

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

ExxonMobil Oil Corporation,)	
)	
Complainant,)	
)	
v.)	Docket No. OR07-_____
)	
SFPP, L.P.,)	
)	
Respondent.)	

**ORIGINAL COMPLAINT
OF
EXXONMOBIL OIL CORPORATION
CHALLENGING SFPP, L.P.'S 2005 INDEX RATE INCREASE,
REQUEST FOR FAST TRACK PROCEDURES, AND
MOTION FOR CONSOLIDATION**

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June 29, 2007

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18 C.F.R. § 343.2(c).....1,3

I.

COMMUNICATIONS AND CORRESPONDENCE

Communications and correspondence regarding this Complaint should be directed to the following persons:

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II.

PARTIES

Complainant is a shipper of refined petroleum products on SFPP's common carrier pipeline system.

SFPP is an oil pipeline engaged in the transportation of oil in interstate commerce regulated as a "common carrier" by the Commission under the Interstate Commerce Act ("ICA").

III.

INTRODUCTION AND BACKGROUND

ExxonMobil files this Complaint in accordance with the index regulations which provide in pertinent part as follows:

A . . . complaint filed against a rate . . . established pursuant to Section 342.3 of this chapter must allege reasonable grounds for asserting that the rate . . . increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable

18 C.F.R. § 343.2(c).

ExxonMobil requests that the instant complaint be consolidated with the complaint filed by BP in Docket No. OR07-8 also challenging SFPP's 2005 index rates and that the standard adopted by the Commission there be applied to the instant complaint.

On June 6, 2007, the Commission issued an order on BP's complaint. BP had demonstrated that SFPP was significantly overrecovering its costs by millions of dollars a year, each year, and argued therefore that SFPP was not entitled to an index rate increase for 2005.

The Commission stated as follows:

“[T]he Commission . . . concludes that a complaint will meet the standards of section 343.2(c) if it establishes that the pipeline appears to substantially over-recover its costs at the time it files tariffs to increase rates under our indexation methodology.”

Order Holding Complaint in Abeyance, *BP West Coast Products LLC v. SFPP, L.P.*, Docket No. OR07-8-000, 119 FERC ¶ 61,241, at ¶ 11 (June 6, 2007) (holding the complaint in abeyance pending resolution of other pending SFPP proceedings).

In the instant complaint, Complainant easily meets and even surpasses this standard to show that SFPP's index rates are unjust and unreasonable. Accordingly, under the standard announced in *BP v. SFPP*, this Complaint should be investigated and set for hearing pursuant to

the Commission's fast track procedures, and SFPP's 2005 index rate increases should be denied *ab initio*, with reparations and interest to be paid to Complainant.

Furthermore, as the Commission held in an order issued yesterday in SFPP's 2007 index rate case proceeding in Docket No. IS07-229-000:

7. Indicated Shippers may believe that the SFPP's rates on the date of filing are unjust and unreasonable, but that is not the issue here. The June 6 Order cited by Indicated Shippers is inapposite because it was a complaint case, Docket No. OR07-8-000. At bottom, Indicated Shippers argue here (1) that the accumulative increase in rates for several years of index increases unreasonably exceeds SFPP's actual increase over the same multi-year period and (2) that the base rates themselves are unjust and unreasonable. These arguments must be advanced by means of a separate complaint, not a protest filed in the suspension phase. In an index-rate adjustment proceeding the focus of an index adjustment case is only whether the index increase is so substantially in excess of cost changes for the index year. Otherwise, each proceeding is likely to evolve into litigation about the return already present in the base rates, in this case those in effect during the calendar year 2006. This would defeat the goal of administrative simplicity that is the core rationale of the indexing methodology. Accordingly, the complaint filed in Docket No. OR07-8-000 was the proper venue to address the concerns raised here.

Similarly, if Protesters believe that SFPP has not accurately calculated the index based on its existing costs and its internal records of those costs, they may file a separate complaint to that effect.

SFPP, L.P., 119 FERC ¶ 61,330, at ¶ 7 (June 28, 2007).

ExxonMobil herewith complies with the Commission's June 28, 2007 order.

IV.

