

168 FERC ¶ 61,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

SFPP, L.P.

Docket No. IS19-675-000

ORDER ACCEPTING TARIFF

(Issued July 26, 2019)

1. On June 28, 2019, SFPP, L.P. (SFPP) filed FERC Tariff No. 202.0.0¹ (Tariff), to be effective July 1, 2019. SFPP states that the Tariff establishes an initial local committed rate on newly created expansion capacity between El Paso, Texas and the Annex Terminal in Tucson, Arizona on SFPP's East Line (Expansion Capacity). Western Refining Company, L.P. (Western) and Tesoro Refining & Marketing Company LLC (Tesoro) (collectively, Protesters) protested the Tariff. As detailed below, the Commission accepts the Tariff, to become effective July 1, 2019.

I. The Tariff

2. SFPP states that the committed rate, which is a negotiated rate, results from an open season conducted from May 23, 2019 to June 24, 2019, that offered potential shippers the opportunity to commit to shipping on the Expansion Capacity.² SFPP states that the Tariff reflects the committed rate applicable to movements on the Expansion Capacity by shippers who executed a transportation services agreement with SFPP during the open season. Pursuant to section 342.2(b) of the Commission's regulations,³ SFPP

¹ SFPP, L.P., FERC Oil Tariff, SFPP Tariff Database, Local Comtt RateTariff, FERC 202.0.0, 202.0.0.

² *Id.* On June 27, 2019, SFPP filed a petition for declaratory order with the Commission in Docket No. OR19-29-000 addressing the open season process, the terms of the TSA, and the shipper commitments on the Expansion Capacity resulting from the open season. That petition remains pending before the Commission.

³ 18 C.F.R. § 342.2(b) (2018).

filed a sworn affidavit stating that the committed rate on the Expansion Capacity is agreed to by at least one non-affiliated person who intends to use the service in question.

3. SFPP requests special permission to submit the Tariff on two days' notice under sections 341.14 and 341.2 of the Commission's regulations⁴ so that the committed rate would take effect on July 1, 2019. SFPP maintains that good cause exists for this request because permitting the Tariff to become effective on short notice benefits shippers by allowing SFPP to offer services on the Expansion Capacity as soon as it is available.

II. Interventions, Protest, and Response

4. On July 15, 2019, Western filed a motion to intervene and protest, arguing that the Tariff does not adequately justify the proposed committed rate.⁵ On July 17, 2019, Tesoro Refining & Marketing Company, LLC (Tesoro), together with Western, filed a motion to intervene and a motion to amend the July 15, 2019 protest to add Tesoro as a protester.

5. Protesters contend that the committed rate, as well as the underlying uncommitted rate for transportation along the same route, will result in over-recovery by SFPP.⁶ Protesters state that when a protest is filed against an initial rate submitted pursuant to section 342.2(b), section 342.2(b) requires the pipeline to comply with section 342.2(a) by filing cost, revenue, and throughput data supporting the initial rate.⁷ Protesters state that such data is essential because the committed rate is integrally related to SFPP's base East Line rates, which are subject to ongoing Commission rate proceedings.⁸

6. Protesters further assert that because the Expansion Capacity requires the use of the existing East Line from El Paso to the Annex Terminal, "the pipeline expansion should result in lower rates for existing shippers."⁹ If not, Protesters state that it is

⁴ *Id.* §§ 341.14 and 341.2.

⁵ Protest at 3.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 7.

⁹ *Id.* at 8.

“highly likely that existing shippers would be subsidizing shipments on” the Expansion Capacity.¹⁰

7. Protesters also contend that the open season SFPP conducted for the Expansion Capacity is invalid.¹¹ Protesters argue that under Commission policy, contract rates are only justified where the pipeline requires firm commitments from shippers for financing purposes.¹² Protesters state that facts here indicate that SFPP had already invested in the Expansion Capacity before any party entered into a firm commitment in the open season.¹³ Specifically, Protesters state that the open season concluded on June 24, 2019, and the Expansion Capacity went into service on July 1, 2019.¹⁴ Protesters maintain that the fact that the Expansion Capacity went into service one week after the open season concluded indicates that the construction of the Expansion Capacity was never contingent on securing financing from committed shippers through the open season.¹⁵

8. Protesters also state that according to Commission precedent, contract rates can only satisfy the principle of nondiscrimination when shippers have an equal, non-discriminatory opportunity to enter into contract rates. Protesters contend that the fact that SFPP began service on the Expansion Project only one week after the conclusion of the open season indicates that SFPP did not provide every shipper an equal opportunity to bid on existing capacity.¹⁶

9. Protesters next argue that SFPP has limited the Expansion Capacity to Mexican-grade gasoline and diesel without justification. Protesters claim that SFPP imposed this limitation to take advantage of the investment it made before the open season to upgrade the Annex Terminal to receive Mexican-grade products.¹⁷ Protesters further claim that, although there are numerous types and grades of Mexican petroleum products, SFPP is

¹⁰ *Id.*

¹¹ *Id.* at 10.

