UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,240

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

SFPP, L.P. Docket Nos. OR98-11-000
OR96-2-000
OR96-10-000
OR96-17-000
IS98-1-000

ORDER ON INITIAL DECISION AND REMANDING
PROCEEDING FOR FURTHER DETERMINATIONS

(Issued February 28, 2003)

1. This order reviews an initial decision in the instant proceeding.[1] The initial decision concluded that SFPP had not established that it lacked market power over SFPP's 3.8 mile Line 109, which connects certain shippers located at Sepulveda Junction to Watson Station, both points located in southwest Los Angeles, California. Watson Station is a receipt point on SFPP's main line to Phoenix and Tucson, Arizona. One issue was reserved for briefing directly to the Commission regarding possible discrimination in the structure of SFPP's main line tariffs at Watson Station.

2. The Commission affirms the ALJ's ultimate conclusion of denying SFPP market-based rates while differing with some parts of his rationale. The Commission therefore remands this proceeding to the ongoing litigation in Docket No. OR96-2-000, et al., for a determination of whether SFPP's current 5 cent per barrel rate is just and reasonable, or to set an alternative rate if the determination should be that it is not. The 5 cent rate was filed in Docket No. IS98-1-000, which will be consolidated with the ongoing cost of service proceeding in Docket No. OR96-2-000, et al. The Commission dismisses the discrimination allegations that were briefed directly to it through the reserved issue.

[1] SFPP, L.P., 93 FERC ¶ 63,023 (2000).

I. Legal Framework of this Proceeding

3. In December 1995 Texaco Refining and Marketing, Inc. (Texaco), and in January 1996, ARCO Products Company (ARCO) (collectively Indicated Shippers) filed complaints alleging that SFPP's service on Line 109[2] was jurisdictional and that SFPP was required to file a tariff to provide that service. They further alleged that the 5 cent rate was unjust and unreasonable, and requested the Commission to set a just and reasonable rate, and to order reparations and refunds. A similar complaint was filed by Ultramar, Inc. (Ultramar) in August, 1996.

4. The complaints were consolidated and a hearing established to determine whether (1) the service over Line 109 was jurisdictional, and (2) if so, whether the 5 cent rate was just and reasonable, and (3) if not, whether reparations and refunds should be awarded. An initial decision dated March 28, 1997 concluded that the service over Line 109 was not jurisdictional.[3] On August 5, 1997, the Commission concluded that service over that line was jurisdictional and required SFPP to file a tariff. The Commission stated that SFPP could file a request for a determination that it would be authorized to charge market-based rates for the service at issue.[4]

5. Complying with the August 5, 1997 order, SFPP filed Tariff 29 on October 6, 1997 in Docket No. IS98-1-000. That tariff provided for a 5 cent per barrel charge for shipments over Line 109. The filing was accepted, effective November 6, 1997, subject to investigation and refund.[5] After no resolution was obtained by a settlement judge, on December 31, 1997, SFPP filed a request for a determination that it could charge market-based rates for the use of Line 109 in Docket No. OR98-11-000. In seeking such a determination, SFPP would have to demonstrate that it lacked significant market power over the transportation of petroleum products between Sepulveda Junction and Watson

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[2] Line 109 has a companion Line 110 which returns transmix to the refineries and terminal companies moving petroleum products over the Line 109. Line 110 is not used to transport petroleum products to Watson Station. The lines are referred to collectively throughout this order as Line 109. 84 FERC at 62,494, n. 7.

[3] Texaco Refining and Marketing, Inc., et al. v. SFPP, L.P., 78 FERC ¶ 63,017 (1997) (Texaco Refining).

[4] Texaco Refining, 80 FERC ¶ 61,200 (1997), rehearing denied, 81 FERC ¶ 61,388 (1997).

[5] SFPP, L.P., 81 FERC ¶ 61,177 (1997).

Station.[6] The request was protested by Texaco, Arco, Tosco Corporation (Tosco), Chevron Products Company (Chevron), and Ultramar in March 1998. In that month GATX Terminals Corporation (GATX) filed to intervene.

6. In a September 30, 1998 order the Commission concluded that SFPP lacked market power in the Line 109 Watson Station destination market.[7] It also concluded that while the evidence suggested that SFPP lacked market power in the Sepulveda Junction origin market, the record was not adequate to make a final determination on that issue. The Commission established a limited hearing to address that issue, and required the protestors to demonstrate that alternative pipelines and local trucking are not reasonable substitutes to the use of Line 109.[8] In establishing the hearing, the Commission stated that SFPP had made a prima facie case by demonstrating the existence of pipeline and local trucking alternatives sufficient to discipline any exercise of market power. Therefore it placed the burden on the intervening and protesting parties to rebut the prima facie case by demonstrating that local trucking and other pipelines are not reasonable alternatives. SFPP retained the ultimate burden of proving it lacked market power.[9]

7. The September 30, 1998 order had the following charge to the protesting parties:

> At the hearing, the protesters need to provide evidence that the pipeline or trucking alternatives to line section 109 are not reasonable substitutes for using line section 109. This evidence needs to focus on the ability for current SFPP customers to increase the amount of product shipped on alternative pipelines and through trucks based on current capacities. The evidence also must focus on the ability to expand current facilities within a reasonable time frame[10] and at reasonable cost. In addition, consideration should be given to the extent of the alternatives that are needed to limit SFPP's ability to exercise market power. This analysis should include

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[6] See 18 C.F.R. § 342.4(b) (2002) addressing proposals for market-based rates.

[7] SFPP, L.P., 84 FERC ¶ 61,338 (1998).

[8] Id. at 62,494.

[9] Id.

[10] See DOJ/FTC Guidelines § 3.2 (using a two-year time frame for evaluating new entry).

> evidence as to the percentage of currently shipped refined products that need to be diverted to the local market to discipline the potential exercise of market power[11] and should consider whether the ability of one firm to discipline market power protects other firms, given the pipeline's inability to price discriminate among customers.[12] (Footnotes in the original except for footnote 13).

Under this language the only parties that have a protected interest here are those customers who have established that they are connected to or ship petroleum products[13] through Line 109 and may have a lack of reasonable substitutes to that line.

8. Hearings in this proceeding began on October 28, 1998. The initial decision issued on December 21, 2000. Briefs on exceptions were filed on February 5, 2001, and reply briefs on exceptions on February 26. The reserved discrimination issue previously mentioned was also briefed in February 2001. This order addresses both the briefs on exceptions and those addressing the reserved issue.

