2007).

[12] *BP West Coast*, 121 FERC ¶ 61,141 at P 10.

[13] Because SFPP fails the second prong of the "substantially exacerbate" test, the Commission need not address the first prong of the test – whether SFPP's Page 700s show a "substantial over-recovery" warranting investigation of the index increase.

revenues declined from 13.11 percent (2011) to 10.13 percent (2012) to 9.22 percent (2013).[14] The Commission is not persuaded by Joint Shippers' response that Page 700 data include full years whereas the index increases take place mid-year.[15] As Joint Shippers assert, the 2013 Page 700 only includes six months of costs and revenue data following the July 1, 2013 index increase at issue in this proceeding. Nonetheless, the continuing decline in the difference between the revenues and costs on the 2013 Page 700 is inconsistent with the claim that the index increase *substantially* increased any pre-existing over-recovery. If a *substantial* exacerbation of any over-recovery had been present, the last six months of 2013 revenues following the index increase would have caused the gap between revenues and costs to grow (not decline) on the 2013 Page 700. Thus, based upon the facts available at the time of the complaints themselves, the 2012 and 2013 index increases did not, in fact, substantially exacerbate the pre-existing difference between SFPP's revenues and costs. The Joint Shippers have not met their burden.

10. The Commission also rejects the Joint Shippers' contention that the Commission should only evaluate the complaints based upon the two years prior to each index increase, i.e., (a) 2010 and 2011 Page 700 data for evaluating SFPP's 2012 index increase and (b) 2011 and 2012 Page 700 data for evaluating SFPP's 2013 index increase. The Commission has previously held that the only relevant data for evaluating an index rate change are the data from the two years prior to the index change.[16] However, the Commission applied this policy when investigating a pipeline's index increase that was protested within 15 days of the challenged indexed rate filing. This case presents different circumstances. The Joint Shippers waited two years after the 2012 rate increase and one year after the 2013 index increase to file their complaints. The Commission will not ignore evidence that was available at the time the Joint Shippers filed their complaints with the Commission, and that, as discussed above, undermines the basis of the Joint Shippers' claim that the 2012 and 2013 index filings substantially increased the gap between SFPP's revenues and costs. This holding is consistent with the Commission's prior decisions not to add, once a proceeding has commenced, subsequent years' data into the record.[17] Such continual additions would be inconsistent with the simplified

[14] This relies upon Joint Shippers' calculations for 2011 and 2012. For 2013, SFPP's Page 700 shows (a) revenues of $157,746,903 and (b) costs of $149,688,755, a difference of 9.22 percent.

[15] Joint Shippers Answer at 15 n.35.

[16] *SFPP*, 140 FERC ¶ 61,016 at P 34; Opinion No. 527, 143 FERC ¶ 61,213 at P 87.

[17] *Id.*

ratemaking methodology and streamlined ratemaking procedures mandated by the Energy Policy Act of 1992. However, such concerns regarding delay and disruption to the administrative process do not exist when the complaining shipper itself delays filing its challenge to the pipeline's rate changes. Accordingly, the complaints are dismissed.

The Commission orders:

Rehearing is granted and the complaints are dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)