

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

Tesoro Refining and Marketing Company,)

Complainant,)

v.)

SFPP, L.P.,)

Respondent.)

Docket No. OR11-_____

**COMPLAINT OF TESORO REFINING AND MARKETING COMPANY
AGAINST INDEX-BASED RATE INCREASES OF SFPP, L.P.**

By: Melvin Goldstein
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*Attorneys for Tesoro Refining and
Marketing Company*

Date: July 20, 2011

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 (1988); 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). Tesoro challenges the justness and reasonableness of SFPP’s proposed indexed-based rate increases for transportation on its interstate pipeline system that it filed with the Commission on May 27, 2011 in Docket No. IS11-444-000. SFPP’s filing proposes to increase its Watson Volume Deficiency Charge by 5.6 percent and to increase all of its transportation rates by 6.9 percent. SFPP’s proposed indexed rates are contained in FERC Tariff Nos. 194.1.0, 195.1.0, 196.3.0, 197.1.0, 198.3.0, 199.1.0, and 200.1.0.

2. Tesoro submits that this Complaint presents reasonable grounds to conclude that SFPP’s proposed rates are unjust and unreasonable on their face. Accordingly, Tesoro requests that the Commission reject SFPP’s proposed indexed-based rate increases, prescribe just and reasonable rates, and order SFPP to refund to Tesoro, with interest, the rates that it will pay in excess of the Commission’s prescribed just and reasonable rates for the period from July 1, 2011 through the resolution of this Complaint.

3. In support hereof, Tesoro states as follows:

I. COMMUNICATIONS AND CORRESPONDENCE

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

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II. PARTIES

5. 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). SFPP operates approximately 2,500 miles of pipeline consisting of the following four lines:

- a. The West Line, which originates at Watson Station and East Hynes in the Los Angeles, California area and makes deliveries to Phoenix, Arizona. The West Line also interconnects with Calnev Pipe Line, LLC (Calnev), an affiliate of SFPP, at Colton, CA for further deliveries to Las Vegas, Nevada;
- b. The East Line, which originates in El Paso and Diamond Junction, Texas and makes deliveries to Lordsburg, New Mexico; Tucson and Phoenix, Arizona; and various military destinations;

- c. The North Line, which originates at Richmond and Concord, CA and makes deliveries to the Reno, NV area; and
- d. The Oregon Line, which originates at Portland, Oregon and makes deliveries to Eugene, Oregon.

6. 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.

7. As the attached Sworn Declaration of Counsel demonstrates, Tesoro is a shipper of refined petroleum products on SFPP’s interstate pipeline system.¹ Tesoro has shipped and continues to ship significant quantities of refined petroleum products on SFPP’s lines in interstate commerce. Tesoro intends to continue to ship refined petroleum products on SFPP’s pipeline system in the foreseeable future. Tesoro therefore has a substantial economic interest in SFPP’s rates and the unjust and unreasonable rates SFPP has charged in the past.²

¹ Ex. A, Verified Statement of Melvin Goldstein, Counsel for Tesoro Refining and Marketing Company (hereinafter “Statement of Counsel”).

² *Id.*

III. BACKGROUND FACTS

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

8. The SFPP lines at issue in this proceeding are subject to the jurisdiction of the Commission, and SFPP has published transportation tariffs for its pipeline system with the Commission. As the attached Statement indicates, during each of the past several years, Tesoro shipped significant quantities of refined petroleum products on the SFPP interstate lines at rates charged by SFPP under tariffs on file with the FERC.³ Tesoro's shipments of refined petroleum products on the SFPP pipeline system will continue into the indefinite future.

B. FERC and Court of Appeals Decisions With Respect to the West Line and Calnev Line.

9. In a series of decisions that were issued in 2004 and 2005, the Commission and the Court of Appeals for the District of Columbia Circuit have held that the rates that SFPP has charged shippers for shipping petroleum products on the West Line and Calnev Line have been unjust and unreasonable and that SFPP's rates must be reduced.⁴ Those decisions are the following:

a. *BP West Coast Products*, 374 F.3d 1263 (2004)

10. In a decision issued on July 20, 2004, the Court of Appeals for the District of Columbia remanded to the Commission the issue of whether the West Line and Calnev Line had experienced "substantially changed circumstances" since

³ *Id.*

⁴ Although SFPP files separate tariffs for its West Line and Calnev Line rates, both the Commission and the Court of Appeals consider the Calnev Line to be part of the West Line. The FERC and Court of Appeals decisions referred to in the text therefore apply both to the West Line and the Calnev Line.