COMPLAINT IN COMPLIANCE WITH RULE 206(b)

In accordance with the Commission's regulations, 18 C.F.R. § 385.206, the complainant must satisfy the following:

1. 18 C.F.R. § 385.206(b)(1), "a complaint must clearly identify the action or inaction which is alleged to violate application statutory standards or regulations." SFPP is charging unjust and unreasonable rates, in violation of the ICA, as a result of SFPP's 2005 index rate increase. The index rate increase on top of a rate that was already unjust and unreasonable, as determined by the Commission and admitted by SFPP, could not possibly be just and reasonable, hence the index rate increase must be reduced to zero and reparations made.

2. 18 C.F.R. § 385.206(b)(2), "explain how the action or inaction violates applicable statutory standards or regulatory requirements."

Section 343.2(c) of the Commission's oil pipeline regulations states, in pertinent part:

A . . . complaint filed against a rate . . . established pursuant to Section 342.3 of this chapter must allege reasonable grounds for asserting that the rate . . . increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable

This standard is met when the pipeline already has unjust and unreasonable rates so that any rate increase would just be that much more "unjust and unreasonable."

"[T]he Commission agrees and concludes that a complaint will meet the standards of section 343.2(c) if it establishes that the pipeline appears to substantially over-recover its costs at the time it files tariffs to increase rates under our indexation methodology." Order Holding Complaint in Abeyance, *BP West Coast Products LLC v. SFPP, L.P.*, Docket No. OR07-8-000, 119 FERC ¶ 61,241, at ¶ 11 (June 6, 2007). As a result of the Commission's decision, SFPP should be precluded from receiving an index rate increase in 2005.

The Commission has granted a permanent 3.6% percentage rate increase to SFPP for 2005, in this case approximately \$4,500,000, to cover a claimed cost increase of only \$407,000, or 0.37%, not even a 1% claimed cost increase.

SFPP's rates are already unjust and unreasonable, as demonstrated in SFPP's annual FERC Form 6s. There can be no claim that any of SFPP's rates are "grandfathered." Whether the 1992 level of rates in the then tariffs are grandfathered or not, the Commission has subsequently allowed a 19.6% cumulative rate increase for all oil pipelines through indexing. Accordingly, any rate increase at all for SFPP would be far in excess of any claimed cost increase and necessarily be unjust and unreasonable.

According to SFPP's 2004 Form 6, SFPP was then collecting an unlawful excess profit of more than \$16,000,000, far above the allowed built-in profit included in its rates, and not sheltered by any claim of "grandfathering" under EPCRA of 1992. Adding an additional \$4,500,000 of increased revenue as a result of the index rate increase would render SFPP's rates even more unjust and unreasonable, and merely increase the illegal excess profits. Even if there were a genuine \$407,000 cost increase, that cost increase is already covered by the \$16,000,000 in excess profits, so \$4,500,000 more is even more egregious.

3. 18 C.F.R. § 385.206(b)(3), "set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant." The business, commercial, economic, or other issues presented by this action that affect Complainant are that Complainant is in the business of supplying the needs of the public, including both private and military consumers, for refined petroleum products, such as motor gasoline, jet fuel for civil and military aircraft, and diesel fuels for various modes of transportation. Not only does Complainant have the economic desire to supply these interstate markets with their requirements, in competition with other shippers, but Complainant has the legal duty to do so. Long-term

contracts require that requirements be met for certain customers, absent a legally sufficient exception. There is no “free exit” from a market.

However, it should suffice to show the relevant standards of aggrievement to say that Complainant wishes to use a public utility to gain access to the interstate market. Access to the interstate market is regulated by FERC, whether the access facility is an electrified wire or a pipeline carrying oil or gas. The interstate shipper has the right to expect FERC to see that only just and reasonable rates are being charged. In the Commission’s own words:

The Commission concludes that the Act of 1992 does not deregulate oil pipeline rates and that the Commission must continue to ensure that oil pipeline rates are just and reasonable.

Order No. 561, [Regs. Preambles 1991-1996] FERC Stats. & Regs. ¶ 30,985, at 30,945 (1993), *order on reh’g*, Order No. 561-A, [Regs. Preambles, 1991-1996] FERC Stats. & Regs. ¶ 31,000 (1994), *aff’d*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

In this case the need for regulation is most acute because SFPP and its affiliate Calnev have the only common carrier oil products pipelines that serve the interstate markets in Arizona, Nevada, and Oregon, not to mention the intrastate market in California.

4. 18 C.F.R. § 385.206(b)(4), “make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction.” Complainant’s transportation costs increased by 3.6% in the summer of 2005, and that amount carries forward into 2006 and beyond, effectively compounding each year.

