

# PUBLIC

# ORIGINAL

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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Tesoro Refining and Marketing Company,	)	
	)	
Complainants,	)	<b>1072</b>
	)	
v.	)	Docket No. <u>OR07-1-000</u>
	)	
SFPP, L.P.,	)	
	)	
Respondent.	)	
	)	

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**COMPLAINT OF TESORO REFINING AND MARKETING COMPANY  
AGAINST SFPP, L.P.**

Public Version

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 FEDERAL ENERGY REGULATORY COMMISSION

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Date: December 1, 2006

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**Exhibit**

- A Sworn Declaration of William M. Weimer in Support of Tesoro Refining and Marketing Company's Complaint Against SFPP, L.P.
- B Initial Decision, *SFPP, L.P.*, 116 FERC ¶ 65,059 (September 25, 2006)
- C Brief of Tesoro Refining and Marketing Company on Exceptions to Initial Decision, Docket No. IS05-230-000 (October 25, 2006)
- D Sworn Declaration of Peter K. Ashton in Support of Tesoro Refining and Marketing Company's Complaint Against SFPP, L.P.
- E SFPP FERC Tariff Nos. 104, 111, 117, 127, 137
- F Schedule Demonstrating Impact of Rates

1. Pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 C.F.R. § 343.2; Sections 1(4), 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act (ICA), 49 U.S.C. App. §§ 1(4), 1(5), 8, 9, 13, 15, and 16 (1984); and Section 1803 of the Energy Policy Act of 1992 (EPAAct), Tesoro Refining and Marketing Company (Tesoro) hereby files this Complaint against SFPP, L.P. (SFPP), challenging the justness and reasonableness of rates on SFPP's North Line. Tesoro seeks the prescription of just and reasonable rates and reparations and refunds, with interest, for the unjust and unreasonable rates that SFPP has charged in the past.

2. In support thereof, Tesoro states as follows:

I.

COMMUNICATIONS AND CORRESPONDENCE

3. Communications and correspondence regarding this complaint should be directed to the following persons:

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## II.

### PARTIES

4. Respondent SFPP is an oil pipeline company engaged in the transportation of refined petroleum products in interstate commerce. It is regulated as a "common carrier" by the Commission under the Interstate Commerce Act (ICA) and the Energy Policy Act of 1992 (EPAAct). As part of its business activities, SFPP operates a petroleum products pipeline from Richmond and Concord, CA to Reno, NV. This line is known as the "North Line."

5. SFPP is a subsidiary of Kinder Morgan Energy Partners, L.P. (KMEP), a publicly-traded master limited partnership and registered tax shelter. In turn, Kinder Morgan, Inc. ("KMI") owns the general partner interest of KMEP. KMEP is both a "Master Limited Partnership" ("MLP") and a "Publicly Traded Partnership" ("PTP") presently eligible to be taxed as a partnership.

6. Tesoro is a shipper of refined petroleum products on the SFPP pipeline system. As the attached Sworn Declaration of William M. Weimer, Director of Supply Logistics of Tesoro, demonstrates, Tesoro is a shipper of record on the North Line between Concord, CA and Reno, NV.<sup>1</sup> Tesoro owns and operates a refinery in Martinez, CA known as the Golden Eagle refinery. The Golden Eagle refinery has a rated capacity of 168,000 barrels a day. Tesoro is dependent on the SFPP North Line to transport the gasoline and diesel fuel that it produces at the Golden Eagle Refinery to its customers.<sup>2</sup> In fact, Tesoro has no practical alternative to using the North Line for this purpose. Tesoro has, accordingly, shipped millions of barrels of

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<sup>1</sup> See Ex. A. Sworn Declaration of William M. Weimer in Support of Tesoro Refining and Marketing Company's Complaint.

<sup>2</sup> *Id.* at ¶ 2.

petroleum products on the North Line during the past several years and will have to continue to do so in the future.<sup>3</sup> Thus, Tesoro has a substantial economic interest in SFPP's North Line rates.

