

102 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

SFPP, L.P.	Docket Nos. OR92-8-017-019 OR93-5-014-016 OR94-3-013-015 OR94-4-015-017
Mobil Oil Corporation v. SFPP, L.P.	OR95-5-012-014
Tosco Corporation v. SFPP, L.P.	OR95-34-011-013
SFPP, L.P.	IS99-144-009-011
SFPP, L.P.	IS00-379-009-011 IS02-46-002-004 IS02-82-002-004

ORDER ACCEPTING COMPLIANCE FILING SUBJECT TO CONDITIONS
AND DENYING CLARIFICATION AND REHEARING AS MOOT

(Issued January 29, 2003)

I. **Summary**

1. This order addresses a revised compliance filing made by SFPP on October 28, 2002, in response to a Commission order issued in the captioned dockets on

September 26, 2002.¹ That order addressed a previous compliance filing made by SFPP on November 20, 2001 in response to Opinion No. 435-B.² It required SFPP (1) to modify the methodology used to determine the level of SFPP's new East Line rates to be applicable to all shippers as of August 1, 2000, (2) to recalculate the reparations that would be due for transportation over the East Lines for the earlier periods covered by the complaints addressed by Opinion No. 435-B, and (3) to make any refunds for adjustments to the rate levels between August 1, 2000 and the date that SPFF filed its revised East Line tariffs.

2. The October 28, 2002 compliance filing therefore includes a number of modifications to the methodology used to calculate the new rates for the transportation of petroleum products over SFPP's East Lines between El Paso, Texas, and points in Arizona and New Mexico, and revisions to the reparations proposed in its earlier compliance filing. SFPP simultaneously filed Tariff No. 75, which reflects revisions to the proposed rates filed November 20, 2001 in Docket No. IS02-82-000 at the same time SFPP filed the changes to the rate calculations on that date.³ Tariff No. 75 includes a surcharge to recover certain supplemental costs authorized in Opinion No. 435-B.

3. After reviewing the compliance filing, the Commission will accept the instant filing with one exception. The required change will not affect the level of the base common carrier tariff rates included in the revised compliance filing, but will affect the surcharge component of Tariff No. 75. The only changes SFPP must make as to revise its calculation of the gross reparations due under the September 20 order, and submit a revised tariff that reflects that revision. As before, the revised tariff will be effective August 1, 2000. The Commission also denies the request for clarification or rehearing that was filed by ExxonMobil on October 22, 2002 as moot.

¹SFPP, L.P., 100 FERC ¶ 61,353 (2002).

²SFPP, L.P., 96 FERC ¶ 61,281 (Opinion No. 435-B), issued September 13, 2001. The prior compliance filing also reflects changes and clarifications to Opinion No. 435-B that were made in SFPP, L.P., 97 FERC ¶ 61,138, issued November 7, 2001, and a correction that issued on December 14, 2001.

³Tariff No. 75 replaces Tariff No. 73 which was filed simultaneously with SFPP's prior compliance filing in this proceeding.

II. Interventions

4. Timely protests were filed in response on November 12, to SFPP's filing by Navajo Refining Company, L.P. (Navajo), Tosco Corporation, and VMSC Marketing and Supply Company (VMSC), a successor company to Ultramar Diamond Shamrock Company. Tosco challenges SFPP's calculation of the reparations due under the September 26 order. VMSC challenges the level of the surcharge filed in Docket No. IS02-82-000 and questions the cost-of-service contained in the filing. In addition, ExxonMobil Oil Corporation (ExxonMobil) filed a request for rehearing or clarification of the September 26, 2002 order.

5. SFPP filed a responses to Tosco's comments on November 18, 2002, and to VMSC's protest on November 19, 2002. Navajo filed for leave to file an answer to SFPP and answer on November 26, 2002. Tosco filed a supplement to its protest on December 2, 2002, and VMSC filed a motion for leave to answer SFPP and answer on December 4, 2002. SFPP responded to these motions on December 10, 11, and 19, 2002. The Commission will reject VMSC's December 4, 2002 motion on the grounds that it adds little to this proceeding, and as such SFPP's response thereto is moot. The Commission will accept Tosco's supplement to its protest and Navajo's motion for leave to answer and SFPP's responses thereto since they add useful information on points before the Commission.