5. 18 C.F.R. § 385.206(b)(5), “indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction.” The fact that SFPP passes through all available cash (including “advances”) to its parent master limited partnership, KMEP, has implications for reliability on SFPP’s pipeline system.

6. 18 C.F.R. § 385.206(b)(6), “state whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum.”

First, as to whether the issues presented are pending in an existing Commission proceeding, only the Commission can answer this question. In a new 2007 complaint jointly filed by ExxonMobil and other Complainants in Docket No. OR07-4, Complainants challenged all SFPP rates, including the indexed rates. However, SFPP intends to assert that a general complaint under ICA Section 13(1) will not reach index rates. While we do not accept this proposition, prudence dictates that SFPP’s argument be made moot.

In addition, the issue of the validity of the 2005 index rate increase was pending in the Court of Appeals. Based on the Solicitor’s challenge to the Court’s jurisdiction, the Court did not reach the merits. *ExxonMobil Oil Corporation v. FERC*, Case Nos. 05-1471 and 05-1472, Unpublished Slip Op., 2007 WL 754800 (D.C. Cir. Feb. 27, 2007). Complainant will not seek rehearing nor seek *certiorari*, because the remedy now open is to file a new complaint in which, according to the Commission, a hearing is guaranteed, and that was the basic relief sought by the appeal of SFPP’s 2005 index.

Second, assuming for the purpose of this answer that the validity of the 2005 index rate increase can be adjudicated in the regular complaint docket, there is absolutely no hope for a “timely resolution.” This case is but one more branch of the seed that was planted back in 1992, when the first complaint against SFPP was filed. That was fifteen years ago, and there still has been no resolution of the first of a series of complaints. If past is prologue, we will not get a decision in the 2007 complaint until sometime after 2022. One of the justifications for suicide, listed by Hamlet, is “the law’s delay.” William Shakespeare, *Hamlet*, Act III, Scene i.

It is a “far, far better thing” to all concerned to adjudicate the 2005 index rate increase in this separate docket. That is because only the complainants in a general complaint case receive reparations and interest. The other shippers only benefit when rates are reduced prospectively in a general complaint case. This principle may or may not apply to complaints against index rate increases.

Had the Commission decided to honor its commitment to investigate rate increases within the index cap, a decision would have provided refunds to *all* shippers. By changing the rules of the game to require complaints, perhaps only the intrepid will receive the equivalent of refunds, and the overcharges to the shippers who do not complain will more than cover the reparations to the shippers who do, so SFPP should be very pleased to avoid this complaint. SFPP may very well change its position and claim that the 2005 index rate increase can only be reached in a general Section 13(1) complaint.

This case calls out for fast track procedures, a subject to be addressed below.

7. 18 C.F.R. § 385.206(b)(7), “state the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief.” There is no request for stay or extension of time. The specific relief or remedy requested is the following:

(a) Terminate the 2005 index rate increase percentage granted to SFPP, as of the date the rate went into effect. In the alternative, terminate the 2005 index rate increase immediately.

(b) Refund, with interest, all dollars collected from all shippers resulting from the 2005 index rate increase. In the alternative, refund, with interest, all dollars collected from Complainant resulting from the 2005 index rate increase.

(c) Order recalculation of the 2006 index rate increase after removing the 2005 index rate increase, and, if this case drags on, the same with 2007, 2008, on. (Each of these index rate increases is also subject to challenge.)

The basis for the relief is that the 2005 index rate increase is illegal, unjust and unreasonable and never should have been granted. Because the 2005 index rate increase went into effect within two years prior to the date of this complaint, there is no statutory bar to full consideration on the merits.

8. 18 C.F.R. § 385.206(b)(8), “include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits.”

The Commission has represented in Order No. 561 that Page 700 of Form 6 is a sufficient basis for this complaint. In addition, Complainant relies upon public documents in FERC’s official files, specifically, Form 6 for year 2004 filed by SFPP, and orders of the Commission identified by citation herein, as well as filings, discovery, and testimony of Kinder Morgan witnesses in the various proceedings now extending back in time for more than a decade.

9. 18 C.F.R. § 385.206(b)(9), “state (i) whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used; (ii) whether the complainant believes that alternative dispute resolution (ADR) under the Commission’s supervision could successfully resolve the complaint; (iii) what types of ADR procedures could be used; and (iv) any process that has been agreed on for resolving the complaint.”

