

99 FERC ¶ 61, 196  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Chevron Products Company

Docket No. OR02-4-000

v.

SFPP, L.P.

ORDER DISMISSING COMPLAINT

(Issued May 21, 2002)

1. On February 11, 2002, Chevron Products Company (Chevron) filed a complaint against SFPP, L.P. (SFPP) alleging that SFPP has violated and continues to violate the Interstate Commerce Act (ICA)<sup>1</sup> by charging unjust and unreasonable rates for the transportation of refined petroleum products on its East and West Lines. Chevron seeks refunds, damages, reparations, and other appropriate relief. Chevron also moved to consolidate its complaint with the ongoing complaint proceedings challenging SFPP's rates in Docket No. OR96-2-000, et al.

2. As discussed below, the Commission will dismiss Chevron's complaint and motion to consolidate. Chevron has failed to provide adequate support for its claim against SFPP, as required by Rule 206 of the Commission's Rules of Practice and Procedure.<sup>2</sup> This action serves the public interest by maintaining adherence to the Commission's complaint procedures and informational requirements, thereby ensuring an organized and fair complaint process.

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<sup>1</sup>49 App. U.S.C. § 1 et seq. (1988).

<sup>2</sup>18 C.F.R. § 385.206 (2001).

3. **BACKGROUND**

4. Chevron explains that it transports and sells refined petroleum products and that it has shipped and/or currently ships such products on SFPP's interstate pipeline facilities. Chevron states that its complaint reflects the merger of Chevron Corporation and Texaco, Inc. on October 9, 2001, into a new corporation, ChevronTexaco. According to Chevron, both it and Texaco Refining and Marketing, Inc. (TRMI), which were subsidiaries of the pre-merger companies, have been parties to, and active participants in, the proceedings in Docket No. OR-96-2-000, et al. Chevron further states that TRMI shipped refined petroleum products on SFPP's interstate pipeline system. Chevron asserts that it now represents the interests of TRMI as a result of the merger.

5. Chevron states that TRMI filed three complaints against the interstate tariffs of SFPP, which were consolidated with other complaints against SFPP, and currently are pending in Docket No. OR96-2-000, et al. Chevron cites complaints filed on December 4, 1995 (Docket Nos. OR96-2-000, et al. and OR96-2-001), TRMI's First Amended Original Complaint in Docket No. OR98-1-001, its Second Amended Complaint, and Third Original Complaint. Chevron states that, in an order issued May 17, 2000, the Commission set the outstanding complaints for hearing.<sup>3</sup>

6. **DESCRIPTION OF THE COMPLAINT**

7. Chevron does not attach documents supporting its complaint, but rather adopts and incorporates by reference three complaints filed by other entities: (1) the Amended Complaint of ARCO Products Company, Mobil Oil Corporation, and TRMI, filed in Docket Nos. OR96-2-000, OR96-10-000, and OR98-1-000 (ARCO Complaint), (2) the Amended Complaint of Ultramar, Inc. (Ultramar) filed in Docket Nos. OR96-15-000 and OR97-2-000 (Ultramar Complaint), and (3) the Complaint and Motion to Consolidate of Refinery Holding Company, L.P. (RHC) filed in Docket No. OR96-2-000, et al. (RHC Complaint).

8. Chevron asserts that there are reasonable grounds for concluding that the discrepancy between SFPP's actual costs and its published rates is such that the pipeline's existing rates are unjust and unreasonable.<sup>4</sup> With respect to the West Line rates, Chevron

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<sup>3</sup>ARCO Products Company v. SFPP, L.P., 91 FERC ¶ 61,142 (2000).

<sup>4</sup>Chevron cites Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, FERC Stats. & Regs., Regulations Preambles

(continued...)

argues that substantial changes in circumstances have occurred and, to the extent that such rates are "grandfathered" under the Energy Policy Act of 1992 (EPAAct),<sup>5</sup> Chevron maintains that it has standing to challenge those rates. Chevron further contends that, to the extent such rates are "indexed" rates or "settlement rates," they are so significantly in excess of costs as to be unjust, unreasonable, and outside any zone of reasonableness.<sup>6</sup> Chevron also alleges that substantial overcharges have been imposed on it as a result of SFPP's rates applicable to the use of the Watson Enhancement Facility, but Chevron admits that it currently is unable to quantify any such overcharges.