6. In addition to the forgoing timely comments, Chevron Products Company (Chevron) filed comments for itself and Texaco Marketing and Refining, Inc. (Texaco) on November 13, 2002, one day out of time. SFPP filed a response to these comments on November 18, 2002. In addition, Equilon Enterprises, LLC (Equilon) filed comments on November 18, 2002, and SFPP filed a reply on November 26, 2002. Equilon and Chevron then filed separate reply comments on December 6, 2002, and then filed a joint Clarification of Real Party in Interest of Chevron Products Company and Equilon Enterprises LLC, or in the alternative, Amendment of Complaint on December 16, 2002. SFPP responded on December 23, 2002. Thereafter Chevron and Equilon filed a response to SFPP on January 13, 2003.

7. The Commission will accept Chevron's November 13, 2002 filing and SFPP's response as the basis for certain rulings that will clarify the record in this proceeding regarding the eligibility of shippers for reparations in this proceeding. The Commission will reject Equilon's November 18, 2002 filing as out of time, and because Equilon is not

a party of record in this proceeding.⁴ The Commission will similarly reject Equilon's filing of December 16, 2002 as an untimely effort to make Equilon and Chevron the parties in interest rather than Texaco, which filed a complaint in this proceedings in 1994.⁵ This additional filings are an effort to substitute Equilon and Chevron as the real parties in interest for Texaco for the period January 1, 1998 to August 3, 2000, and obtain for these parties to obtain any reparations that might be due Texaco for that period.⁶ The Commission looks upon interventions in the compliance phase of a case with disfavor because it can interject new issues and matters of proof long after the record has closed, as in this case. Given Equilon did not even exist until more than 3 years after the date for complaints closed in this proceeding, it has no privity of contract with SFPP and it is denied party standing.⁷

III. Discussion

8. VMSC and Navajo address two issues. The first is the mechanics for calculating the gross reparations level included in the compliance filing. Under the September 26, 2002 order, SFPP was required to calculate the gross reparations that would be due under the methodology specified in that order. The gross reparations are the reparations that would be due all East Line shippers if they were deemed eligible for reparations under the terms of the September 26, 2002 order. SFPP was required to then calculate the reparations due the shippers who were actually due reparations because they had filed complaints in these proceedings. The difference between the gross reparations and those actually due, if any, was to be credited against SFPP's FERC administrative law legal

⁴Commission practice requires a motion for intervention as well as the filing of the substantive comments. See 18 C.F.R. §§ 385.211, 385.212, and 385.214. Equilon was not a party at the time the record closed and has not filed a notice of intervention at any time during the several years thereafter. This is an additional ground to reject its filing.

⁵This filing should have been captioned as a motion and would also require an intervention for Equilon.

⁶Texaco would not be entitled to reparations in any event. As is discussed below, the Commission has consistently held that Texaco is an West Line shipper only. As such, it is not entitled to reparations under the terms of this order and nothing would be gained by the substitution for Texaco by Equilon or Chevron. Even assuming they could stand in Texaco's shoes, they would have no rights to East Line reparations under this order.

⁷The last complaint was accepted on August 7, 1994.

costs for the years 1995 through 1998. If the difference was inadequate to cover and offset the costs in those four years, SFPP was authorized to implement a surcharge recovering the difference over a period of five years. Under the method used by SFPP in the compliance filing, the East Line surcharge comes to 1.62 cents per barrel for five years.