Complainant has had negotiations with SFPP regarding its excessive rates several times over the last few years without success. Complainant has not contacted FERC’s Enforcement Hotline staff as the hotline will not address rate complaints. Complainant does not presently

believe successful resolution of this complaint is attainable through arbitration or mediation under the Commission's supervision, but looks forward to the appointment of a settlement Judge with jurisdiction to compel good faith negotiation on all issues that divide shippers and the utility. Our suggestions to SFPP for invocation of the settlement judge process have been rejected, as Mr. Miles of the Commission's Dispute Resolution Service and Office of Administrative Litigation can verify.

10. 18 C.F.R. § 385.206(b)(10), "include a form of notice of the complaint suitable for publication in the Federal Register in accordance with the specifications in Sec. 385.203(d) of this part. The form of notice shall be on electronic media as specified by the Secretary."

A Form of Notice is included.

11. 18 C.F.R. § 385.206(b)(11), "explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint."

Fast track procedures are requested.

First, SFPP admits on Page 700 of its Form 6 that it is collecting "excess profits," otherwise known as "unjust and unreasonable rates." "Fast track" will provide the opportunity to secure a virtually immediate reduction in rates for two reasons. First, the "cost of service" underlying SFPP's Page 700 does not support the revenues being collected. Second, last December the Commission announced a policy of requiring an interim reduction in rates when a public utility, responding to a complaint, cannot cost justify its current rates. *Panhandle Complainants v. Southwest Gas Storage Company*, 117 FERC ¶ 61,318, at ¶ 20 (2006). SFPP has claimed that the policy cannot apply to it unless there is first a hearing, so let there be a fast track hearing in order to moot this claim, too. The case can then be phased, if necessary, although we do not expect phasing to be necessary. At the conclusion of probably no more than

a day or two of hearing, it will be obvious to all that the 3.6% rate increase established for SFPP's rates in 2005 cannot stand. It was never "just and reasonable." All rates should be rolled back to the level of the cost of service claims, even taking those at face value for interim purposes.

Second, a "fast track" is the only effective way to induce a public utility like SFPP to respect the public utility obligation. If, it turns out, that only the complainants in an index rate increase case can get refunds and interest, then SFPP will achieve a windfall at the expense of the shippers and consumers who did not join in this complaint. SFPP will make enough illegal profits from all shippers to cover the reparations to the complainants and then have some profits left over.

The Commission, having removed the protest as a means of securing relief from an unjust and unreasonable index rate, surely would want to maximize the relief to cover the shippers who did not file a complaint.

V.

CONCLUSION AND REQUEST FOR RELIEF

SFPP's 2005 index rate increase has been shown to be unjust and unreasonable. Accordingly, the Commission should set this proceeding for expedited hearing under the Commission's fast track procedures, find the index rate increase unlawful, reverse the index rate increase, reduce the level of the base rates down to the level of the claimed cost of service, direct that SFPP refund the dollars collected under the index rate increase and compel the

adjustment of subsequent index rate increases downward, without prejudice to challenges to subsequent index rate increases.

Respectfully submitted,

EXXONMOBIL OIL CORPORATION

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Counsel for ExxonMobil Oil Corporation

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NOTICE OF COMPLAINT

(_____, 2007)

Take notice that on June 29, 2007, ExxonMobil Oil Corporation (“ExxonMobil” or “Complainant”) tendered for filing a Complaint against SFPP, L.P. (“SFPP”) challenging SFPP’s 2005 index rate increases as unjust and unreasonable. Complainant requests that the Commission review and investigate SFPP’s index rate increases; set the proceeding for an evidentiary hearing to determine just and reasonable rates for SFPP; require the payment of reparations and interest starting two years before the date of complaint for all rates; and award such other relief as is necessary and appropriate under the Interstate Commerce Act.

Complainant states that copies of the Complaint were served on SFPP, L.P.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The public version of this filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: _____

Kimberley D. Bose
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by E-Mail or by first-class U.S. Mail, postage prepaid, upon counsel for the Respondent in this proceeding.

Dated at Washington, D.C., this 29th day of June, 2007.