II. Discussion

A. Statement of Facts and Findings

9. As noted, the Commission has already determined in this proceeding that SFPP did not have market power in the Watson Station destination market for Line 109. Thus, whether SFPP has significant market power and whether there are alternatives that may prevent it from having such power in the Sepulveda origin market for SFPP's Line 109 are the ultimate issues in this proceeding. The facts underlying this issue are particularly complex and involve not only the alternatives that shippers may have had at the time the record closed, but how any such alternatives evolved during the relevant time frame. The following are findings of fact by the Commission, or where relevant, reflect the Commission's adoption or rejection of certain facts and conclusions by the ALJ.

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[11] For instance, it may not be necessary for the customers connected to line section 109 to divert all products currently shipped on line section 109 in order to discipline SFPP's ability to exercise market power.

[12] 84 FERC at 62,498-99.

[13] The Commission has accepted SFPP's definition of petroleum products as various grades of gasoline, fuel oil, and jet fuel. Id. at 62,494.

10. Between late 1982 and mid-1983, SFPP's predecessor company, SantaFe Southern Pacific Pipeline, entered into contracts (the 1982-83 contracts) with a number of large petroleum shippers for the construction of Line 109 between Sepulveda and Watson Station. The initial contracts had a term of 10 years and a base rate of 15 cents a barrel with a guaranteed annual revenue of $860,000. If sufficient volumes were transported to reach this guaranteed amount, any additional volumes generated revenue which was refunded pro rata to the shippers after the close of the calender year. Thus, if the maximum revenue requirement was exceeded, this had the practical effect of reducing the per barrel charge below 15 cents per barrel in that year. After these contracts expired in late 1992 and early 1993, SFPP provided service over Line 109 by means of bilateral contracts with those shippers still wishing to use the line. These new contracts had a rate of 5 cents per barrel with no guaranteed revenues and no limitation in the revenue collected if the revenues exceeded a certain maximum amount.

11. When Line 109 was constructed in 1982, the Texaco refinery and GATX terminal obtained a direct connection to line 109.[14] This enabled these two facilities to ship directly to the SFPP main line at Watson Station using their own pumping facilities to provide the necessary pipeline pressure. In addition, Ultramar and its predecessor company contracted to ship over Line 109 via the GATX terminal. These companies utilized Line 109 heavily through the expiration of the 1982-1983 agreements in 1992 and 1993 and continued to do so through 1995.[15]

12. The September 30 order and the initial decision found that arguments relating to SFPP's market power in the Arizona and New Mexico long haul markets are not relevant to this proceeding because SFPP is not seeking market-based rates for the transportation of petroleum products beyond Watson Station.[16] Thus, the only relevant argument in this

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[14] The Shell Carlson and Texaco Refineries had a direct connection to Watson Station via Line LS66. A portion of that line was leased to GATX after Line 109 was built for use as a more efficient way of transporting petroleum products from the Paramount refinery to the GATX terminal than continuing to use the existing GATX line for the entire movement from Paramount. See Ex. 184.

[15] See the ALJ's table at 93 FERC at 65,127, which contains columns showing the total throughput on Line 109, and that from GATX, Texaco, and Ultramar and its predecessors. The highest total volume on Line 109 is 38.1 million barrels in 1995, with volumes declining thereafter as Ultramar and Texaco shifted volumes to other pipelines.

[16] Id. at 62,494. The long-haul market is relevant here only insofar as SFPP may
(continued...)

case is whether there are alternative means for delivering petroleum products to Watson Station, East Hynes, and consuming points in the local Los Angeles market. The parties also stipulated that rail, barge, and bus transportation were not substitutes for the delivery of refined petroleum products to Watson Station. The record also establishes that the following companies connect through company owned lines to SFPP at Watson Station: ARCO, Chevron, Tosco, Mobil, and the Shell Carson Terminalling Company. These pipelines range in diameter from 12 to 20 inches and provide these firms with independent access to SFPP at Watson Station.[17]

13. An improved connection between the Ultramar refinery and the Shell Carlson refinery, together with the exclusive lease of Equilon's (formerly Shell) Line 25 in 1998 permitted Ultramar to begin bypassing Line 109 for much of its product in that year.[18] In 1999 Texaco became affiliated with Shell as part of the Equilon partnership. After the affiliation, a new connection through the former Shell Sepulveda refinery also permitted the Texaco refinery to bypass Line 109 using Shell's (Equilon's) Line 28. The Shell Carson refinery is now part of the Equilon partnership and is open to third parties in the Los Angeles area.[19] The terminals and refineries served include Los Angeles International airport, the Mobil Vernon Terminal and Mobil Refinery, a marine terminal, the Unocal Refinery and LA Terminal, the ARCO refinery, GATX, the ATSC System and the SFPP system.[20] It will also serve four additional truck oriented terminals in Los Angeles as well as shipping product over SFPP's main line to the outlying areas of San Diego, Colton, Ventura, Las Vegas, and Arizona.[21] Because the Shell (Equilon) refinery controls its own large diameter pipelines to Watson Station, it can provide services to these outlying areas without using Line 109.

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[16](...continued)
lose some portions of its long haul revenues if additional diversions were to result for an increase in the current 5 cents per barrel rate for shipments over Line 109.

[17]See Prepared Testimony of Barry R. Pearl, Ex. 72, at 8.

[18]Id. at 62,497.

[19]Ex 72, BRP-2.

[20]Id.

[21]Id. at EQLN-01153.

14. There are sufficient pipeline alternatives to provide Ultramar and Texaco with alternatives for all of the shipments that these two companies were making over Line 109 in 1998 and in 1999 when the record closed. There is also sufficient capacity on Equilon's Line 25 to divert all of Ultramar's volume away from Line 109 to Line 25.[22] All of Texaco's volumes could be diverted to Equilon Line 28 with a little investment, and Line 25 and Line 28 were providing alternatives to SFPP's Line 109 that were price competitive at the time the record closed.[23] The ALJ correctly ruled that Ultramar and Texaco had failed to produce evidence to the contrary and they had failed their evidentiary burden of proof under the September 30 order. Thus, the Commission is satisfied that Equilon's Lines 25 and 28 are good alternatives to Line 109 for these two shippers.[24]

15. ARCO's Terminal Services Corporation (ATSC) connects to SFPP at East Hynes, downstream from Watson Station, utilizing pipelines that are titled in ATSC's name.[25] ATSC has opened its terminal and pipeline facilities to third parties and provides storage capacity, pipeline services, and truck rack services for third parties. ATSC serves the Los Angeles harbor complex, has storage capacity of some 1.6 million barrels per day, and truck racks capable of handling 45,000 barrels per day. Its facilities connect directly to the following terminals and refineries: ARCO, Chevron, Edington, GATX, Mobil, Paramount, PetroDiamond, Powerine, Shell, Texaco, Ultramar, Unocal, and Wilmington Liquid Bulk, as well as the SFPP System and Four Corners Pipe Lines.[26] Through its connection at East Hynes ATSC can provide physical access to varying degrees for all of these facilities and has advanced itself as a competitor of GATX.[27]

16. ATSC also operates certain lines between the Sepulveda Junction area and a connection with SFPP's trunk line at East Hynes, including ATSC lines, E31, E32, E33, Line 64, and Line 69. The ALJ correctly concluded that Line 64 was incompatible because of nature of the commodities it was handling and that the other four ATSC lines had sufficient capacity to provide a competitive alternative to Line 109. The ALJ also

[22] 93 FERC at 65,096 and 93 FERC at 65,104-06.