**III.**

**BACKGROUND FACTS**

**A. Tesoro's Shipments on the SFPP Pipeline System.**

7. SFPP holds a monopoly on the transportation of refined petroleum products by pipeline from Tesoro's Golden Eagle refinery to Reno, NV. The SFPP North Line is subject to the jurisdiction of the Commission and SFPP has published transportation tariffs that are on file at the Commission. During the period December 1, 2004 to November 30, 2006, Tesoro has shipped more than [Privileged and Confidential material removed] barrels of refined petroleum products on the North Line at rates charged by SFPP under tariffs on file with the FERC.

8. Tesoro's shipments on the North Line are set forth in Table I below:

[Privileged and Confidential material removed]

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<sup>3</sup> *Id.* at ¶ 3.

**[Privileged and Confidential material removed]**

**B. FERC Decisions With Respect to the North Line.**

9. On September 25, 2006, Administrative Law Judge H. Peter Young issued an Initial Decision (ID) following hearings that were conducted from January 24, 2006 to February 16, 2006, with respect to the rates that SFPP has been charging shippers for transportation on the North Line. A copy of that Decision is attached to this Complaint as Exhibit B.

10. In his decision, Judge Young stated that the cost of service that SFPP has been using to justify the rates that it has been charging on the North Line for the period December 1, 2004 to the present is defective. According to Judge Young, only 70% of the costs incurred by SFPP in constructing a 20-inch line from Concord to Sacramento may be included in the interstate rate base as "used and useful" in

interstate commerce.<sup>4</sup> Judge Young further found that SFPP was not entitled to any income tax allowance;<sup>5</sup> that no increase should be permitted in SFPP's base period environmental costs;<sup>6</sup> and that SFPP's capital structure should be adjusted so that it includes considerably more debt (and less equity) than SFPP proposed.<sup>7</sup> The ID further finds that SFPP's return on equity and long-term debt cost should be reduced below the amounts SFPP claimed in its cost of service.<sup>8</sup> The ID also reduces the amount SFPP is entitled to receive in depreciation,<sup>9</sup> overhead allocations,<sup>10</sup> and amortization of property balances.<sup>11</sup>

11. As Tesoro indicates in the Brief on Exceptions it filed with the Commission regarding other aspects of Judge Young's decision, the application of the principles in Judge Young's decision to the cost of service that SFPP submitted necessarily indicates that the maximum permissible rate that SFPP can lawfully charge shippers for the transportation of petroleum products on the North Line is \$1.098.<sup>12</sup> A copy of Tesoro's Brief on Exceptions is attached to this Complaint as Exhibit C. Also attached to this Complaint as Exhibit D is the Sworn Declaration of Peter K. Ashton, a noted transportation economist and financial analyst. In his Sworn Declaration, Mr. Ashton sets forth in detail the reasons why the application of the principles set forth in Judge Young's decision necessarily leads to the

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<sup>4</sup> See Ex. B to this Complaint. Initial Decision, *SFPP, L.P.*, 116 FERC ¶ 63,059 (September 25, 2006) at ¶ 34 (hereafter "ID").

<sup>5</sup> ID at ¶ 109.

<sup>6</sup> ID at ¶ 197.

<sup>7</sup> ID at ¶ 82, 87-88.

<sup>8</sup> ID at ¶ 99.

<sup>9</sup> ID at ¶ 39.

<sup>10</sup> ID at ¶ 187.

<sup>11</sup> ID at ¶ 53.

<sup>12</sup> Brief of Tesoro Refining and Marketing Company on Exceptions to Initial Decision, Docket No. IS05-230-000 (October 25, 2006) (hereafter "Tesoro Exceptions") at 8.

conclusion that the maximum rate that Tesoro is permitted to charge on the basis of its cost of service is \$1.098 per barrel.<sup>13</sup> As shown below in Table II, the rates that SFPP has been charging have been as much as 40% above that \$1.098 rate.