9. VMSC asserts that SFPP has incorrectly determined the difference between gross reparations and those due the shippers actually eligible for reparations. It asserts that SFPP included an interest calculation in the amount due the individual shippers eligible for reparations, but did not include an interest calculation in determining the gross reparations. VMSC asserts that this in turn results in an understatement of the difference between the gross reparations amount and the reparations due the eligible shippers. VMSC states that if interest were either included in the gross reparations level, or eliminated from the total due the eligible shippers, the difference would be adequate to cover SFPP's FERC litigation costs for the years 1995-1998. Therefore there would be no need for the surcharge included in the instant filing. SFPP argues in reply that this issue was previously raised by Navajo and that the Commission ruled against the protesting parties in its prior orders by not addressing the issue. Navajo replies that lack of action is not a formal ruling foreclosing its position.

10. The Commission concludes that VMSC and Navajo have presented the proper interpretation of the September 26 order. While the point may not have been explicitly addressed in the Commission's prior orders, reparation calculations should include an interest component at all levels of the calculation. This is appropriate even for the determination of the gross reparations to be calculated under the September 26, 2000 order. SFPP had the use of the money, and the interest that could be earned on it should be calculated.

11. The fact that this monetary return to SFPP will not be returned to certain of the other East Line shippers does not change the fact that the time value of the money was available to defray SFPP's FERC litigation costs, as was the principal amount included in the determination of the gross reparations due. Therefore SFPP must recalculate the gross reparations due on Schedule 35 of its compliance filing (Line 1) to include the same rate of interest it used to calculate total reparations due the eligible shippers on Line 2. The gross surcharge amount on line 13 must be adjusted accordingly and the proposed surcharge on line 17 must also be modified. Tariff No. 75 included in the instant filing must be replaced or revised, together with revised Schedule 35, within 15 days after this order issues.

12. VMSC also continues to attack the accuracy of SFPP's list of corporate unit holders that are subject to double taxation. This argument goes to the determination of the new East Line rates to be established by SFPP in response to Opinion No. 435-B and the compliance filings under review. SFPP correctly points out that Ultramar, VMSC's predecessor corporation, was granted a limited right of intervention to comment on whether SFPP had properly complied with Opinion No. 435-B and was required to take the record as it found it, which would include the quality of the evidence therein. The narrow compliance issue raised by VMSC involves whether the record adequately establishes if one small mutual fund should be included in determining the federal income tax allowance to be used to calculate SFPP's rates. SFPP asserts that the Pioneer Fund was not improperly included in the category of entities used to determine the federal income tax allowance. Based upon SFPP's representations, the Commission finds SFPP has complied in this matter.

13. Tosco asserts that SFPP failed to include certain of Tosco's subsidiaries, divisions, or affiliates in the calculation of reparations due Tosco for shipment over SFPP's East Lines. Tosco asserts that on April 30, 1996, Circle K Stores Inc. (Circle K) became a wholly owned subsidiary of Tosco, and as such should be eligible for reparations for shipments over the East Lines for shipments before August 7, 1995. In addition, Tosco asserts that SFPP has characterized certain reparations as being due one Tosco Refining Corporation (Tosco Refining). Tosco asserts that this presumable includes all reparations that are due to Tosco Corporation, or the Tosco Refining collectively, the latter being a division of Tosco. It asserts that SFPP has not included reparations that might be due another Tosco affiliate, Tosco Refinery - TSW.

14. SFPP replies that Tosco did not specifically plead its affiliates or subsidiaries were entitled to receive reparations and failed to establish the eligibility of Tosco Refinery - TSW or Circle K for reparations during the evidentiary phase of this proceeding. SFPP further asserts that Tosco filed its complaint on August 7, 1995, which was consolidated with the instant case on January 3, 1996, and that Tosco made no mention of either entity at that time. SFPP further argues that the copy of the affidavit included in Exhibit A to Tosco's protest, upon which Tosco bases its claim, was filed in the consolidated Docket No. OR96-2-000, not this docket, and as such has no relevance. SFPP does admit that it has included the sums due Tosco as Tosco or Tosco Refining in its calculations of the reparations due.⁸

⁸See Response of SFPP dated November 18, 2002 at 4.