/s/ Nancilee Holland
Nancilee Holland

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Pursuant to Rules 206 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. §§ 385.206 & 385.212, Section 343 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 C.F.R. § 385.343.2, Sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, 49 U.S.C. App. §§ 1(5), 8, 9, 13, 15, and 16 (1994) ("ICA"), and Section 1803 of the Energy Policy Act of 1992 ("EPAAct"), ExxonMobil Oil Corporation ("ExxonMobil" or "Complainant") hereby files this Original Complaint against SFPP, L.P. ("SFPP") challenging the justness and reasonableness of SFPP's 2005 index rates. ExxonMobil also requests that the Commission consolidate this Complaint with the complaint filed by BP West Coast Products LLC ("BP") in Docket No. OR07-8 also challenging SFPP's 2005 index rates. In support hereof, Complainant states as follows:

I.

COMMUNICATIONS AND CORRESPONDENCE

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II.

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Complainant is a shipper of refined petroleum products on SFPP's common carrier pipeline system.

SFPP is an oil pipeline engaged in the transportation of oil in interstate commerce regulated as a "common carrier" by the Commission under the Interstate Commerce Act ("ICA").

III.

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A . . . complaint filed against a rate . . . established pursuant to Section 342.3 of this chapter must allege reasonable grounds for asserting that the rate . . . increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable

18 C.F.R. § 343.2(c).

ExxonMobil requests that the instant complaint be consolidated with the complaint filed by BP in Docket No. OR07-8 also challenging SFPP's 2005 index rates and that the standard adopted by the Commission there be applied to the instant complaint.

On June 6, 2007, the Commission issued an order on BP's complaint. BP had demonstrated that SFPP was significantly overrecovering its costs by millions of dollars a year, each year, and argued therefore that SFPP was not entitled to an index rate increase for 2005.

The Commission stated as follows:

“[T]he Commission . . . concludes that a complaint will meet the standards of section 343.2(c) if it establishes that the pipeline appears to substantially over-recover its costs at the time it files tariffs to increase rates under our indexation methodology.”

Order Holding Complaint in Abeyance, *BP West Coast Products LLC v. SFPP, L.P.*, Docket No. OR07-8-000, 119 FERC ¶ 61,241, at ¶ 11 (June 6, 2007) (holding the complaint in abeyance pending resolution of other pending SFPP proceedings).

In the instant complaint, Complainant easily meets and even surpasses this standard to show that SFPP's index rates are unjust and unreasonable. Accordingly, under the standard announced in *BP v. SFPP*, this Complaint should be investigated and set for hearing pursuant to

the Commission's fast track procedures, and SFPP's 2005 index rate increases should be denied *ab initio*, with reparations and interest to be paid to Complainant.

Furthermore, as the Commission held in an order issued yesterday in SFPP's 2007 index rate case proceeding in Docket No. IS07-229-000:

7. Indicated Shippers may believe that the SFPP's rates on the date of filing are unjust and unreasonable, but that is not the issue here. The June 6 Order cited by Indicated Shippers is inapposite because it was a complaint case, Docket No. OR07-8-000. At bottom, Indicated Shippers argue here (1) that the accumulative increase in rates for several years of index increases unreasonably exceeds SFPP's actual increase over the same multi-year period and (2) that the base rates themselves are unjust and unreasonable. These arguments must be advanced by means of a separate complaint, not a protest filed in the suspension phase. In an index-rate adjustment proceeding the focus of an index adjustment case is only whether the index increase is so substantially in excess of cost changes for the index year. Otherwise, each proceeding is likely to evolve into litigation about the return already present in the base rates, in this case those in effect during the calendar year 2006. This would defeat the goal of administrative simplicity that is the core rationale of the indexing methodology. Accordingly, the complaint filed in Docket No. OR07-8-000 was the proper venue to address the concerns raised here.

Similarly, if Protesters believe that SFPP has not accurately calculated the index based on its existing costs and its internal records of those costs, they may file a separate complaint to that effect.

SFPP, L.P., 119 FERC ¶ 61,330, at ¶ 7 (June 28, 2007).

ExxonMobil herewith complies with the Commission's June 28, 2007 order.

IV.

COMPLAINT IN COMPLIANCE WITH RULE 206(b)

In accordance with the Commission's regulations, 18 C.F.R. § 385.206, the complainant must satisfy the following:

1. 18 C.F.R. § 385.206(b)(1), "a complaint must clearly identify the action or inaction which is alleged to violate application statutory standards or regulations." SFPP is charging unjust and unreasonable rates, in violation of the ICA, as a result of SFPP's 2005 index rate increase. The index rate increase on top of a rate that was already unjust and unreasonable, as determined by the Commission and admitted by SFPP, could not possibly be just and reasonable, hence the index rate increase must be reduced to zero and reparations made.

