121 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

SFPP, L.P. Docket No. IS08-28-000

ORDER ON TARIFF FILING

(Issued November 29, 2007)

1. On October 30, 2007, SFPP, L.P. (SFPP) filed a tariff[1] in the captioned docket to increase its East Line rates, to be effective December 1, 2007. The filing is protested by several of SFPP's East Line shippers. The Commission accepts and suspends the instant tariff, subject to refund, and as requested by the parties and consistent with Commission regulations,[2] sets the filing for negotiation before a settlement judge. The Commission also sets the instant tariff for hearing, but holds the hearing in abeyance pending proceedings before the settlement judge.

The Pleadings

2. SFPP's tariff filing proposes to recover a portion of the construction and increased operating costs related to completion of the Phase II expansion of its East Line between El Paso, Texas, in the east, and Tucson and Phoenix, Arizona, to the west. SFPP asserts that the Phase II expansion will result in a 21 percent increase in its East Line cost of service, namely from $68,444,000 to $ 82,795,000. Given this increase in its East Line costs, SFPP asserts it is entitled to file revised rates under section 342.4(a) of the Commission's regulations.[3] SFPP states that the proposed increase would result in a rate of 72.05 cents per barrel (cpb) to Lordsburg, New Mexico, 118 cpb to Tucson, and 158.82 cpb to Phoenix, with projected revenue of $82,791,000 compared to a projected cost of service of $82,795,000. The related construction project will result in a 12 inch line serving Tucson and a line of 16 inches and 12 inches (in different segments) serving Phoenix, the instant expansion being a uniform 12 inch line to Tucson.

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[1] FERC Tariff No. 162, canceling FERC Tariff No. 157.

[2] 18 C.F.R. § 343.5 (2007).

[3] 18 C.F.R. § 342.4(a) (2007).

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3. SFPP states that the proposed rates are based on a test period ended September 30, 2007, with 9 month adjustments for known and measurable changes. SFPP asserts that the rates include an income tax allowance consistent with Commission policy and a 2.2 cent rate component for estimated litigation costs. SFPP asserts that these are based on test period estimates involving prior litigation, but will provide refunds for that portion of the rate if the expenses prove to be lower than anticipated. The proposed amortization period of the estimated litigation costs is 3.25 years, but the collection period will be extended if the amount collected in that period should prove inadequate. SFPP further asserts that it and certain East Line shippers resolved their disputes regarding the rates SFPP filed to collect the additional costs related to the Phase I expansion of its East Line. The proposed settlement in Docket No. IS06-283-000 has been filed with the Commission and is pending before the Administrative Law Judge. Finally, SFPP states that its filing is complete and requests the Commission to accept the filing with a short suspension and make it effective December 1, 2007. As noted, it requests that any protests be referred to a settlement judge.

4. The following shippers intervened and filed protests to the instant tariff filing: BP West Coast Products LLC and ExxonMobil Oil Corporation, filing jointly; ConocoPhillips Company; Southwest Airlines Co.; Western Refining Company, L.P; and Valero Marketing and Supply Company and Chevron Products Company, filing jointly (collectively Intervenors). The Intervenors make many of the same assertions, which are briefly summarized here. First, they assert that SFPP has not established that it is entitled to make a rate filing under section 342.4(a) of Commission's regulations rather than relying on the Commission's indexing procedures to recover its increase East Line costs. They also assert that SFPP has not established that the proposed tariffs are just and reasonable. They claim that the supporting documentation does not conform to the Commission's filing requirements under section 342.4(a) or adequately justify the proposed rate levels. Among other things, the Intervenors assert that: (1) SFPP has not justified its proposed income tax allowance; (2) the proposed capital structure includes purchase price accounting adjustments that are inconsistent with Commission policy; (3) the proposed equity cost of capital improperly includes master limited partnerships in the proxy group; (4) the allocation of overhead costs does not conform to Commission policy and the increase in those costs since 2006 is unsubstantiated; (5) the proposed debt structure improperly excludes certain items from long term debt and SFPP has not adequately explained why the amount varies from a prior period; (6) the projected volumes are too low in relationship to capacity and therefore the tariff rates are too high; and (7) the proposed litigation costs are not justified on a cost-of-service basis. SFPP filed a reply asserting that its cost-of-service calculations are appropriate, with particular emphasis on the equity cost of capital and the income tax allowance factors. It asserts that it provided sufficient detail to meet the Commission's filing requirements under section 342.4(a).

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Discussion

5. The Commission concludes that SFPP has provided sufficient detail to support its filing under section 342.4(a) at the filing stage of this proceeding. Given the challenges to its proposed cost of service, a final determination in that regard must await the outcome of this proceeding. The disputed cost-of-service issues raised here are similar to those in numerous ongoing proceedings between SFPP and its shippers, and thus it is not necessary to address them further here in light of those ongoing proceedings and the settlement procedures established here. This is particularly the case since the parties were able to settle their differences regarding the Phase I expansion of SFPP's East Line in Docket No. IS05-283-000 and have requested that the Commission refer the instant docket to a settlement judge. The Commission does so here. The Commission also finds that the Intervenors have not established their request for maximum suspension of this tariff filing.[4] The Commission also finds that SFPP has not established that the rates in the proposed tariff are just and reasonable, and accepts and suspends the tariff for a nominal period, to be effective December 1, 2007, provided that the expanded facilities are actually in service on that date. The Commission also sets the instant tariff filing for hearing, but holds that hearing in abeyance during the settlement procedure established here.

The Commission orders:

(A) SFPP's FERC Tariff No. 162 is accepted and suspended, to be effective December 1, 2007, subject to refund and further order of the Commission.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly section 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by SFPP's filing.

(C) Pursuant to the section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2007), the Chief Administrative Law Judge shall designate a presiding administrative law judge (ALJ) for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and to the Commission's Rules of Practice and Procedure.

(D) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is directed to appoint a

[4] *See Buckeye Pipe Line Company*, 13 FERC ¶ 61,267 (1980).

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settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(F) Within 30 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.