15. The Commission will reject the arguments in Tosco's protest. SFPP states that it has included in the reparations calculations for this docket reparations that may be due the Tosco Refining Corporation, although not for Tosco Refining Co. - TSW. As SFPP states, it is not clear from Tosco's protest when Tosco Refining Co. - TSW was established or acquired, or whether the name represents an alternative or a substitution for an entity for which SFPP has already calculated reparations, such as Tosco or Tosco Refining. It is reasonable to expect that this type of factual issue would be raised and resolved during the evidentiary phases of such a complex proceeding. Moreover, after further review, it is clear that the shipments for the Tosco Refining included in Exhibit C of Tosco's protest are mostly West Line shipments originating in California. As such, only those claims for Tosco Refining that SFPP has included as East Line shipments are eligible here since the reparations are only available here for East Line shipments.

16. As to Circle K, the separate corporate entity acquired in 1996, SFPP correctly points out that each corporate entity should file its own complaint if it desires standing to obtain reparations.⁹ This is particularly true since Circle K was not even a member of the Tosco corporate family for the period covered by the complaints in the instant docket, for which the last eligible complaint date is August 7, 1995. There is a clear lack of any contractual relationship between Circle K and SFPP for the period in which complaints were required to be filed for shippers to be eligible for reparations in this proceeding.

17. In its initial comments, Chevron asserts that its own reparations should be calculated based on a complaint date beginning in September, 1992 (the exact date is not stated). As SPPF points out, the Commission has consistently ruled that Chevron's September 23, 1992 filing was a protest to matters involving West Line rates and that reparations would not lie until Chevron filed a complaint, the date of which in this case was August 3, 1993. The Commission so held in Opinion No. 435-B,¹⁰ and repeated this conclusion in its November 7, 2001 order in this proceeding.¹¹ As SPPF further points out in its November 22, 2002 answer, Chevron acknowledged that the August 3, 1993 date was determinative in one of its subsequent pleadings dated December 7, 2001, slightly more than one year ago. Chevron's assertion that it is entitled to additional reparations is wholly without merit. Chevron's argument that TRIM should be included

⁹Citing *Texaco Refining and Marketing Inc. v. SFPP*, 99 FERC ¶ 63,009 (2002); *National Radiator Company v. Pennsylvania R. Co.*, 203 I.C.C. 172 (1934); *Armour and Co. v. Director General*, 120 I.C.C. 587 (1925).

¹⁰9 FERC at 62,072.

¹¹SFPP, L.P., 97 FERC ¶ 61,138 (2001).

in the list of parties receiving reparations is equally without merit. The Commission has consistently held that TRIM has filed complaints only against SFPP's West Line rates and is ineligible for reparations for East Line rates.¹²

18. ExxonMobil requests clarification of whether ExxonMobil is eligible for reparations for shipments over SFPP's East Lines, asserting that the September 26 order concludes that Exxon is not eligible for reparations. However, SFPP has included Mobil in SFPP's reparations schedules in the instant compliance filing of the shipments made by Mobil over the East Lines before Mobil became affiliated with Exxon. In doing so SFPP correctly interpreted the September 26 order in this regard. The Commission therefore concludes that the clarification and rehearing requests are moot.

IV. Conclusion

19. Except for the redetermination of the gross reparations and the level of the five year surcharge, the instant compliance filing is accepted. All other protests to the compliance filing are rejected. The revised tariff required by this order will continue to be effective August 1, 2000, as required by the prior orders in this proceeding.

The Commission orders:

(A) The compliance filing submitted in the captioned dockets is accepted subject to the conditions listed in ordering paragraphs B and C.

(B) SFPP must recalculate the per barrel surcharge included on Schedule 35 of the instant filing by including interest at the regulatory rate in the gross reparations level stated in line 1 of that schedule.

(C) Within 15 days after this order issues SFPP must refile Schedule 35 and a revised tariff to reflect the changes required by this order.

¹²See SFPP, L.P., 91 FERC § 61,135 at 61,154 (2000) (Opinion No. 435-A); Opinion No. 435-B, 96 FERC at 62,072.

Docket No. OR92-8-017, et al.

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(D) The request for clarification or rehearing October 22, 2002, is denied as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.