**Table II**

<b>Tariff</b>	<b>Effective Date</b>	<b>Rate Charged</b>	<b>Just and Reasonable Rate</b>	<b>Difference</b>	<b>Percent Increase Above Just and Reasonable Rate Using Inflationary Index</b>
104	7/1/04	\$1.1934	\$1.098	\$0.0954	8.7%
111	6/1/05	\$1.3934	\$1.098	\$0.2954	26.9%
117	7/1/05	\$1.4440	\$1.098	\$0.3460	31.5%
127	7/1/06	\$1.5328	\$1.098	\$0.4348	39.6%
137	9/11/06	\$1.5328 (plus \$.0075 ULSD Recovery Fee)	\$1.098	\$0.4423	40.3%

**IV.**

**BASIS OF COMPLAINT**

12. During the period December 1, 2004 through November 30, 2006 Tesoro has shipped petroleum products on the SFPP North Line under the following SFPP tariffs:

- FERC No. 104
- FERC No. 111
- FERC No. 117

<sup>13</sup> See Ex. D. Sworn Declaration of Peter K. Ashton in Support of Tesoro Refining and Marketing Company's Complaint Against SFPP, L.P. (December 1, 2006) (hereafter "Ashton Dec.").

FERC No. 127

FERC No. 137<sup>14</sup>

13. As discussed above, applying the principles of Judge Young's decision to SFPP's cost of service for the North Line necessarily leads to the conclusion that the rates that SFPP charged Tesoro for shipments on the North Line under these tariffs were unjust and unreasonable. Tesoro therefore seeks both reparations with respect to the unjust and unreasonable rates it has been charged in the past and the prescription of just and reasonable rates for future shipments.

14. On March 26, 2004, the Commission issued a decision finding that the North Line rates were subject to grandfathering under Section 1803 of the Energy Policy Act.<sup>15</sup> In *ARCO Products v. SFPP, L.P.*,<sup>16</sup> the Commission stated that the "grandfathered rate" for the SFPP North Line is \$1.10 per barrel.<sup>17</sup> That determination has been appealed by shippers to the United States Court of Appeals for the District of Columbia Circuit. However, for the purposes of the present Complaint, Tesoro's damage calculations are based on the assumed validity of the Commission's finding that Section 1803 of the Energy Policy Act does not permit the Commission to reduce SFPP's North Line rate below \$1.10. Consequently, even though SFPP's maximum permissible rate as determined by the principles stated in Judge Young's decision is below \$1.10 per barrel, the damage calculations that are set forth in this Complaint are based on the \$1.10 grandfathered rate.

15. In fact, Tesoro maintains that the maximum rate that SFPP could charge for shipment on the North Line based only on an analysis of its cost of service

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<sup>14</sup> Ex. E. SFPP FERC Tariff Nos. 104, 111, 117, 127, 137.

<sup>15</sup> Order on Initial Decision, *ARCO Products Co. v. SFPP, L.P.*, 106 FERC ¶ 61,300 at P 59 (2004); *Reh'g denied*, 111 FERC ¶ 61,334 (2005).

<sup>16</sup> 106 FERC ¶ 61,300 (2004).

<sup>17</sup> *Id.* at PP 59-60.

is below the \$1.098 rate that results from the application of the principles stated in Judge Young's decision. In the Brief on Exceptions, which is attached to this Complaint as Exhibit C, Tesoro demonstrates that further reductions should be made to SFPP's cost of service to reflect SFPP's excessive litigation expenses,<sup>18</sup> excessive environmental expenses,<sup>19</sup> and an unreasonable return on equity.<sup>20</sup> In addition, the SFPP cost of service should be further adjusted to reflect greater throughput.<sup>21</sup> As Mr. Ashton demonstrates in his Declaration, these further adjustments in SFPP's cost of service would result in a maximum permissible rate of \$1.053 per barrel.

16. Table III below states the difference between the rate that SFPP actually charged Tesoro during the period December 1, 2004 through November 30, 2006 and the \$1.10 per barrel grandfathered rate, which is the maximum permissible rate that SFPP was permitted to charge.