[23] 93 FERC at 65,104-105.

[24] Id.

[25] 84 FERC at 62,491.

[26] Ex. 72, ATSC materials at BRP-4.

[27] See Ex. 72, BRP-2 and BRP-3.

correctly determined that the price ATSC charges for lines E31, E32, E33, and Line 69 is competitive with Line 109, and found that these lines are held out as available for use by other firms.[28]

17. The ALJ incorrectly determined that ATSC's Lines E31, E32, D33, and Line 69 were not feasible alternatives to Line 109 for at least some shippers because they had not been used recently and there appeared to be operational and engineering problems with their age and use. The record is to the contrary.[29] ARCO stated that its East Hynes terminal could, theoretically, relieve the Sepulveda Line of 3.650 million barrels per year. This includes some 19,000 barrels per day from Texaco, 59,000 barrels per day for Ultramar, and up to theoretically 58,000 barrels per day from GATX. ATSC stated that its pumping rate to the SFPP West Line is up to 16,000 barrels per hour and up to 28.8 million barrels per day, assuming shippers would pay the line rate and storage charges.[30] The ALJ's finding is also inconsistent with ATSC's own marketing materials that it is encouraging the use of its storage and pipeline facilities by third parties.[31] However, while this capacity may be available to GATX's upstream customers, this capacity is not available to GATX as an alternative to Line 109 for the reasons discussed below.

18. The ALJ correctly found that Ultramar admitted that at least 38 million barrels of product could be loaded on the truck racks located at Sepulveda Junction.[32] Witness Vautrain (testifying for Interveners) conceded that there is excess capacity of 131,000 barrels per day on truck racks accessible at the Sepulveda Junction origin market,[33] which totals approximately 48 million barrels annually. The ALJ also correctly found that 110 trucks per day would be sufficient to handle all product left on Line 109 if all of Texaco's and Ultramar's product was diverted from Line 109 by the use of pipeline alternatives.

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28 93 FERC at 65,106, citing Ex. 57 and 205.

29 93 FERC at 65,106-107.

30 See Ex. 57.

31 See Ex. 72, filed as Ex. BRP-4. In addition, Ultramar conceded its does ship around 4,000 BPD or less, to a customer on ATSC, and that it was in the process of arranging some storage service at ATSC. See Ex. 244 at 3. Ex. 37, introduced as an impeachment document by Indicated Shippers, contains at least 9 examples of contracts for movements from GATX over ATSC at a uniform rate of 12 cents per barrel.

32 93 FERC at 65,110.

33 93 FERC at 65,107, citing Ex. 147.

He also correctly found that truck volume of this magnitude was not inconsistent with the local road network in the Sepulveda area.[34] Therefore sufficient capacity exist to move the 8 million barrels GATX shipped over Line 109 in 1999 if the trucking mode is price and service competitive and the product involved may be sold in the local market.

19. However, the ALJ also found that local trucking would not be an effective competitor to more removed local markets such as Colton and San Diego because the delivered price per barrel would not be competitive with product shipped over Line 109, then over SFPP's main line, and then delivered locally by truck from an SFPP terminal. As is explained below in greater detail, the ALJ overestimated that costs of trucking product to outlying markets such as Colton and San Diego for the Sepulveda area refineries and terminals. The Commission finds that the ALJ overestimated the costs of local trucking and underestimated the effective range of trucking competition.

20. The ALJ also found that only 30 percent of the volumes that he believed could not be shifted from Line 109 to Equilon's Lines 25 or 28 were so-called CARB compliant. CARB compliant means that the product meets the standards of the California Air Resources Board for petroleum products to be consumed in California.[35] He appears to have derived that 30 percent figure from a summary of CARB compliant and non-Carb compliant products provided by SFPP for the calender years 1996-1997 and the months June and July of 1998.

21. However, there is no clear correlation between the 1996-1997 and June and July of 1998 distributions of fuel types shipped over Line 109 to the probable distribution of fuel types shipped over Line 109 in 1999. This is because the decline in Texaco and Ultramar volumes previously discussed materially changes the base volumes against which the distribution of fuel types was measured by the ALJ. Thus, there is no record evidence to establish how much of the 8 million barrels shipped over Line 109 from the GATX terminal in 1999 was CARB compliant in that year. Since petroleum product must be CARB compliant to be sold in the local market, the lack of this essential data precludes the Commission from determining whether trucking is in fact an effective source of competition for that even thought the trucking capacity is available and the delivered price competitive throughout the greater Los Angeles local market.

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[34] Id., 65,112-113.

[35] CARB compliant petroleum products are those that meet the California Air Resources Board's minimum standards for the emissions produced when the product is consumed by an internal combustion engine. These limits do not apply to jet fuel. alternatives for those markets.

22. After the initial decision issued there was a change in the market structure just described. On March 13, 2001, GATX Terminals Corporation was sold to KinderMorgan[36] and thereafter GATX no longer participated in this proceeding.[37] The result of the acquisition is that SFPP and GATX became parts of a vertically integrated firm providing both terminal and transportation services in the greater Los Angeles area. After the acquisition of the GATX Sepulveda terminal facilities by SFPP, the following companies still have direct access to SFPP at Watson Station from their refineries and proprietary terminals and their independence from Line 109 was unchanged: ARCO, Chevron, Tosco, and Mobil. The Shell Equilon facilities will continue to have access to Watson Station via its own lines and ATSC will have access to SFPP at East Hynes.[38]

B. Analysis of Whether SFPP has Significant Market Power

23. The Commission's test for determining whether SFPP can exercise significant market power over customers at the origin market is whether these customers have sufficient competitive alternatives so that SFPP will not be able to raise its price on line Section 109 above the competitive level without losing substantial business.[39] In examining the issue of market power, the Commission has focused on whether there are sufficient competitive alternatives available to which the customers can turn to prevent the undue exercise of market power. While the ALJ found that there were competitive alternatives available to Ultramar and Texaco at the Sepulveda origin, the ALJ found that SFPP had not established that substitutes were available for all of the product moving over Line 109, principally product moving through GATX.[40] The ALJ also concluded that maritime exports and possible diversion of aviation petroleum products to Los Angeles International airport would not serve as effective alternative markets for product moving over Line 109. The Commission concurs in these findings.