9. Chevron cites (1) the O'Loughlin Affidavit attached as Exhibit B to the Ultramar Complaint, (2) the Verified Statement of Paul Foster, and the Eberst Affidavit attached as Attachments A and B respectively, to the RHC Complaint, and (3) Appendices D and E (Premo Affidavit) to the ARCO Complaint. Chevron "suggests that these materials strongly support the following assertions of changed circumstances:"<sup>7</sup> (1) that SFPP substantially overrecovered its costs of service for 1996, 1997, and 1998, (2) that there have been substantial decreases in SFPP's cost-of-service, (3) that there have been increases in SFPP's total carrier operating revenues during the 1996-1998 period, (4) that SFPP has recovered all capital costs associated with the Watson Enhancement Facilities, (5) that SFPP's cost of debt declined during the relevant period, and (6) that application of the Commission's decision in Lakehead Pipe Line Co.<sup>8</sup> to SFPP's claimed cost-of-service shows substantially changed economic conditions when compared to such conditions existing during the base period of measurement.

10. Chevron asks the Commission to determine just and lawful rates for the shipment of petroleum products on SFPP's East and West Lines, consolidate its complaint with existing complaints in Docket No. OR96-2-000, et al. and order refunds, damages,

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<sup>4</sup>(...continued)

January 1991 - June 1996 ¶ 30,985 (1993); and 49 App. U.S.C. § 1(5) 8, 9, 13, 15 (1988).

<sup>5</sup>Pub. L. No. 102-486, 106 Stat.2772 (1992).

<sup>6</sup>Chevron cites 18 C.F.R. § 343.2(c)(1), 343.2(c)(2) (2001).

<sup>7</sup>Complaint of Chevron Products Co. and Motion to Consolidate Complaint With ARCO Products Company, et al. v. SFPP, L.P., Docket Nos. OR96-2-000, et al. at 12 (February 11, 2002).

<sup>8</sup>75 FERC ¶ 61,181 (1996).

reparations and other just and reasonable relief, including interest and the reasonable expenses of litigation. Chevron asserts that its current complaint raises the same and related issues involving the justness and reasonableness of SFPP's interstate pipeline rates that are at issue in Docket No. OR96-2-000, et al. and that consolidation of the instant complaint with the ongoing proceedings will not delay the proceedings or prejudice any party.

11. Chevron states that the Commission's Enforcement Hotline, Dispute Resolution Service and other tariff-based or informal dispute resolution procedures have not been utilized in this instance because Chevron believes they would not be productive. Chevron does not seek fast track processing for its complaint.

12. **SFPP'S ANSWER**

13. SFPP opposes the motion to consolidate and asks the Commission to dismiss the complaint. SFPP points out that the consolidated proceedings in Docket No. OR96-2-000, et al. have been lengthy and expensive and are nearly concluded. SFPP also states that, on January 16, 2002, Chevron filed a notice with the Commission indicating that it had become the successor in interest to TRMI, but that the Presiding Administrative Law Judge (ALJ) in the Docket No. OR96-2-000 proceedings has indicated repeatedly that the filing was inadequate to make Chevron a complainant in that case.<sup>9</sup> SFPP further contends that the ICA only allows recovery from a common carrier by a party that has been injured by the carrier.<sup>10</sup>

14. SFPP states that Chevron's complaint obscures the difference between two analytically distinct issues: (1) Chevron's alleged ownership of the TRMI claim against SFPP; and (2) Chevron's claims against SFPP based on Chevron's own shipments.

15. SFPP points out that TRMI first asserted its claim relating to West Line shipments on December 1, 1995. Thus, states SFPP, because the West Line rates are grandfathered by the EAct, TRMI's potential claim may extend forward from that date.<sup>11</sup> In addition SFPP states that TRMI's potential claim with respect to shipments on the non-

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<sup>9</sup>Exhibit A to SFPP's answer includes excerpts of transcripts in support of its position that the ALJ has not been able to determine if Chevron is entitled to be a complainant in Docket No. OR96-2-000, et al.