1992. The court held that if substantially changed circumstances exist, then the rates SFPP charged for transportation on the West Line and Calnev Line would not be subject to the “grandfathering” provision of Section 1803 of the Energy Policy Act of 1992. This statutory provision generally applies to pipeline transportation rates that were in effect for the 365 days prior to the enactment of the EAct on October 24, 1992.

b. *ARCO Products Co., et al. v. SFPP, L.P.*, 106 FERC ¶ 61,300 (2004)

11. In this Decision, the Commission found that the threshold “changed circumstances” standard in Section 1803(b)(1) of EAct had been satisfied with respect to the West Line and Calnev Line. In an Initial Decision, an Administrative Law Judge specifically found that the substantially changed circumstances standard had been satisfied with regard to West Line and Calnev Line rates for 1996, 1997, 1998, and 2000. The Commission subsequently confirmed that determination, concluding that “substantial changes in circumstances [existed] that were the basis for the Yuma, Calnev and West Tucson rates beginning in 1995, and for the West Phoenix rates beginning in 1997.”⁵

c. *SFPP, L.P.*, 111 FERC ¶ 61,334 (2005)

12. This order addressed the remand to the Commission by the United States Court of Appeals for the District of Columbia Circuit in *BP West Coast Products*, the Phase I proceeding in Docket No. OR96-2-000, *et al.*, and issues raised by the Commission’s March 24, 2004 Order in that proceeding. These issues all

⁵ 106 FERC ¶ 61,300 at P 53 (2004).

concerned the extent to which SFPP's rates for the West Line and the Calnev Line were subject to the grandfathering provision of Section 1803 of the Energy Policy Act. The Commission "again conclude[d] that there were substantially changed circumstances on the West Line for the years stated in the March 2004 Order."⁶

d. SFPP, L.P., 113 FERC ¶ 61,277 (2005)

13. Since the Commission had found the rates on the West Line and Calnev Line were not grandfathered, in a further order issued on December 16, 2005, the Commission clarified the methodology that SFPP must use in establishing new interim rates for the West Line and the Calnev Line. The Commission stated that "[t]his order makes certain determinations for establishing interim just and reasonable rates for SFPP, L.P.'s (SFPP) East and West Line rates pursuant to section 15(1) of the Interstate Commerce Act."⁷ Based on this Order, "the Commission [required] SFPP to make several compliance filings and to establish new interim rates for its West Line...as of May 1, 2006."⁸

e. Tariffs Nos. 120 and 121 and Commission Order Suspending Tariffs Subject to Refund

14. As a result of the previous decisions, on March 7, 2006, SFPP filed FERC Tariff Nos. 120 and 121 for transportation on the West Line and Calnev Lines, respectively. SFPP stated that the new rates it established in these tariffs for the West Line and Calnev Line were intended to comply with the Commission's

⁶ 111 FERC ¶ 61,334 at P 39 (2004).

⁷ 113 FERC ¶ 61,277 at P 1 (2005).

⁸ *Id.* at P 2.

December 16 Order and the Order on Rehearing issued February 13, 2006.⁹ The Commission accepted and suspended SFPP Tariffs Nos. 120 and 121, subject to refund, to be effective May 1, 2006.¹⁰

IV. BASIS OF COMPLAINT

15. The Commission has noted on a number of occasions that the annual Form No. 6 that a pipeline files can be used by shippers as evidence that a pipeline is charging unjust and unreasonable rates. Specifically, the Commission has stated that “page 700 [of Form No. 6] was designed as a preliminary screening tool for pipeline rate filings. It provides a means for a shipper to determine whether a pipeline’s cost of service or per-barrel/mile cost is so substantially divergent from the revenues produced by its rates to warrant a challenge that requires the pipeline to justify its rates... [It will] enable a shipper to challenge a pipeline's rates.”¹¹

16. The Commission has, in the past, used two different standards for determining whether an index rate increase is improper: (i) the “substantially exacerbate” standard and (ii) a percentage comparison test.

⁹ Order on Rehearing in Docket No. OR92-8 et al., 114 FERC ¶ 61,136 (February 13, 2006).

¹⁰ Order Accepting and Suspending Tariff Filings, 115 FERC ¶ 61,125 (April 28, 2006).