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[36] KinderMorgan is the parent company for SFPP, L.P. and is its general partner.

[37] Letter dated March 13, 2001, from Edward D. Greenberg, Counsel to GATX Terminals Corporation, to David P. Boergers, Secretary of the Commission. GATX did not withdraw its evidence, which is still part of the record.

[38] See the transcript attached to the Prepared Testimony of Barry R. Pearl, Doc. No. BRP-5 of Ex. 72, at 136.

[39] SFPP, 84 FERC ¶ 61,338, at 62,497, citing Elizabethtown Gas Company v. FERC, 10 F.3d 866, 871 (D.C. Cir. 1993).

[40] Id., at 65,123-25; 65,128-29.

24. The ALJ's findings on the ultimate issue included determinations that trucking alternatives are inadequate to protect GATX and other shipper interests, that the local market cannot absorb volumes of CARB compliant gasoline that may be moving from GATX to points in the Los Angeles metropolitan area, and that SFPP had not established that refineries producing product that did not conform to Los Angeles air quality standards could economically shift to the production of product that would meet such standards. The Commission concurs in this first of these findings because of a lack of essential data regarding the transportation of CARB compliant product over Line 109, and does not reach the other two issues because of limitations in the record that preclude a finding that either is an effective alternative.

25. The ALJ also make numerous findings regarding the implications of SFPP's 5 cent rate for determining whether SFPP has market power. As is discussed below, the only one of relevance to the Commission's conclusion is that SFPP's failure to reduce its rates despite a substantial decline in volume evidenced market power. He therefore concluded that SFPP failed to meet its burden of proof even as to Ultramar and Texaco because it had not established the price it charged for shipments over Line 109 was a competitively established rate. The Commission concurs in the finding that SFPP's failure to reduce its 5 cent rate suggests continuing market power over GATX, but reverses the ALJ's determination in this regard as to Ultramar and Texaco.

26. Staff and the complaining and intervening parties support these findings, including the ALJ's ultimate conclusions regarding Ultramar and Texaco. SFPP excepted to the ALJ determinations on several points. First, it asserts that GATX is not a shipper and is not entitled to protection under the ICA. A subsidiary point in this argument is that SFPP and GATX are joint producers for the distribution of petroleum products over Line 109, and that this therefore this limits SFPP's ability to extract economic value from GATX. SFPP further asserts that GATX and its upstream shippers have pipeline and trucking alternatives, that GATX's customers have the ability to sell petroleum products in alternative local markets, and that producers can shift to the production of additional output to sell in that market. SFPP also excepts to the ALJ's determinations on the relevance of the 5 cent rate.

1. Whether Equilon's Lines 25 and 28 are effective alternatives for Ultramar and Texaco.

27. The ALJ determined that Ultramar and Texaco have pipeline alternatives: Ultramar via its exclusive lease of Equilon's Line 25, and Texaco (now affiliated with Equilon) through its access to Equilon's Line 28. In doing so the ALJ determined that these lines possessed adequate capacity and were price competitive with SFPP's

Line 109.[41] The shipper parties excepted to the conclusion that the Ultramar and Texaco refineries have reasonable alternatives to Line 109, arguing that the proprietary nature of the Equilon lines precluded Lines 25 and 28 from being reasonable pipeline alternatives and that there are restrictions on the capacity that might be nominally available. Staff further argued that these and other pipeline alternatives were not adequate to protect small shippers who might be utilizing Line 109 as part of shipments through the GATX terminal. SFPP supported the ALJ's conclusions that Equilon's Lines 25 and 28 provide effective alternatives for Ultramar and Texaco.

28. The Commission affirms the ALJ's finding that there are sufficient pipeline alternatives to Line 109 for Ultramar. As was previously discussed, the record establishes that Ultramar's exclusive lease of Line 25 is sufficient to provide it with a reasonable substitute for all the volumes it has historically shipped over Line 109. The competitive pressure from Ultramar's lease of Line 25 is reflected in the sharp decline in the volume Ultramar shipped over Line 109 after 1995. The ALJ's table at 84 FERC 65,127 demonstrates that Ultramar's shipments over Line 109 dropped from 13.1 million barrels in 1995 to some 2.7 million barrels in 1999 as a result of the alternative that Ultramar developed in 1996.

29. While the protesting parties assert that those 2.7 million barrels of Ultramar's product remain captive to Line 109, this is belied by a 1999 Ultramar internal work paper requesting approval of capital expenditures to remove the operating obstructions involved in the use of Line 25 that would resolve these issues at a projected annual internal rate of return for this investment in excess of 40 percent.[42] Projected returns of this magnitude for an incremental investment to an existing pipeline network suggests the ease with which Ultramar could develop pipeline alternatives in response to a price this shipper considered too high.

30. The Commission also affirms the ALJ's finding regarding Texaco on similar grounds. In 1998, after Texaco's affiliation with Shell to form Equilon, that refinery began flowing volumes over Equilon's line 28. In 1997 Texaco flowed some 13.1 million barrels over Line 109 and none over Line 28. In 1998 11.6 million barrels flowed over Line 109 and 2.9 million barrels over Line 28. In 1999 the volumes were 14.7 million barrels over Line 28 and 3.9 million barrels over Line 109. In other words, the volumes over Line 28 in 1999 were more than the total Texaco shipped over Line 109 in 1997.

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[41] 93 FERC at 65,104-05.

[42] See the attachment to Ex. 226, Bates Nos. 002313-14.

31. Indicated Shippers objected to the ALJ's conclusion, asserting that the new Equilon partnership cannot provide alternative capacity to Line 109 because of its own requirements. However, the ALJ correctly found that Indicated Shipper's witness Vautrain conceded that any limiting problems with storage could be solved with "some investment."[43] Given the ability of the Equilon partnership to control the investment and operations required to shift all of the Texaco refinery product to Line 28 this arguments is not credible. Indicated Shippers' objections were also general in nature and did not provide the engineering specifics required by the Commission's charge in this case.[44]

32. Finally, the Commission reverses the ALJ's conclusion that the fact that SFPP was able to sustain a 5 cent rate means that it nonetheless has market power over Texaco and Ultramar. While that conclusion may apply to GATX and to other shippers that do not have pipeline or other alternatives to the use of Line 109, it does not apply to shippers that do have such alternatives. Their ability to bypass Line 109 removes the ability of SFPP to exercise market power over such shippers. The fact that these shippers may continue to use Line 109 as a matter of choice to meet their commercial needs and therefore elect to pay the 5 cent rate does not alter the conclusion that SFPP does not have market power over Ultramar, Texaco, or shippers who have propriety lines that connect to SFPP.