2. 18 C.F.R. § 385.206(b)(2), "explain how the action or inaction violates applicable statutory standards or regulatory requirements."

Section 343.2(c) of the Commission's oil pipeline regulations states, in pertinent part:

A . . . complaint filed against a rate . . . established pursuant to Section 342.3 of this chapter must allege reasonable grounds for asserting that the rate . . . increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable

This standard is met when the pipeline already has unjust and unreasonable rates so that any rate increase would just be that much more "unjust and unreasonable."

"[T]he Commission agrees and concludes that a complaint will meet the standards of section 343.2(c) if it establishes that the pipeline appears to substantially over-recover its costs at the time it files tariffs to increase rates under our indexation methodology." Order Holding Complaint in Abeyance, *BP West Coast Products LLC v. SFPP, L.P.*, Docket No. OR07-8-000, 119 FERC ¶ 61,241, at ¶ 11 (June 6, 2007). As a result of the Commission's decision, SFPP should be precluded from receiving an index rate increase in 2005.

The Commission has granted a permanent 3.6% percentage rate increase to SFPP for 2005, in this case approximately \$4,500,000, to cover a claimed cost increase of only \$407,000, or 0.37%, not even a 1% claimed cost increase.

SFPP's rates are already unjust and unreasonable, as demonstrated in SFPP's annual FERC Form 6s. There can be no claim that any of SFPP's rates are "grandfathered." Whether the 1992 level of rates in the then tariffs are grandfathered or not, the Commission has subsequently allowed a 19.6% cumulative rate increase for all oil pipelines through indexing. Accordingly, any rate increase at all for SFPP would be far in excess of any claimed cost increase and necessarily be unjust and unreasonable.

According to SFPP's 2004 Form 6, SFPP was then collecting an unlawful excess profit of more than \$16,000,000, far above the allowed built-in profit included in its rates, and not sheltered by any claim of "grandfathering" under EPCRA of 1992. Adding an additional \$4,500,000 of increased revenue as a result of the index rate increase would render SFPP's rates even more unjust and unreasonable, and merely increase the illegal excess profits. Even if there were a genuine \$407,000 cost increase, that cost increase is already covered by the \$16,000,000 in excess profits, so \$4,500,000 more is even more egregious.

3. 18 C.F.R. § 385.206(b)(3), "set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant." The business, commercial, economic, or other issues presented by this action that affect Complainant are that Complainant is in the business of supplying the needs of the public, including both private and military consumers, for refined petroleum products, such as motor gasoline, jet fuel for civil and military aircraft, and diesel fuels for various modes of transportation. Not only does Complainant have the economic desire to supply these interstate markets with their requirements, in competition with other shippers, but Complainant has the legal duty to do so. Long-term

contracts require that requirements be met for certain customers, absent a legally sufficient exception. There is no “free exit” from a market.

However, it should suffice to show the relevant standards of aggrievement to say that Complainant wishes to use a public utility to gain access to the interstate market. Access to the interstate market is regulated by FERC, whether the access facility is an electrified wire or a pipeline carrying oil or gas. The interstate shipper has the right to expect FERC to see that only just and reasonable rates are being charged. In the Commission’s own words:

The Commission concludes that the Act of 1992 does not deregulate oil pipeline rates and that the Commission must continue to ensure that oil pipeline rates are just and reasonable.

Order No. 561, [Regs. Preambles 1991-1996] FERC Stats. & Regs. ¶ 30,985, at 30,945 (1993), *order on reh’g*, Order No. 561-A, [Regs. Preambles, 1991-1996] FERC Stats. & Regs. ¶ 31,000 (1994), *aff’d*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

In this case the need for regulation is most acute because SFPP and its affiliate Calnev have the only common carrier oil products pipelines that serve the interstate markets in Arizona, Nevada, and Oregon, not to mention the intrastate market in California.

4. 18 C.F.R. § 385.206(b)(4), “make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction.” Complainant’s transportation costs increased by 3.6% in the summer of 2005, and that amount carries forward into 2006 and beyond, effectively compounding each year.