¹¹ Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts, 93 F.E.R.C. ¶ 61,262 (2000); *See* Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, FERC Stats. & Regs. [Regs. Preambles 1991-1996] P 31,006 at 31,168 (1994), 59 F.R. 59137 (November 16, 1994); Order on Reh'g, Order No. 571-A, FERC Stats. & Regs. [Regs. Preambles 1991-1996] P 31,012 (1995), 60 F.R. 356 (January 4, 1995); Order No. 561, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 30,985 (1993) (requiring the use of FERC Form 6 to challenge oil pipeline rates).

17. Under the “substantially exacerbate” standard, a determination is made as to whether (1) the pipeline is substantially over-recovering its cost of service, and (2) an index-based increase so exceeds the actual increase in the pipeline’s cost that the resulting rate increase would substantially exacerbate that over-recovery.¹² Under the “percentage comparison test,” a comparison is made of a pipeline’s page 700 cost data as contained in its Form No. 6 with the data that is reflected in the index filing and the data for the prior year. If the comparison indicates that the index rate is substantially in excess of the pipeline’s actual costs, then the pipeline’s index rate increase is unreasonable. The Commission recently stated that with respect to Protests, the only acceptable test is the “percentage comparison test.” However, it is unclear whether both tests are applicable to Complaints. Nonetheless, under either the “substantially exacerbate test” or the “percentage comparison test,” SFPP’s proposed index rate increases are unjust and unreasonable.

18. With respect to the “substantially exacerbate test,” page 700 of SFPP’s 2010 Form No. 6 clearly demonstrates that both criteria of the “substantially exacerbate” standard are met in the instant proceeding. As for the first criterion, Tesoro discussed in its concurrently filed Complaint against SFPP’s base rates that the 2010 Form No. 6 filed by SFPP shows that its total revenues exceeded its total cost-of-service by approximately \$32.6 million, or 22.7 percent, in that year. On its

¹² *SFPP, L.P.*, 129 FERC ¶ 61,228, 62,099 (2009).

face, this represents a substantial over-recovery by SFPP of its cost-of-service and demonstrates that at least some of its existing rates are unjust and unreasonable.¹³

19. As for the second criterion, SFPP's 2010 Form No. 6 demonstrates that SFPP's cost-of-service in 2010 *decreased* by \$6 million, or 4 percent, while its revenue *increased* by \$27.9 million, or 18.8 percent, from 2009. Thus, SFPP's proposed 6.9 percent increase in rates clearly exceeds the 4 percent decrease in its cost-of-service so as to substantially exacerbate the 22.7-percent over-recovery that it experienced in 2010. As the Commission stated in its June 30, 2011 Order in Docket No. IS11-444-000:

A 4 percent decrease in costs combined with the proposed index-based rate increase of 6.9 percent for all the transportation rates would still provide SFPP an approximately 10.9 percent revenue increase under its transportation rates. The Commission previously found this magnitude of a divergence between the pipeline's change in costs, as expressed in percentage terms, and the proposed rate increase raises an issue of reasonableness that the Commission will investigate.¹⁴

20. With respect to the percentage comparison test, as the Commission itself found:

SFPP's revised FERC Form No. 6, as filed on June 17, 2011, shows a total cost of service decrease between 2009 and 2010 of approximately 4.0 percent. A 4 percent decrease in costs combined with the proposed index-based rate increase of 6.9 percent for all the transportation rates would still provide SFPP an approximately 10.9 percent revenue increase under its transportation rates.¹⁵

¹³ As Tesoro discussed in its Complaint against SFPP's base rates, the data compiled in FERC Form No. 6 is reported on a system-wide basis; therefore, it is impossible to determine at this time which particular rates are unjust and unreasonable and led to SFPP's over-recovery.

¹⁴ *SFPP, L.P.*, 135 FERC ¶ 61,274 at P 11 (2011) (internal citations omitted).

¹⁵ *Id.*

An 11-percent divergence between SFPP's change in costs, as expressed in percentage terms, and the proposed rate increase results in a rate that is unjust and unreasonable.

21. Accordingly, Tesoro requests that the Commission: (i) find SFPP's proposed index-based rate increases to be unjust and unreasonable; (ii) prescribe new just and reasonable rates that SFPP may lawfully charge Tesoro for the shipment of petroleum products on the SFPP pipeline system; and (iii) award Tesoro reparations, plus interest, for overcharges that Tesoro will pay under the indexed tariffs in question.

V. COMPLIANCE WITH PROCEDURAL REGULATIONS

22. Under 18 CFR § 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."¹⁶ That requirement has been fully satisfied with respect to Tesoro's Complaint against SFPP.