2. Whether GATX is entitled to protection under the IC Act.

33. On exceptions SFPP disputes GATX's status as a shipper, and therefore its right to contest the relief SFPP seeks in this proceeding. The Commission disagrees. If a complaining or intervening party's economic position could be injured by the carrier's rate, the party has standing to seek relief on the grounds that the carrier's rate is not just and reasonable. Thus, in prior cases the Commission has afforded the State of Alaska standing to challenge the rates of the Prudoe Bay oil pipelines on the ground that an unjust and unreasonable rate reduces netbacks to the producers, and as such reduces the royalties due the State from those netbacks. This potential impact to its economic interests gave the State standing to intervene or to file a complaint on its own behalf.[45]

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[43] 93 FERC at 61,105.

[44] Id. at 65,104 and 65, 107.

[45] See Kuparuk Transportation Company, 55 FERC ¶ 61,122 (1991); Endicott Pipeline Company, 55 FERC ¶ 63,028 (1991).

34. GATX has reasonably asserted that it has been, or may be, forced to absorb some of the Line 109 5 cent rate to remain competitive.[46] It therefore also has standing to oppose SFPP's request for authority to utilizes market-based rates on the grounds its interests would be injured. Because any party whose economic position may be injured by the carrier's rate has standing to file a complaint,[47] GATX need not be a shipper in the l sense of being the party making payment to SFPP for transportation over Line 109.[48]

35. If GATX lacks alternatives to the use of Line 109, SFPP is in the position to determine whether it, or GATX, will absorb the Line 109 rate if competition requires GATX to do so. If the Line 109 rate is reasonable, then GATX is not entitled to relief, but it is if the rate SFPP charges for Line 109 should prove to be unjust and unreasonable. Thus, the issue to be decided here is whether SFPP has the ability to charge an unjust and unreasonable rate because it has undue market power over the transportation service it provides over Line 109. If GATX has no transportation alternatives to reach Watson Station, or other means of avoiding shipments over Line 109, then it is rational for GATX to continue to participate in markets it can reach through transportation over Line 109 as long as the remaining cash flow exceeds variable costs of providing shippers with access to the Line 109 and Watson Station.[49] The Commission finds that GATX is entitled to just and reasonable rates under the IC Act.

[46]Petroleum products moving over Line 109 have historically represented about 35 to 40 percent of GATX’s business. See Ex 198.

[47]See Section 13(1) of the Interstate Commerce Act, 49 App. U.S.C. § 13(1) (1988).

[48]See Equilon Pipeline Company, LLC, 91 FERC ¶ 61,210 (2000). While Sinclair's protest was rejected on standing grounds, it was on the grounds that it failed to show a material interest in the rates at issue. The decision specifically noted that Sinclair could file a complaint against other movements in which it had a more material interest. Id. at 61,762.

[49] See Coal Exporters Association of the United States, Inc. v. United States, 745 F.2d 76 (D.C. Cir. 1984), cert denied, 471 U.S. 1972 (1985). The court's decision has an extensive discussion of this issue.

3. Whether GATX has effective alternatives to Line 109.

36. The ALJ determined that GATX did not have pipeline alternatives to Line 109 and that it is inevitably wedded to Line 109 in term of its access to the SFPP system.[50] The exceptions raised by SFPP include the availability of pipeline and trucking alternatives, the ability to shift petroleum product to other local markets, and possible conversion of local refineries to the production of petroleum products that may be sold in that market.

a. Whether effective pipeline alternatives are available.

37. The ALJ concluded that ATSC lines E31, E33, and 69 were problematic substitutes for Line 109 for any shippers, including GATX and its customers, due to their smaller diameters and lower pumping pressures, and the fact that there was no evidence that they were currently being used as alternatives.[51] SFPP excepted to this finding. It asserts that these ATSC lines have functioned as alternatives in the past and that the record establishes that these lines have sufficient capacity and that the capacity is available at competitive rates.

38. In this regard, the Commission will accept the ALJ's determination that Line 64 appears to be used primarily for the shipment of various types of crude that inhibit the use of the line for the transportation of petroleum products. However, while the ALJ correctly determined that ATSC Lines E31, E33, and 69 have available capacity of over 3 million barrels per year, and that the price for utilizing that capacity is competitive with Line 109, he incorrectly concluded that each of these lines must be an adequate substitute for Line 109 if it is to be included in the category of effective substitutes to Line 109. Reasonable substitutes can exist if the cumulative capacity of all the potential alternatives is sufficient to assure that an oil pipeline will not be able to exercise undue market power and raise rates beyond a just and reasonable level.

39. The Commission first concludes that GATX itself does not have adequate pipeline alternatives for the delivery of petroleum products to SFPP at either Watson Station or East Hynes. GATX asserts that if it were to ship its product through Equilon or ATSC, any customer using its facilities would have to pay an extra terminal charge. Thus, unless GATX were to absorb that charge, it would not be competitive. Thus GATX would be required to absorb all of its own terminal charge if it were to be able to access

[50] 93 FERC at 65,099.

[51] Id., at 65,099 and 65,106-07.

adjoining terminals such as the ATSC or Equilon system and still be competitive. This is because even after absorbing the additional terminal charge, GATX or its customers would still have to pay a transportation charge to reach either Watson Station or East Hynes that approximates the current charge over Line 109. Moreover, the record discloses that both ATSC and Equilon are determined and aggressive competitors of GATX.[52] By refusing GATX access to their systems, they can seek to maximize the volume over their own systems by capturing the product of GATX's upstream customers.

40. The Commission also concludes that ATSC Line E31, E33, and E69 could serve as reasonable substitutes for some of the capacity needs for GATX customers other than Ultramar and Texaco, which have no particular need for it. The problem here is there is no record evidence as to what the demand of such upstream customers might be and whether the universe of such customers includes those customers that have their own pipeline connections to SFPP, such as ARCO, Chevron, Tosco, Mobil. Thus, the Commission cannot determine from the record here whether any of the 8 million barrels GATX moved over Line 109 in 1999 could have been diverted to the ATSC system, or to proprietary pipelines of companies that might have been using GATX as the most effective alternative for the transportation of some portion of their petroleum products.

41. SFPP claims that it requested data from GATX that would enable SFPP to evaluate whether GATX's upstream shippers have transportation alternatives.[53] GATX states that it provided detailed information on the volume and sources of its upstream customers to SFPP.[54] SFPP replied that that data received was inadequate and that it was unable to conduct the requisite analysis, but the indirect approach it actually used to the same issue might not be a substitute, as SFPP claims, but an avoidance of information that might undercut its position that all upstream customers have access to pipeline alternatives. Given this uncertainly, the Commission cannot find evidence to support a conclusion that there are competitive alternatives for all of the upstream customers of GATX.

b. The role of trucking competition.

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[52] See footnote 28, supra.