¹² *Id.* at 9 (quoting *Colonial Pipeline Co.*, 146 FERC ¶ 61,206, at P 35 (2014)).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 11.

attempting to limit shipments to that terminal on the Expansion Capacity to “only one narrow range” of Mexican-grade product.¹⁸ Protesters claim that these facts are similar to those in *Texaco Pipeline Inc.*,¹⁹ in which the Commission found that a tariff designating a portion of a pipeline for the exclusive use of a special class of shippers violated sections 1(4) and 3(1) of the Interstate Commerce Act (ICA).²⁰

10. SFPP filed a response to the protest on July 22, 2019. SFPP contends that Protesters do not have standing to protest the Tariff because they lack a substantial economic interest therein. SFPP states that Protesters do not qualify as committed shippers and will never pay the committed rate, and thus lack any economic interest in the Tariff. In addition, SFPP argues that Protesters’ attempt to challenge SFPP’s East Line base rates in a protest against an expansion tariff is improper and that Protesters’ challenges to SFPP’s open season are unfounded because the Commission has previously approved open seasons that occurred concurrently with the construction of the project that was the subject of the open season. Finally, SFPP maintains that, if the Commission does not reject the protest, it should deny Protesters request to suspend the Tariff for a full seven months and instead suspend the Tariff for one day.

III. Discussion

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,²¹ all unopposed and timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted. In addition, the motion to amend the protest to add Tesoro as a protester is granted.

12. The Commission concludes that Protesters lack standing to protest the Tariff. Under section 343.2(b) of the Commission’s regulations, “[o]nly persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the [ICA].”²² This standard “is intended to assure that parties protesting a filing have a sufficient interest in the matter to warrant the commitment of agency and

¹⁸ *Id.* at 13.

¹⁹ 74 FERC ¶ 61,071 (1996).

²⁰ Protest at 12-13 (quoting *Texaco*, 74 FERC at 61,201).

²¹ 18 C.F.R. § 385.214 (2018).

²² *Id.* § 343.2(b) (2018); see also *Belle Fourche Pipeline Co.*, 156 FERC ¶ 61,063, at P 18 (2016) (“The key factor in determining standing is the magnitude of the economic stake of the person seeking standing to challenge a proposed rate.”).

pipeline resources to a review of the merits.”²³ The Commission has required persons protesting a tariff filing to “plead their interest with specificity, not generality, in order to establish that they have a substantial economic interest in the tariff they are protesting.”²⁴ Standing in oil pipeline proceedings is based on all the facts and circumstances of the particular proceeding, and there is no bright line test for determining whether a person has a substantial economic interest sufficient to confer standing under section 343.2(b).²⁵

13. The Commission finds that Protesters have failed to establish a substantial economic interest in the Tariff. Protesters are not committed shippers moving Mexican-grade product and thus do not currently ship on the Expansion Capacity. Moreover, Protesters have not claimed any intention to ship any type of Mexican-grade product on SFPP’s East Line from El Paso to Tucson, and Protesters have not made any showing that they will pay the committed rate at any time in the future. Accordingly, the Commission finds that Protesters have not demonstrated an ability and intention to ship on the Expansion Capacity and have not shown that they will ever pay the Tariff’s committed rate.

14. In addition, the Commission rejects Protesters’ cross-subsidization claims as unsupported. Consistent with Commission policy, the committed service described in the Tariff only applies to “newly created expansion capacity.”²⁶ Protesters claim that it is “likely that this contract rate would have some impact on the rates that uncommitted shippers are now being charged,”²⁷ but have not shown that SFPP’s new service will alter SFPP’s East Line base rates or affect the existing service that Protesters receive on SFPP’s East Line. Similarly, Protesters have provided no basis for their assertion that “the expansion should result in lower rates for existing shippers.”²⁸

15. The Commission likewise dismisses Protesters’ objection that SFPP has only offered committed rate service on the Expansion Capacity for specific grades of

²³ *Enbridge Pipelines (Southern Lights) LLC*, 134 FERC ¶ 61,067, at P 11 (2011).