**Table III**

<b>Tariff</b>	<b>Effective Date</b>	<b>Rate Charged</b>	<b>Grandfathered Rate</b>	<b>Difference</b>	<b>Percent Increase Above Grandfathered Rate</b>
104	7/1/04	\$1.1934	\$1.10	\$0.0934	8.5%
111	6/1/05	\$1.3934	\$1.10	\$0.2934	26.7%
117	7/1/05	\$1.4440	\$1.10	\$0.3440	31.3%
127	7/1/06	\$1.5328	\$1.10	\$0.4328	39.3%
137	9/11/06	\$1.5328 (plus \$0.0075 ULSD Recovery Fee)	\$1.10	\$0.4403	40.0%

<sup>18</sup> Tesoro Exceptions at 17-22.

<sup>19</sup> *Id.* at 22-24.

<sup>20</sup> *Id.* at 24-30.

<sup>21</sup> *Id.* at 30-33.

17. In his Declaration, Mr. Ashton has determined that as a result of these overcharges imposed by SFPP, Tesoro is entitled to reparations in the amount of \$694,520, plus interest in the amount of \$37,251.47.

18. Accordingly, Tesoro requests that the Commission (i) prescribe a rate of \$1.10 as the maximum permissible rate that SFPP may lawfully charge Tesoro for the shipment of petroleum products on the North Line; (ii) award Tesoro \$694,520, plus interest in the amount of \$37,251 as refunds and reparations for overcharges for past shipments of petroleum products on the North Line made as of the date of this filing; and (iii) award Tesoro damages and interest that continue to accrue so long as SFPP charges Tesoro unjust and unreasonable rates for the shipment of petroleum products on the North Line.

19. Under 343.2(c)(1), a Complainant must allege reasonable grounds for asserting that the rates charged by an oil pipeline under the indexation provisions of the Commission's regulations are "so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable." That requirement either does not apply to this Complaint or has been satisfied fully with respect to Tesoro's Complaint against SFPP's North Line rates.

20. Firstly, SFPP did not determine any of the rates it charged Tesoro during the period December 1, 2004 to November 30, 2006 by applying the index schedule established by the Commission to either the cost of service rate that Judge Young determined was appropriate or to the grandfathered rate of \$1.10. Each of the rates that SFPP charged during was considerably above the rate that would have been determined by the application of the index to its grandfathered rate.

21. Secondly, the rates that SFPP charged Tesoro during the period December 1, 2004 to November 30, 2005 were more than 40% higher than its cost of service would justify. A 40% disparity certainly meets the regulatory standard of being "so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable."

V.

**FURTHER COMPLIANCE WITH PROCEDURAL REGULATIONS**

22. In further support of its Complaint, Tesoro states as follows in accordance with the provisions of 18 C.F.R. § 385.206:

**A. Rule 206(b)(1): Action or Inaction**

23. The action or inaction which caused Tesoro to file this complaint is SFPP's charging Tesoro unjust and unreasonable rates for the transportation of petroleum products on the North Line.

**B. Rule 206(b)(2): Violations of Statute or Regulation**

24. SFPP's failure to charge just and reasonable rates violates Sections 1(4), 1(5) 8, 9, 13, 15, and 16 of the Interstate Commerce Act.

**C. Rule 206(b)(3): Business, Commercial or Economic Issues Which Affect The Complainant**

25. Tesoro ships a substantial quantity of petroleum products on SFPP's North Line tariff rates. The rates Tesoro was charged for that transportation were substantially above the just and reasonable rates based on Judge Young's September 25, 2006 decision, and above the grandfathered rate, which Tesoro maintains is the highest permissible rate that SFPP may lawfully charge Tesoro for shipments on the North Line. Tesoro has a substantial business, commercial and

economic interest in being charged the just and reasonable rate, as opposed to unjust and unreasonable monopoly rates.