[53] Brief on Exceptions of SFPP, L.P. at 24-25.

[54] Brief Opposing Exceptions of GATX Terminals Corporation at 11-12.

42. Local trucking is one of the possible transportation alternatives that the Commission examines in reviewing requests by oil pipelines for market-based rates. In the September 30 Order,[55] the Commission stated that local trucking is recognized as a viable alternative in oil pipeline proceedings as "absent evidence to the contrary, [trucking] has generally been considered an alternative to the use of the pipeline to bring product to a destination market." The Commission sees no reason to deviate from that policy with respect to origin markets.[56]

43. In this case trucking can be an alternative only for CARB compliant volumes,[57] since any volumes that are not CARB compliant cannot be consumed in California, and thus cannot be diverted to the local market. With respect to the 30 percent of the volume on Line 109 that the ALJ found is CARB compliant, the ALJ determined that certain gas stations in and around SFPP's Colton Terminal could be just as economically served by direct local trucking from the GATX Terminal as by the combination of Line 109, SFPP's mainline to Colton and local trucking from SFPP's Colton Terminal.[58] In addition, the ALJ found that there was no evidence that local trucking was not of comparable quality to Line 109 to points that can be served from the truck racks located at the various Sepulveda refineries and terminals.[59] The ALJ, however, found that local trucking failed to meet the cost comparability standard for certain other gas stations because these gas stations/destination points cannot be served at a price comparable to what they pay using a combination of Line 109 and local trucking.[60] Thus, the ALJ concluded that local trucking was competitive with Line 109 for deliveries to some, but not to other, gas stations in the greater Los Angles area.

44. SFPP excepts to the ALJ's determination regarding the cost comparability between trucking product from the Sepulveda Junction origin market and delivery by a combination of pipeline shipment and trucking from pipeline-connected terminals. SFPP argues that the ALJ's analysis of the cost comparability is unsupported. Staff excepts to

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[55] SFPP, L.P., 84 FERC ¶ 61,338 (1998).

[56] Id. at 62,497 and n.17.

[57] CARB-compliant refers to gasoline that meets the emission requirements of the California Air Resources Board for sale in California.

[58] SFPP, 93 FERC at 65,114.

[59] Id. at 65,112.

[60] Id. at 65,114-15.

the ALJ's determination that local trucking from the Sepulveda Junction origin market could provide a reasonable alternative to Line 109 for certain gas stations. Staff claims that local trucking capacity is not realistically available because the truck racks that are available near Sepulveda are mostly proprietary and that local trucking is of a lesser quality than pipeline transportation.

45. The Commission concludes that local trucking is a competitive alternative for gas stations served from SFPP's Colton Terminal. As has been discussed, the ALJ correctly found that there is adequate rack capacity in the Sepulveda Junction origin market to load all 8 million barrels that GATX handled for parties other than Ultramar and Texaco in 1999. The record is also clear that competing terminals such as Equilon and ATSC also have rack capacity they can use to serve trucks shipping from the Sepulveda area. There are also numerous private terminals in Colton and in other portions of the greater Los Angeles metropolitan area the compete with SFPP's local terminals. Because there is little danger of congestion in the Sepulveda Junction area and highway capacity is adequate, the issue is whether trucking is cost competitive, and under that standard, provides a comparable service.

46. The Commission finds that SFPP's witnesses successfully demonstrated that local trucking from the GATX Terminal for certain gas stations was price competitive with the combination of Line 109, SFPP's mainline to Colton and local trucking from SFPP's Colton Terminal facility.[61] The ALJ concluded that local trucking can be competitive at Colton only if the SFPP Colton Terminal fee is $0.32 or higher. This was incorrect. In fact, the study upon which the ALJ relied demonstrates that trucking can be competitive at Colton with a terminal fee at 29 cents.[62] Since most terminal fees negotiated at Colton are at 29 cents or higher, the ALJ understated the effectiveness of local trucking as an alternative.

47. The difficulty with concluding in this case that local trucking can be an effective alternative for the CARB compliant petroleum product the GATX transported over Line 109 is that the record does not disclose what that volume is. As previously discussed, local trucking would be an effective alternative for much of the petroleum product that can be consumed in the Los Angeles and was shipped over Line 109 in 1999. However, since the record does disclose how much of the product shipped by GATX over Line 109 was CARB compliant, the Commission is unable to determine whether trucking is an effective alternative for those volumes. A subsidiary point on the local market trucking

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61 Transcript at 2037-40; Exhibit 92 at 42-43; Exhibit 107.

62 Exhibit 63.

issue raised by SFPP involves the potential for petroleum products that are not CARB compliant and now flowing over Line 109 to be converted to CARB compliant product and then shipped to the local market by local trucking. However, since it is not possible to determine on this record just what those volumes are, again the Commission cannot find on this record that local trucking is an effective alternative to Line 109.

4. The relevance of the 5 cent tariff rate.

48. The Commission has determined that SFPP can exercise market power in the Sepulveda Junction area with respect to GATX because GATX has not been shown to have transportation or other alternatives to Line 109. This conclusion is further supported by the fact that SFPP did not reduce its 5 cent rate despite the sharp decline in volume over Line 109. The ALJ concluded that the fact that SFPP did not drop its rate in response to reduced volumes indicates that the rate did not reflect a competitive market structure.[63] SFPP asserts that it did not drop the rate because no additional volumes would be forthcoming because transportation alternatives were available for the volumes that had already been diverted, and that this was, a rational response. It also asserts that it made no sense to drop the rate at a time when the rate was being attacked in complicated litigation. The other parties assert that the ALJ correctly determined that SFPP's failure to reduce its rate as volumes declined establishes its monopoly power.

49. While the ALJ recognized the many opportunities shippers had to divert oil to alternative transportation means, he concluded that SFPP continuation of its 5 cent rate despite a reduction in throughput demonstrated SFPP's market power. He reasoned that a competitive firm would always reduce rates if its volumes diminished in order to recapture those volumes, and that therefore, SFPP must have market power because it did not reduce its rates. This presents a difficult issue because a firm that has set a price that is too high for some of its customers would suffer a loss of volume, so this alone is not evidence of market power.[64] Certainly, as to some shippers, particularly Ultramar and Texaco, SFPP's revenue first increased, but then declined precipitously. According to

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[63] Id. at 63,128.