²⁴ *Shell Pipeline Co., LP*, 104 FERC ¶ 61,021 (2003).

²⁵ *Enbridge*, 134 FERC ¶ 61,067 at P 11.

²⁶ SFPP, Tariff Filing, Transmittal Letter at 1.

²⁷ Protest at 8.

²⁸ *Id.* To the extent Protesters are concerned that their existing rates may be improperly subsidizing shipments on the Expansion Capacity, they may file a complaint against SFPP’s East Line rates to that effect.

Mexican-grade gasoline and diesel.²⁹ A pipeline possesses discretion to decide whether or not to offer a particular service and is “only required to provide services that it holds itself out as offering.”³⁰ Thus, it was not unreasonable for SFPP to offer in its open season to transport only specific grades of Mexican-grade product on the Expansion Capacity,³¹ and Protesters have not demonstrated that this limitation grants an unreasonable preference or advantage in violation of the ICA.³²

16. In sum, Protesters are not current or potential shippers on the Expansion Capacity and have not demonstrated that they will pay the committed rate in the future. Furthermore, Protesters have not shown that service on the Expansion Capacity under the Tariff will affect the rate they pay or the service they currently receive on the East Line, and Protesters’ cross-subsidization claims and objections to SFPP limiting service on the Expansion Capacity to particular grades of Mexican-grade product are unpersuasive. The

²⁹ See Protest at 11-13.

³⁰ *CHS Inc. v. Enterprise TE Prods. Pipeline Co., LLC*, 155 FERC ¶ 61,178, at P 14 (2016).

³¹ Moreover, the Commission is not persuaded by Protesters’ challenge to the validity of the open season, which is based solely on the fact that SFPP conducted the open season when development of the project was near completion. Consistent with its policy allowing pipelines and shippers to agree to committed rates for new services resulting from new investment, the Commission has approved rate and service structures derived from open seasons held under similar circumstances. See *Stateline Crude, LLC*, 162 FERC ¶ 61,245 (2018) (approving open season held when project construction was near completion).

³² Protesters cite *Texaco* to support their position, but *Texaco* is inapposite. In that case, the Commission found that a proposed tariff reserving 60 percent of the pipeline’s capacity for firm service by committed shippers paying a rate set at a discount to the applicable uncommitted rate would grant an unreasonable preference to the committed shippers. *Texaco*, 74 FERC at 61,201-02. However, the Commission has since found that, where committed shippers pay premium rates in exchange for firm service, as opposed to discounted rates, any preference is not undue. See *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 48 (2008) (discussing *CCPS Transp., LLC*, 121 FERC ¶ 61,253 (2007) (“As in *Texaco*, Keystone’s proposal guarantees firm capacity at discounted rates and therefore is unduly preferential. This case is unlike *CCPS*, where the firm capacity was supported by premium rates, thus making the preference not undue.”); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008). Here, SFPP set the committed rate at a premium to the uncommitted East Line rate for service from El Paso to Tucson, making any preference to committed shippers not undue.

Commission therefore finds that Protesters do not have a substantial economic interest in the Tariff and, as a result, lack standing to protest the Tariff under section 343.2(b) of the Commission's regulations. As a result, no valid protest to the Tariff has been filed and SFPP is not required to file cost-of-service data supporting the committed rate under section 342.2(b).³³

17. Accordingly, the Commission accepts the Tariff, waives the thirty-day notice requirement in section 6(3) of the ICA, and grants SFPP's request for special permission to submit the Tariff on two days' notice so that it may become effective on July 1, 2019.

The Commission orders:

(A) Pursuant to the authority contained in the ICA, SFPP's FERC Oil Tariff No. 202.0.0 is accepted.

(B) The Commission grants SFPP's request for special permission to submit the Tariff on short notice so that it may become effective on July 1, 2019, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³³ See *Buckeye Linden Pipe Line Co. LLC*, 147 FERC ¶ 61,249, at P 10 (2014) (“Only if the initial rate filing is subject to a valid protest is a pipeline required to support its filing with cost, revenue, and throughput data.”); *Bridger Pipeline LLC*, 130 FERC ¶ 61,100, at P 15 (2010).