

100 FERC ¶ 61, 329
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. OR02-4-001

v.

SFPP, L.P.

ORDER DENYING REHEARING

(Issued September 25, 2002)

1. On June 20, 2002, Chevron Products Company (Chevron) filed a request for rehearing of the Commission's Order Dismissing Complaint that was issued on May 21, 2002 (May 21, 2002 order).¹ Chevron contends that, in the May 21, 2002 order, the Commission failed to consider a May 2, 2002 filing made by Chevron in support of its complaint against SFPP, L.P. (SFPP). As discussed below, the Commission denies rehearing. This action serves the public interest by maintaining adherence to the Commission's complaint procedures and informational requirements, thereby ensuring an orderly and fair complaint process.

BACKGROUND

2. In its complaint, Chevron stated that it has shipped and/or currently ships refined petroleum products on SFPP's interstate pipeline facilities. Chevron maintained that its complaint reflected the October 9, 2001 merger of Chevron Corporation and Texaco, Inc. into a new corporation, ChevronTexaco. Chevron claimed that both it and Texaco Refining and Marketing, Inc. (TRMI), as subsidiaries of the pre-merger companies, had been active parties in the consolidated proceedings challenging SFPP's rates in Docket No. OR96-2-000, et al. (Consolidated Proceedings). Chevron contended that TRMI was

¹Chevron Products Company v. SFPP, LP, 99 FERC ¶ 61,196 (2002).

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also a shipper on SFPP's system, but that, as a result of the merger, Chevron now represented TRMI's interests in the Consolidated Proceedings.

3. Chevron cited three complaints filed by TRMI against SFPP, all of which are now pending in the Consolidated Proceedings. In its complaint in the instant proceeding, Chevron sought to incorporate by reference complaints and other filings by various entities in the Consolidated Proceedings, asserting that those documents established reasonable grounds for concluding that SFPP's existing rates are unjust and unreasonable. In addition, though it claimed that it was overcharged for rates applicable to SFPP's Watson Enhancement Facility, Chevron admitted that it was unable to quantify any such overcharges. Chevron asked the Commission to consolidate its complaint in the instant docket with the Consolidated Proceedings.

4. SFPP filed an answer opposing Chevron's motion to consolidate, emphasizing that the Presiding Administrative Law Judge (ALJ) previously found that Chevron had not demonstrated that it was entitled to succeed to the interests of TRMI in the lengthy and nearly concluded Consolidated Proceedings. Further, SFPP refuted Chevron's allegations concerning its rates and maintained that, while Chevron had been a shipper on SFPP's system since at least 1995, it had not chosen to file a complaint until this late date. Finally, SFPP argued that Chevron's complaint failed to comply with the Commission's complaint rules.

5. In the May 21, 2002 order, the Commission dismissed Chevron's complaint, stating that Chevron had failed to comply with the Commission's regulations governing complaints and had not provided an adequate explanation for its belated effort to participate in the Consolidated Proceedings.

REQUEST FOR REHEARING

6. Chevron maintains that the Commission failed to consider a May 2, 2002 filing made in support of its complaint against SFPP. Chevron asserts that it has been an active party in the Consolidated Proceedings since 1996. Chevron claims that it was difficult following the merger to obtain data in support of its efforts to succeed to the interests of TRMI in the Consolidated Proceedings; however, Chevron maintains that it has addressed that issue in various pleadings in this proceeding. Additionally, Chevron contends that SFPP provided the volumetric throughput of all complainants in the Consolidated Proceedings, but refused to provide such information to Chevron. Moreover, Chevron maintains that, contrary to SFPP's claims, the pipeline did in fact provide cost-of-service data for the years 2000 and 2001. In conclusion, Chevron asks

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the Commission to consider its supplemental filing of May 2, 2002, as justification for its claim that it should succeed to the interests of TRMI in the Consolidated Proceedings.

THE MAY 2, 2002 FILING

7. In Chevron's May 2, 2002 Motion for Leave to Reply to Answers to Complaint and Reply to Answer in Opposition to Complaint, Chevron stated that it had demonstrated the adverse impact to it due to SFPP's unjust and unreasonable rates charged from January 1999 to December 2001, using public information available in the Consolidated Proceedings. Chevron asked the Commission to take official notice of the Consolidated Proceedings, as well as Order No. 435 et seq.

8. Chevron maintained that consolidation of its current complaint with the Consolidated Proceedings would not expand its legal rights. Chevron asserted that it intervened in the Consolidated Proceedings immediately after TRMI filed the first complaint in December 1995 and that it was a primary party in the complaint in Docket No. OR92-8-000 challenging SFPP's interstate transportation rates. Chevron also asserted that, when it filed the instant complaint in February 2002, it was not seeking to recover reparations relating to Chevron's transportation on SFPP's system in the period prior to 2000. Rather, Chevron contended that, as a result of the 2001 merger, it acquired the rights of TRMI in the Consolidated Proceedings for the period from December 1993 through December 31, 1997, but that it only recently learned the identities of the real parties in interest. Chevron provided the sworn statement of its attorney, Jon Robbins, detailing the relationships of the various Chevron and Texaco entities beginning in 1997-1998.