[64] See Tennessee Gas Pipeline Company, 91 FERC ¶ 61,053, at 61,190-91 (2000), reh'g denied, 94 FERC ¶ 61,097, at 61,398 (2001) (firm with market power will withhold capacity to create scarcity), aff'd 292 F.3d 831, 837 (D.C. Cir. 2002); Interstate Natural Gas Association of America v. FERC, 285 F.3d 18, 32 (D.C. Cir. 2002) (pipelines can exert market power through withholding to drive up prices); R. Posner, Economic Analysis of Law, 195-201 (2d ed. 1977) (monopolist will sell less quantity at a higher price to maximize revenue).

the record, SFPP's revenue peaked in 1995 at $1.9 million and then decreased every year thereafter until it reached $872,000 in 1999.[65]

50. Moreover, certain of SFPP's arguments for not lowering rates are plausible under the circumstances. The record establishes that the volumes shipped over Line 109 declined because two of the three major shippers committed themselves to alternatives that involved investments in other facilities under long term contracts, or significant opportunities for internal corporate efficiencies. Once these decisions were made, it is difficult to recapture the business lost since the shippers have made incremental investments whose costs they would seek to recover. Finding itself in that situation, it would be rational for SFPP to conclude that it would not generate a net increase in revenues if it dropped the rate. If the reduction in price will not result in greater total revenues, the decision not to reduce the rate is equally rational regardless of whether SFPP was operating in a competitive environment or possessed market power.

51. However, the reasons SFPP advances do not compel a conclusion that SFPP lacks significant market power over GATX after Ultramar and Texaco shifted their volumes away from Line 109. Granted that SFPP may have no incentive to reduce price to recapture business it had lost, it also had incentives to keep the price at the same level for the remaining customers based on a perception that GATX lacked effective alternatives. While SFPP may have misjudged the market position of Ultramar and Texaco, its failure to reduce prices for GATX suggests SFPP continued to have some degree of market power as to that customer and would therefore seek to maximize its revenues by not reducing its rate on the remaining volumes. As has been discussed, SFPP appears to have been in a position to determine how much of the joint product revenue would be allocated between itself and GATX. In this instance the ALJ was correct that SFPP's pricing behavior supports a conclusion that SFPP has not met its burden to establish that GATX has sufficient competitive alternatives to SFPP.

5. Maritime and Airport Deliveries and Pipeline Entry

52. The ALJ concluded that three other alternatives raised by SFPP would not serve to constrain the rates for Line 109 to reasonable levels. Two of these were the potential diversion of Line 109 volumes to Los Angeles International Airport (LAX) and export shipments of oil petroleum products through Los Angeles and Long Beach harbors.[66] He also concluded that entry by new pipelines or the conversion of older pipelines was not

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[65] Initial Decision, at 65,128.

[66] 93 FERC at 65,117-18 and 65,115-17 respectively

practical in the pipeline corridor between Sepulveda Junction and Watson Station.[67] SFPP excepts to the ALJ's determinations asserting that there was ample evidence that large volumes of petroleum products could be shifted to the airport and maritime market, particularly given the unusually large amount of petroleum products consumed at Los Angeles International Airport. SFPP also asserts that it presented numerous examples of possible entry, particularly the conversion of used or crude pipelines, that the ALJ should have recognized. Indicated Shippers, Ultramar, and Staff support the ALJ's conclusions.

53. The Commission agrees with the ALJ that SFPP did not present adequate evidence of the ability of LAX or the maritime shipments to absorb shipments of the different commodities that are moving over Line 109. This is because the size of LAX and its ability to absorb aviation product that might be shifted from Line 109 to other pipelines serving LAX is described only in general terms. With respect to maritime exports, the depth of the market from the Los Angeles basin is particularly unclear.

54. The Commission also agrees that the discussion of potential entry was generally inadequate. As the ALJ correctly noted, entry did occur with respect to the Equilon facilities, so entry is certainly possible. However, moving beyond these facilities, the description of the various potential facilities was quite general and insufficient to support an inference that the use of other facilities, particularly out of service pipelines, would actually be practical. The reply testimony claiming that certain substitutes were not available was equally general.

C. The Reserved Discrimination Issue

55. The reserved discrimination issue in this proceeding was briefed directly to the Commission and not addressed by the ALJ's initial decision. The issue is whether it is proper for SFPP to charge a rate for shipments over Line 109 that is separate from the rates charged on its main line, rather than whether the rate now on file with the Commission is just and reasonable. The Indicated Shippers and Ultramar maintain that SFPP charges a single main line rate to downstream points that is the same for all points on the West line, regardless of the source of the refined product. They argue that charging a rate on Line 109 (above the mainline rate) for deliveries to Watson Station from Sepulveda Junction is discriminatory because it imposes a charge on deliveries to Sepulveda Junction that is not imposed on deliveries at other Los Angeles points into SFPP such as Watson Station, East Hynes, and Norwalk. They further assert that this provides an unjust preference to those shippers delivering into SFPP's main line pipeline at points other than those using Line 109. Their principal argument is that there are no

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[67] 93 FERC at 65,119-20.

circumstances that warrant distinguishing the Sepulveda Junction to Watson Station movement on Line 109 from the rate treatment of any other entry points to SFPP's trunk line system in the Los Angeles area. Shipments from each of these points pay only the mainline tariff rate to downstream points.

56. The Indicated Shippers and Ultramar cite to the Supreme Court's statement in United States v. Illinois Cent. R.R. Co., 263 U.S. 515, 524 (1924), that, in order to invoke the prohibition of Section 3(1) of the Interstate Commerce Act (ICA), it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions. They assert that there are no transportation conditions or other factors that justify an incremental rate from Sepulveda Junction to Watson Station on Line 109 while charging uniform rates from the main line origin points at Watson Station, East Hynes, and Norwalk. The Indicated Shippers and Ultramar therefore urge the Commission to combine Line 109 with SFPP's other Los Angeles origin points to form a group rate so that all these points would have the same rate.

57. In reply, SFPP argues that Sepulveda Junction and Line 109 are not similarly situated with the origin points at Watson Station, East Hynes, and Norwalk on SFPP's main line pipelines. SFPP's main argument is that Line 109 is both physically and commercially distinct from the service provided at those origin points. From a physical standpoint, SFPP states that: (1) Line 109's delivery rate is much lower than that of its main line pipelines because of the difference in power that drives the pipelines; and (2) there is vast difference between the volumes and usage on Line 109 and on the main line pipelines originating at Watson Station and passing by East Hynes and Norwalk.[68] From a commercial standpoint, SFPP states that Line 109 is comparable to and in competition with the other pipelines that deliver products from area refineries and terminals into SFPP's Watson Station for pumping into SFPP's main line pipelines. Further, SFPP asserts that these other feeder pipelines provide transportation at some cost to the shipper, whether reflected in a tariff or in the imputed internal cost to the delivering firm.