5. 18 C.F.R. § 385.206(b)(5), “indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction.” The fact that SFPP passes through all available cash (including “advances”) to its parent master limited partnership, KMEP, has implications for reliability on SFPP’s pipeline system.

6. 18 C.F.R. § 385.206(b)(6), “state whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum.”

First, as to whether the issues presented are pending in an existing Commission proceeding, only the Commission can answer this question. In a new 2007 complaint jointly filed by ExxonMobil and other Complainants in Docket No. OR07-4, Complainants challenged all SFPP rates, including the indexed rates. However, SFPP intends to assert that a general complaint under ICA Section 13(1) will not reach index rates. While we do not accept this proposition, prudence dictates that SFPP’s argument be made moot.

In addition, the issue of the validity of the 2005 index rate increase was pending in the Court of Appeals. Based on the Solicitor’s challenge to the Court’s jurisdiction, the Court did not reach the merits. *ExxonMobil Oil Corporation v. FERC*, Case Nos. 05-1471 and 05-1472, Unpublished Slip Op., 2007 WL 754800 (D.C. Cir. Feb. 27, 2007). Complainant will not seek rehearing nor seek *certiorari*, because the remedy now open is to file a new complaint in which, according to the Commission, a hearing is guaranteed, and that was the basic relief sought by the appeal of SFPP’s 2005 index.

Second, assuming for the purpose of this answer that the validity of the 2005 index rate increase can be adjudicated in the regular complaint docket, there is absolutely no hope for a “timely resolution.” This case is but one more branch of the seed that was planted back in 1992, when the first complaint against SFPP was filed. That was fifteen years ago, and there still has been no resolution of the first of a series of complaints. If past is prologue, we will not get a decision in the 2007 complaint until sometime after 2022. One of the justifications for suicide, listed by Hamlet, is “the law’s delay.” William Shakespeare, *Hamlet*, Act III, Scene i.

It is a “far, far better thing” to all concerned to adjudicate the 2005 index rate increase in this separate docket. That is because only the complainants in a general complaint case receive reparations and interest. The other shippers only benefit when rates are reduced prospectively in a general complaint case. This principle may or may not apply to complaints against index rate increases.

Had the Commission decided to honor its commitment to investigate rate increases within the index cap, a decision would have provided refunds to *all* shippers. By changing the rules of the game to require complaints, perhaps only the intrepid will receive the equivalent of refunds, and the overcharges to the shippers who do not complain will more than cover the reparations to the shippers who do, so SFPP should be very pleased to avoid this complaint. SFPP may very well change its position and claim that the 2005 index rate increase can only be reached in a general Section 13(1) complaint.

This case calls out for fast track procedures, a subject to be addressed below.

7. 18 C.F.R. § 385.206(b)(7), “state the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief.” There is no request for stay or extension of time. The specific relief or remedy requested is the following:

(a) Terminate the 2005 index rate increase percentage granted to SFPP, as of the date the rate went into effect. In the alternative, terminate the 2005 index rate increase immediately.

(b) Refund, with interest, all dollars collected from all shippers resulting from the 2005 index rate increase. In the alternative, refund, with interest, all dollars collected from Complainant resulting from the 2005 index rate increase.

(c) Order recalculation of the 2006 index rate increase after removing the 2005 index rate increase, and, if this case drags on, the same with 2007, 2008, on. (Each of these index rate increases is also subject to challenge.)

The basis for the relief is that the 2005 index rate increase is illegal, unjust and unreasonable and never should have been granted. Because the 2005 index rate increase went into effect within two years prior to the date of this complaint, there is no statutory bar to full consideration on the merits.

8. 18 C.F.R. § 385.206(b)(8), “include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits.”

The Commission has represented in Order No. 561 that Page 700 of Form 6 is a sufficient basis for this complaint. In addition, Complainant relies upon public documents in FERC’s official files, specifically, Form 6 for year 2004 filed by SFPP, and orders of the Commission identified by citation herein, as well as filings, discovery, and testimony of Kinder Morgan witnesses in the various proceedings now extending back in time for more than a decade.

9. 18 C.F.R. § 385.206(b)(9), “state (i) whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used; (ii) whether the complainant believes that alternative dispute resolution (ADR) under the Commission’s supervision could successfully resolve the complaint; (iii) what types of ADR procedures could be used; and (iv) any process that has been agreed on for resolving the complaint.”