**D. Rule 206(b)(4): Financial Impact**

26. A schedule, which is attached to this Complaint as Exhibit F, and which is privileged and confidential under Commission Rule 1112, 18 C.F.R. §385.1112, demonstrates the impact of SFPP's unlawful rates on Tesoro. That schedule indicates that Tesoro is entitled to reparations of \$694,520, plus interest in the amount of \$37,251 as a result of the unlawful rates SFPP charged Tesoro for the shipment of petroleum products from December 1, 2004 to November 30, 2006. As stated above, these damage calculations are based on the use of Tesoro's grandfathered rate of \$1.10 per barrel as the maximum permissible rate that SFPP could lawfully charge Tesoro for the shipment of petroleum products during the period from December 1, 2004 to November 30, 2006. As we have noted above, that \$1.10 rate is higher than the rate resulting either from the application of the principles of Judge Young's decision to SFPP's cost of service or Tesoro's determination that further adjustments to SFPP's cost of service indicate that SFPP could not lawfully charge a rate of more than \$1.05 per barrel. Of course, damages and interest incurred by Tesoro are continuing to accrue.

**E. Rule 206(b)(5): Non-Financial Impacts**

27. The adverse impact that Tesoro alleges under this Complaint is financial as set forth above.

**F. Rule 206(b)(6): Related Matters**

28. Although SFPP's North Line rates have been litigated in Docket No. IS05-230-000, the case before Judge Young, the issue of whether Tesoro is entitled

to reparations for SFPP's unjust and unreasonable rates for the North Line based on the facts alleged in this complaint has not yet been adjudicated.

**G. Rule 206(b)(7): Relief Requested**

29. Tesoro seeks reparations for the period December 1, 2004 to the present, plus interest, as well as reparations for damages that have accrued since the date of this filing, and the prescription of just and reasonable rates for future North Line shipments.

**H. Rule 206(b)(8): Documents**

30. Tesoro has attached documents in its possession that support its Complaint.

**I. Rule 206(b)(9): Alternative Dispute Resolution**

31. We understand that an effort by the Alternative Dispute Resolution branch of the Commission's staff might be undertaken in the near future. However, the issues presented in this Complaint are at present unresolved. Consequently, Tesoro requests that these matters be set for hearing and, to the extent appropriate and feasible, consolidated with any relevant proceedings.

**VI.**

**REQUEST FOR RELIEF**

32. WHEREFORE, Complainant Tesoro Refining and Marketing Company respectfully requests that the Federal Energy Regulatory Commission:

33. Determine that the rates established by SFPP, L.P. in the following tariffs for the shipment of refined petroleum products are unjust and unreasonable and thereby violate Sections 1(4) and 1(5) of the Interstate Commerce Act and Section 343.2(c)(1) of the Commission's regulations:

FERC No. 104

**FERC No. 111**

**FERC No. 117**

**FERC No. 127**

**FERC No. 137**

**34. Prescribe new rates that are just and reasonable for the shipment of refined petroleum products from Richmond and Concord, CA to Reno, NV;**

**35. Determine that SFPP overcharged Tesoro for shipments of refined petroleum products from Concord, CA to Reno, NV from at least December 1, 2004 to the present date and is continuing to overcharge Tesoro for such shipments;**

**36. Order SFPP to pay refunds, reparations and damages, plus interest, to Tesoro for shipments made by Tesoro under each of the tariffs specified in Paragraph 33 above from December 1, 2004;**

**37. Award Tesoro its costs and attorneys fees in prosecuting this Complaint; and**

**38. Grant Tesoro such other, different or additional relief as the Commission may determine to be appropriate.**

Date: December 1, 2006

Respectfully submitted,

TESORO REFINING AND MARKETING COMPANY

By: 

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 206(c) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.206(c), I hereby certify that on December 1, 2006, Public copies of the *Complaint of Tesoro Refining and Marketing Company Against SFPP, L.P.* have been served on the following parties:

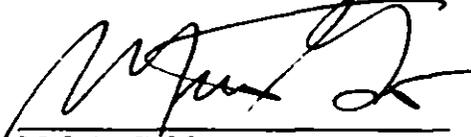
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Dated: December 1, 2006

  
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