<sup>10</sup>49 App. U.S.C. § 8 (1988).

<sup>11</sup>SFPP cites EAct § 1803(b)(2).

grandfathered East Line may extend to two years prior to the filing of TRMI's first complaint against SFPP's East Line rates.<sup>12</sup> However, SFPP states that, although Chevron has been a shipper on SFPP's West and East Lines since at least December 1, 1995, it did not file a complaint asserting a claim for tariff reductions based on those shipments until it filed the instant complaint on February 11, 2002. Thus, reasons SFPP, Chevron may not receive any relief based on its West Line shipments prior that date<sup>13</sup> and may not recover reparations based on its East Line shipments prior to February 11, 2000.<sup>14</sup> SFPP maintains that none of the complaints on which Chevron relies contains the data needed to compare the economic circumstances at the time the West Line rates were established to the economic circumstances on the West Line as of February 11, 2002. Further, argues SFPP, Chevron's claimed willingness to take the record as it stands ignores the fact that there is a gap of 18 months between the last complaints consolidated into the ongoing proceeding and Chevron's current complaint. SFPP points out that it prepared cost-of-service studies for the years 1992, 1995, 1996, 1997, 1998, and 1999, but that there are no such presentations in the record for the periods after that, and in addition, all of the parties in the consolidated proceeding have presented their recommendations for forward-looking rates on the basis of the 1999 test year.

16. SFPP asserts that Chevron seeks to extend its own claim for reparations back to the time periods covered by TRMI's complaints in the Docket No. OR96-2-000, et al. proceeding. However, SFPP submits that the issue of Chevron's standing has been raised and will be resolved in the Docket No. OR96-2-000, et al. proceeding. SFPP also argues that Chevron's reassertion of the TRMI claim is unnecessary and improper. Because all the complainants in that case have presented their arguments and cross-examined SFPP's witnesses, SFPP maintains that the TRMI claim has been fully presented. SFPP suggests that, if the TRMI claim has been assigned to Chevron USA, Inc., the proper course of action for Chevron USA, Inc. would be to file a motion to become the complainant of record in Docket No. OR96-2-000, et al., for the TRMI claim and to submit relevant documentation. SFPP points out that the ALJ in the consolidated proceedings has attempted unsuccessfully over many months to obtain such information from Chevron.

17. SFPP also contends that publicly available information appears to contradict Chevron's assertion that it owns TRMI's claim. SFPP states that, as a prerequisite to approving the Chevron-Texaco merger, the Federal Trade Commission (FTC) ordered

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<sup>12</sup>49 App. U.S.C. § 16(3)(b) (1988).

<sup>13</sup>EPA Act § 1803(b)(2).

<sup>14</sup>49 App. U.S.C. § 16(3)(b) (1988).

Texaco, Inc. to divest either TRMI or an interest in Equilon. A copy of the FTC order is attached as Exhibit B to SFPP's answer. SFPP also attaches as Exhibit C to its answer an affidavit indicating that Shell has purchased TRMI and that Texaco's sale of TRMI was required as a condition of governmental approval of the merger. SFPP observes that the FTC order does not mention the possibility of assigning TRMI to any Chevron company.

18. SFPP further states that Chevron's complaint fails to comply with 18 C.F.R. § 343.2(c)(1) and must be dismissed. According to SFPP, that section makes it clear that a complaint against indexed rates must allege that a rate increase substantially exceeds the carrier's cost increases. SFPP maintains that none of the complaints that Chevron incorporates by reference makes the proper allegations against indexed rates.

19. SFPP contends that Chevron's complaint fails to include the documentation specified in Rule 206(b)(8), which requires a complaint to include all documents that support the facts in the complaint in possession of, or otherwise attainable by the complainant, including, but not limited to contracts and affidavits.<sup>15</sup>

20. In addition, SFPP emphasizes that Chevron's complaint fails to make a good faith effort to quantify the financial injury it has experienced as a result of the alleged actions of SFPP, as required by Rule 206(b)(4). Moreover, SFPP points out that while Chevron incorporates the complaints of other parties filed in the Docket No. OR96-2-000, et al. proceedings, it offers no explanation why it could not provide its own factual allegations and documents supporting those allegations. SFPP argues that Chevron cannot rely on complaints filed long ago to meet its burden to supply the required evidence of a substantial change in economic circumstances at the time the complaint was filed.