Complainant has had negotiations with SFPP regarding its excessive rates several times over the last few years without success. Complainant has not contacted FERC’s Enforcement Hotline staff as the hotline will not address rate complaints. Complainant does not presently

believe successful resolution of this complaint is attainable through arbitration or mediation under the Commission's supervision, but looks forward to the appointment of a settlement Judge with jurisdiction to compel good faith negotiation on all issues that divide shippers and the utility. Our suggestions to SFPP for invocation of the settlement judge process have been rejected, as Mr. Miles of the Commission's Dispute Resolution Service and Office of Administrative Litigation can verify.

10. 18 C.F.R. § 385.206(b)(10), "include a form of notice of the complaint suitable for publication in the Federal Register in accordance with the specifications in Sec. 385.203(d) of this part. The form of notice shall be on electronic media as specified by the Secretary."

A Form of Notice is included.

11. 18 C.F.R. § 385.206(b)(11), "explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint."

Fast track procedures are requested.

First, SFPP admits on Page 700 of its Form 6 that it is collecting "excess profits," otherwise known as "unjust and unreasonable rates." "Fast track" will provide the opportunity to secure a virtually immediate reduction in rates for two reasons. First, the "cost of service" underlying SFPP's Page 700 does not support the revenues being collected. Second, last December the Commission announced a policy of requiring an interim reduction in rates when a public utility, responding to a complaint, cannot cost justify its current rates. *Panhandle Complainants v. Southwest Gas Storage Company*, 117 FERC ¶ 61,318, at ¶ 20 (2006). SFPP has claimed that the policy cannot apply to it unless there is first a hearing, so let there be a fast track hearing in order to moot this claim, too. The case can then be phased, if necessary, although we do not expect phasing to be necessary. At the conclusion of probably no more than

a day or two of hearing, it will be obvious to all that the 3.6% rate increase established for SFPP's rates in 2005 cannot stand. It was never "just and reasonable." All rates should be rolled back to the level of the cost of service claims, even taking those at face value for interim purposes.

Second, a "fast track" is the only effective way to induce a public utility like SFPP to respect the public utility obligation. If, it turns out, that only the complainants in an index rate increase case can get refunds and interest, then SFPP will achieve a windfall at the expense of the shippers and consumers who did not join in this complaint. SFPP will make enough illegal profits from all shippers to cover the reparations to the complainants and then have some profits left over.

The Commission, having removed the protest as a means of securing relief from an unjust and unreasonable index rate, surely would want to maximize the relief to cover the shippers who did not file a complaint.

V.

CONCLUSION AND REQUEST FOR RELIEF

SFPP's 2005 index rate increase has been shown to be unjust and unreasonable. Accordingly, the Commission should set this proceeding for expedited hearing under the Commission's fast track procedures, find the index rate increase unlawful, reverse the index rate increase, reduce the level of the base rates down to the level of the claimed cost of service, direct that SFPP refund the dollars collected under the index rate increase and compel the

adjustment of subsequent index rate increases downward, without prejudice to challenges to subsequent index rate increases.

Respectfully submitted,

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Counsel for ExxonMobil Oil Corporation

Dated: June 29, 2007

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

)	
ExxonMobil Oil Corporation,)	
)	
Complainant,)	
)	
v.)	Docket No. OR07-_____
)	
SFPP, L.P.,)	
)	
Respondent.)	
)	

NOTICE OF COMPLAINT

(_____, 2007)

Take notice that on June 29, 2007, ExxonMobil Oil Corporation (“ExxonMobil” or “Complainant”) tendered for filing a Complaint against SFPP, L.P. (“SFPP”) challenging SFPP’s 2005 index rate increases as unjust and unreasonable. Complainant requests that the Commission review and investigate SFPP’s index rate increases; set the proceeding for an evidentiary hearing to determine just and reasonable rates for SFPP; require the payment of reparations and interest starting two years before the date of complaint for all rates; and award such other relief as is necessary and appropriate under the Interstate Commerce Act.

Complainant states that copies of the Complaint were served on SFPP, L.P.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The public version of this filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: _____

Kimberley D. Bose
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by E-Mail or by first-class U.S. Mail, postage prepaid, upon counsel for the Respondent in this proceeding.

Dated at Washington, D.C., this 29th day of June, 2007.

/s/ Nancilee Holland
Nancilee Holland

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