58. SFPP also asserts that because Line 109 is physically distinct from the main line origin points and that the separate rate for Line 109 is only paid by shippers using the service, it has cogent reasons, under ICA case law, for not extending the group rate given

[68] SFPP cites Exhibit No. 70 which illustrates that in 1999, Sepulveda Junction origin market shippers used Line 109 to deliver 43,000 barrels per day (BDP) of product to Watson Station, whereas the main-line pipelines originating at Watson Station were moving 430,000 BDP on average, and at East Hynes it was 448,000 BDP.

to the main line pipelines to Line 109. Furthermore, SFPP argues that if the group rate were to apply to shippers on Line 109, then they would have a commercial advantage over other shippers. In other words, those shippers with access to Line 109 could reach Watson Station without bearing any pipeline transportation cost from the Sepulveda Junction origin market, but ARCO, Chevron, Mobil, or Tosco refineries would not be able to avoid incurring their internal costs to move their production to Watson Station through their proprietary pipelines.

59. The Commission finds that the incremental rate charged on Line 109 is in conformity with the ICA. SFPP is correct that Line 109 is both physically and commercially distinct from the service provided at the origin points at Watson Station, East Hynes, and Norwalk on SFPP's main lines. In contrast to the points at Watson Station, East Hynes, and Norwalk, Line 109 is a lateral line that is used to bring product to the mainline delivery point. Line 109 has distinct delivery rates, volumes and usage, and as SFPP asserts, competes with the other pipelines that deliver products from area refineries and terminals into SFPP's Watson Station for pumping thereafter into SFPP's main line.

60. Indeed, as SFPP points out, removing the charge from Line 109 would provide a competitive advantage to those shippers using Line 109. While their competitors would have to pay the lateral line costs to reach Watson Station or other SFPP mainline points (either as a charge for service or as an imputed cost if they own the facilities), shippers on Line 109 would have their lateral line costs subsidized by the other SFPP shippers. The Commission therefore finds that Line 109 is a lateral line facility as opposed to a main line facility and, as such, Line 109 is not similarly situated to SFPP's other main line facilities.

61. The Indicated Shippers and Ultramar assert that the Interstate Commerce Commission and the federal courts have accepted rate group designs under certain circumstances.[69] The caselaw, however, does not require a rate group design. Rather, the cited caselaw requires the carrier to provide cogent reasons for not extending the group rate to an origin point only a short distance from the group.[70] For the reasons

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[69] Citing, e.g., Brilliant Coal Co. v. Illinois Central R.R., 171 ICC 207, 212 (1930); Grain from Montana, 128 ICC 123, 127-28 (1927); Ayshire Collieries Corp. v. United States, 335 U.S. 573, 576 (1949); Hitchman Coal & Coke Co. v. Baltimore & O.R. Co., 16 ICC 512, 520 (1909).

[70] See, e.g., Lee Brothers Foundry Co. v. Alabama Great Southern R.R., 297 ICC

(continued...)

stated above, the Commission finds that the physical and commercial distinctions between Line 109 and the main line origin points warrant a separate incremental rate on Line 109. In fact, to reduce the Line 109 charge so that shippers pay only the main line rate would result in discrimination against the other shippers who incur costs to move their production to Watson Station through their proprietary pipelines or the pipelines of companies competing for deliveries to Watson Station. Therefore the discrimination complaints will be dismissed.

III. Conclusion

62. The Commission finds that there are inadequate pipeline and other alternatives at the Sepulveda Junction, and related upstream origin points, to prevent SFPP from exercising undue market power over GATX. For these reasons, the Commission denies SFPP's request for authority to utilize market-based rates providing transportation services over its Line 109. Accordingly, SFPP must continue to offer cost-of-service rates to all companies and firms transporting petroleum products over Line 109. The Commission therefore remands the issue of whether SFPP's current 5 cent tariff rate for the transportation of petroleum products over Line 109 is just and reasonable for determination in the ongoing proceeding in Docket No. OR96-2-000, et al.

The Commission orders:

(A) SFPP's request for authority to establish market-based rates for transportation services of Line 109 is denied for the reasons stated in this order.

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[70](...continued)
781, 799 (1956); Globe Roofing Products Co., Inc. v. Chicago I. & L. Ry. Co., 231 ICC 748, 751 (1939).

(B) Docket No. IS98-1-000 is consolidated with Docket No. OR96-2-000, et al., and is remanded to the ALJ in that proceeding for a determination of whether the 5 cent rate at issue in this proceeding is just and reasonable.

By the Commission. Commissioner Brownell dissenting with separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

SFPP. L.P. | Docket Nos. OR98-11-000
OR96-2-000
OR96-10-000
OR96-17-000
IS98-1-000

(Issued February 28, 2003)

BROWNELL, Commissioner, dissenting

In this order, the majority denies SFPP's request for authority to charge market-based rates for transportation services over its 3.8-mile Line 109. To me, the facts and good regulatory policy support a different determination.

The order finds that the origin market is not competitive insofar as preventing SFPP from exercising market power over a single customer, GATX. The order finds, however, that there are sufficient pipeline alternatives for the other customers of Line 109, Ultramar and Texaco. The record shows that every other shipper in the origin market that intervened in this proceeding has alternatives to Line 109. The record also supports the conclusion that both the origin market and the broader Los Angeles oil terminal market have excess capacity.

Congress made clear in the Energy Policy Act of 1992 that the Commission should move in the direction of a more simplified version of oil pipeline regulation. Part of this mandate contemplated use of light handed regulation when competitive circumstances so warrant. The competitive circumstances of this case support light handed regulation and warrant a different outcome. As the Commission's order establishing hearing in this proceeding[71] suggested, it may not be necessary for the customers connected to Line 109 to divert all product currently shipped through Line 109 in order to discipline SFPP's ability to exercise market power. As a common carrier, SFPP can not price discriminate. If SFPP increases its rate to GATX, it must increase the rates of its other shippers. Therefore, even if an alternative is not directly available to GATX, GATX is protected because the competitive alternatives available to other shippers in the market effectively

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[71] See 84 FERC ¶ 61,338 at 62,499 (1998).

disciplines what SFPP can charge. Moreover, since the inception of this case in 1998, circumstances have changed. In particular, GATX, the lone customer that the order finds not to have economic alternatives to SFPP's Line 109, was acquired in March 2001 by Kinder Morgan, the parent company of SFPP. GATX notified the Commission of this development and that it would not further participate in the proceeding and requested that it be removed from the service list. Therefore, the only remaining parties opposed to market-based rates for SFPP have competitive alternatives. This does not seem like a sound regulatory result or good policy to me.

Rather than deny market-based rates and remand the issue of whether SFPP's current five cent tariff rate is just and reasonable, I would have preferred that we simply conclude that SFPP can not exercise market power because there are sufficient competitive alternatives in the market and GATX , by its new affiliation with SFPP, would not be harmed by the grant of market-based rates to SFPP. For these reasons, I respectfully dissent.

Nora Mead Brownell
Commissioner