

98 FERC ¶ 61, 177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.

Docket Nos. IS02-46-001
and IS02-82-001

ORDER ON REHEARING

(Issued February 15, 2002)

1. On December 20, 2001, the Director of the Division of Tariffs and Rates Central, acting on delegated authority, rejected tariffs involved in two compliance filings that were made by SFPP, L.P. The first tariff was Tariff No. 67, filed on November 20, 2001, in Docket No. IS02-46-000 to be effective December 1, 2001, to comply with Opinion No. 435-B.¹ The second tariff was Tariff No. 68, filed on December 14, 2001, in Docket No. IS02-82-000 to correct some of the underlying calculations involved in determining the level of Tariff No. 67. Tariff No. 68 was to be effective on December 20, 2001, and was intended to replace Tariff No. 67. The Director's letter orders rejected both tariffs on the grounds that Opinion No. 435-B required that any tariffs filed to comply with that Opinion were to be effective August 1, 2000.

2. SFPP's request for rehearing centers on the point just stated. SFPP asserts that because the Commission had previously accepted certain tariffs to be effective August 1, 2000, the Commission lacks the authority to modify Tariff No. 60 retrospectively to that date. That tariff was filed to comply with Opinion No. 435-A,² a predecessor order in this case, and was accepted subject to refund.³ The August 1, 2000 rates decreased the prior rates filed in Tariff No. 43, Docket No. IS99-144-000, to comply with Opinion No.

¹SFPP, L.P., 96 FERC ¶ 61,281 (2001) (Opinion No. 435-B).

²SFPP, L.P., 92 FERC ¶ 61,166 (2000) (Opinion No. 435-B).

³SFPP, L.P., 92 FERC ¶ 61,166 (2000).

435.⁴ Tariff No. 43 was accepted subject to refund on April 1, 1999.⁵ The tariffs filed to comply with Opinion No. 435 and 435-A remain subject to refund at this time pending resolution of the numerous compliance issues that have been raised in the course of these proceedings. In each of the prior Opinions the Commission has made clear that SFPP must recalculate the rates to be applied in compliance with those Opinions and that any prior calculations of reparations and surcharges must be adjusted accordingly.

3. SFPP's request for rehearing argues that the Commission's directions to make any revised rates retrospective to August 1, 2000, violates the doctrine stated in Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.⁶ Arizona Grocery does not apply to the instant circumstances, however, because SFPP has been directed only to make a further compliance filing, and thus no final rate has been determined in this case.⁷ This point will be further addressed in the Commission's disposition of the pending Opinion No. 435-B rehearing requests and compliance filings.

4. Accordingly, rehearing of the Director's letter orders is denied. Those orders correctly rejected SFPP's tariffs for failure to comply with the explicit direction to SFPP in Opinion No. 435-B to make a revised compliance filing to be effective August 1, 2000.

⁴SFPP, L.P., 86 FERC ¶ 61,022 (1999) (Opinion No. 435).

⁵SFPP, L.P., 87 FERC ¶ 61,056 (1999).

⁶284 U.S. 370, 387-90 (1932) (Arizona Grocery).

⁷Arizona Grocery could apply only if the Commission had already determined a final reasonable rate in this proceeding. The Commission then would be barred under Arizona Grocery from retroactively changing its determination as to that reasonable rate. The whole purpose, however, of the continuing compliance proceedings that are the subject of Opinion Nos. 435, 435-A, and 435-B is to determine what the appropriate reasonable rate should be.

The Commission orders:

Rehearing is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.