21. SFPP asks the Commission to reject Chevron's effort to recover litigation expenses. According to SFPP, in limited circumstances, a complainant under the ICA may recover attorneys' fees, but recovery of litigation expenses is not permitted under section 8 of the ICA. Further, states SFPP, the ICA permits the recovery of attorneys' fees only if an action against a carrier is pursued in court rather than before the Commission.<sup>16</sup>

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<sup>15</sup>18 C.F.R. § 385.206(b)(8) (2001).

<sup>16</sup>SFPP cites *Meeker v. Lehigh Valley RR*, 236 U.S. 412, 432-33 (1915) (disallowing an award of attorneys' fees for service performed before the ICC).

22.

**INTERVENTIONS**

23. BP West Coast Products LLC and ExxonMobil Oil Corporation (Indicated Shippers) filed a motion to intervene and an answer in opposition to the motion for consolidation. Indicated Shippers do not present any arguments with respect to Chevron's alleged rights as the successor to TRMI's claims; rather, Indicated Shippers emphasize the lengthy and fully-litigated proceedings in Docket No. OR96-2-000, et al., and they argue that consolidation of the instant complaint will serve only to delay the ongoing proceedings.

24. Ultramar also filed a motion to intervene and an objection to the request for consolidation, citing the length and the current status of the pending consolidated proceedings. Ultramar maintains that consolidating Chevron's current complaint with the ongoing consolidated proceedings will not serve any administrative efficiencies or protect the interests of the parties to those proceedings. Ultramar argues that it is illogical and unfounded for a 2002 complaint to proceed from a forward-looking test year that is three years prior to the complaint year. Moreover, continues Ultramar, Chevron's allegations appear to be based on affidavits and related evidence that have been superceded by written testimony and related exhibits, including trial exhibits, that have been addressed at length in the hearing. According to Ultramar, as an active participant in Docket No. OR96-2-000, et al., Chevron could have filed a more timely complaint, which would have been less prejudicial and disruptive.

25.

**DISCUSSION**

26. The Commission will dismiss Chevron's complaint. The Commission finds that Chevron has failed to comply with the Commission's regulations governing complaints. For example, Rule 206(b)(8) requires a complainant to "[i]nclude all documents that support the facts in the complaint in possession of or otherwise attainable by the complainant, including, but not limited to contracts and affidavits[.]" Chevron has not provided an explanation for its desire to incorporate by reference complaints and supporting documents filed by other parties at earlier stages of the proceedings in Docket No. OR96-2-000, et al. or for its failure to provide documentation specifically relevant to its complaint. Thus, Chevron's complaint is wholly inadequate to support its claim for relief, particularly with respect to any period subsequent to the periods litigated in the consolidated proceeding. Moreover, Chevron does not seem to have made a good faith effort to quantify the financial impact or burden to it arising from the actions of SFPP, as required by Rule 206(b)(4). Finally, Chevron offers no explanation for intervening in the consolidated proceedings rather than filing a complaint some years earlier, when

consolidation with the proceedings in Docket No. OR96-02-000, et al. might have afforded an expeditious means of addressing its allegations.

27. Because the Commission is dismissing the complaint, the Commission will not address other issues raised by the parties. However, the Commission points out that the issue of Chevron's right to succeed to the interests of TRMI is being addressed in the consolidated proceedings in Docket No. OR96-02-000, et al., in which Chevron is an intervenor.<sup>17</sup>

The Commission orders:

Chevron's complaint is dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>17</sup>See, e.g., pleadings filed on March 14-15, 2002, in Docket Nos. OR-96-2-000, et al., by SFPP, Chevron, Ultramar, and others in response to the ALJ's inquiry regarding the rights of successors in interest. On April 12, 2002, the ALJ issued an order denying the proposals to substitute parties or others as complainants. On April 29, 2002, Chevron filed a motion for permission to file an interlocutory appeal of the April 12, 2002 order.