9. Chevron argued that its complaint complies with the Commission's rules. Contending that the public record in the Consolidated Proceedings demonstrates that SFPP's rates recover revenues that substantially exceed the pipeline's cost of service, Chevron asked the Commission to incorporate this evidence by reference. Chevron compared SFPP's rates and those developed by the Commission's Staff, which it claimed to have taken from Exhibit No. S-48-A in the Consolidated Proceeding. Chevron states that, using Staff's rates and volumetric information provided by SFPP, Chevron estimates that it was overcharged at least \$830,000 for transportation on SFPP's East Line and approximately \$14,800,000 on the West Line from January 1, 1999, to December 31, 2001. Chevron also contended that SFPP illegally ignored its duty as a common carrier and refused to transport volumes for new entities on request.

10. Chevron stated that it had agreed to take the record as it exists in the Consolidated Proceedings, thereby avoiding further delay. In fact, claims Chevron, consolidation of its complaint with the ongoing proceedings will enhance the efficiency of the administrative process because the record has been closed and there would be no need to use the Commission's resources to re-try the same issues. Most important concludes Chevron, if the Commission accepts its complaint and consolidates it with the Consolidated Proceedings, Chevron's right to receive reparations at least back to February 2000 will be preserved.

DISCUSSION

11. The Commission denies Chevron's request for rehearing of the May 21, 2002 order. First, the request for rehearing does little more than restate the unsupported claims of injury that Chevron offered in its complaint. When it issued the May 21, 2002 order, the Commission had before it the May 2, 2002 filing, which Chevron attached to its current request for rehearing. In that filing, Chevron again sought to incorporate by reference certain portions of the record in the Consolidated Proceedings. However, the Commission finds that Chevron's efforts to support its complaint in that manner and its inclusion of calculations it claims to have extrapolated from an exhibit in the Consolidated Proceedings, fall far short of quantifying the financial impact or burden to Chevron, as required by Rule 206(b)(4). Simply put, when it issued the May 21, 2002 order, the Commission determined that Chevron's complaint against SFPP should be dismissed, and on rehearing, Chevron has presented nothing that persuades the Commission that its determination to dismiss the complaint was ill-founded.

12. In addition, the issue of Chevron's request that it be permitted to succeed to the interest of TRMI in the Consolidated Proceedings has been resolved in those proceedings. On April 12, 2002, the ALJ issued an order denying Chevron's request that it be permitted to assume the interests of TRMI.² The ALJ thoroughly reviewed Chevron's claim and pointed out that, while Chevron had participated in the Consolidated Proceedings, it had done so only as an intervenor and not as a complainant, as Texaco had done through its subsidiary, TRMI. The ALJ also emphasized that Chevron had remained passive through most of the lengthy proceedings. Further, the ALJ pointed out that the possible payment of reparations hinges upon the filing of a complaint, not merely an intervention. Yet, continued the ALJ, for a number of years,

²Texaco Refining and Marketing, Inc. and Equilon Enterprises, LLC v. SFPP, L.P., 99 FERC ¶ 63,009 (2002).

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Chevron elected not to file a complaint under its own name, much less to seek consolidation with the Consolidated Proceedings until it filed the complaint in Docket No. OR02-4-000 in February 2002. The ALJ explained that a transfer of interest does not require a substitution of parties, which in this case could result in confusing damage claims.

13. On May 22, 2002, Chevron filed an out-of-time interlocutory appeal of the ALJ's April 12, 2002 order denying its request to be substituted for TRMI in the Consolidated Proceedings. In its interlocutory appeal, Chevron presented the same allegations and the sworn statement of Mr. Robbins that it presented in the May 2, 2002 filing as discussed above. Thus, the interlocutory appeal presented arguments that previously were considered and rejected by the Commission. On May 29, 2002, the Commission issued a Notice of Determination By the Chairman acting as Motions Commissioner that he would not refer Chevron's interlocutory appeal to the full Commission. The notice stated that Chevron had failed to demonstrate extraordinary circumstances warranting Commission review of the contested ruling in order to prevent detriment to the public interest or irreparable harm to any person, as required by section 385.715(c)(5) of the Commission's regulations. Therefore, the ALJ's April 12, 2002 order controls, and Chevron will not be substituted for TRMI in the Consolidated Proceedings. Because the ALJ in his April 12, 2002 order, the Chairman in his determination not to refer the interlocutory appeal to the full Commission, and the full Commission in the May 21, 2002 order have thoroughly reviewed and have rejected Chevron's claim that it should be permitted to succeed to the interests of TRMI in the Consolidated Proceedings, the Commission will not now reverse those rulings in response to Chevron's belated complaint in this docket.

The Commission orders:

Rehearing of the May 21, 2002 order in this proceeding is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.