23. In further support of its Complaint, Tesoro states as follows in accordance with the provisions of 18 CFR § 385.206:

a. Rule 206(b)(3): Business, Commercial or Economic Issues Which Affect the Complainant

24. Tesoro has shipped a substantial quantity of refined petroleum products on the SFPP pipeline system at the rates established by SFPP in its

¹⁶ 18 C.F.R. § 343.2(c)(1).

interstate tariffs. The rates Tesoro has been charged for that transportation have been unjust and unreasonable. Accordingly, the just and reasonable rates for SFPP's pipeline are substantially lower than the rate that SFPP is now charging. Tesoro has a substantial business, commercial and economic interest in being charged the just and reasonable rate, as opposed to the unjust and unreasonable rate.

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

25. When the volumes Tesoro shipped on the SFPP pipeline are factored into the difference between the just and reasonable rates that SFPP should have charged Tesoro and the rates that SFPP has actually charged Tesoro, it appears that Tesoro was overcharged by substantial amounts for the period July 1, 2011 to the present. Tesoro is also continuing to incur damages for overcharges.

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

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

d. Rule 206(b)(6): Related Matters

27. The amount of damages that Tesoro is entitled to receive for SFPP's unjust and unreasonable rates has not been addressed in any proceeding.

e. Rule 206(b)(7): Relief Requested

28. Tesoro seeks reparations from the period July 1, 2011 to the date of decision on its Complaint, plus interest, and the prescription of new just and reasonable rates on the SFPP pipeline system.

f. Rule 206(b)(8): Documents

29. Tesoro is still evaluating whether the documents in its possession support its Complaint.

g. Rule 206(b)(9): Alternative Dispute Resolution

30. It is possible 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 consolidated with current on-going proceedings.

h. Rule 206(b)(10): Form of Notice

31. A form of notice suitable for publication in the Federal Register in accordance with the specifications in Rule 203(d) has been attached to this Complaint as Exhibit B.

VI. REQUEST FOR RELIEF

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

a. Determine that the rates established by SFPP, L.P. in the following tariffs for the shipment of refined petroleum products are unjust and unreasonable, thereby violating Sections 1(4) and 1(5) of the Interstate Commerce Act and Section 343.2(c)(1) of the Commission's regulations: FERC Tariff Nos. 194.1.0, 195.1.0, 196.3.0, 197.1.0, 198.3.0, 199.1.0, and 200.1.0;

b. Prescribe new rates that are just and reasonable for the shipment of refined petroleum products on the SFPP pipeline system on the routes specified in the above tariffs;

c. Order SFPP to pay refunds, reparations and damages, plus interest, to Tesoro for shipments made by Tesoro under each of the tariffs specified above from July 1, 2011 through the date on which the Commission resolves the issues presented in this docket and related proceedings;

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

Date: July 20, 2011

Respectfully submitted,

TESORO REFINING AND MARKETING COMPANY

By: /s/ Melvin Goldstein
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CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of July 2011 served the foregoing Complaint of Tesoro Refining and Marketing Company on the persons listed on the Commission's list of Corporate Officials for SFPP, L.P.

/s/ Melvin Goldstein
Melvin Goldstein

EXHIBIT A

EXHIBIT B

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Tesoro Refining and Marketing Company,

Complainant,

v.

Docket No. OR11-_____

SFPP, L.P.,

Respondent

NOTICE OF COMPLAINT

Take notice that on July 20, 2011, Tesoro Refining and Marketing Company (Tesoro) filed a formal complaint against SFPP, L.P. (SFPP) pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 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 (1988); and Section 1803 of the Energy Policy Act of 1992 (EPAct).

Tesoro alleges that because SFPP has over-recovered its cost of service in 2010, and their proposed index-based rate increases exceed the actual decrease in the pipeline's previous-year costs in such a manner that substantially exacerbate that over-recovery, SFPP is not entitled to raise its rates. Tesoro requests that the Commission determine that the rates established by SFPP, L.P. in FERC Tariff Nos. 194.1.0, 195.1.0, 196.3.0, 197.1.0, 198.3.0, 199.1.0, and 200.1.0 are unjust and unreasonable; prescribe new just and reasonable for the SFPP interstate pipeline system; and order SFPP to pay refunds, plus interest, to Tesoro for shipments made by Tesoro under each of the tariffs specified above from July 1, 2011 through the date on which the Commission resolves the issues presented in this docket and related proceedings. Tesoro has also requested that the Commission grant such other, different or additional relief as it may determine to be appropriate.

Tesoro certifies that copies of the complaint were served on the contacts for SFPP as listed on the Commission's list of Corporate Officials.

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 CFR 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.

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: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary