

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of SFPP, L.P. for authority,)
pursuant to Public Utilities Code Section 455.3,)
to increase its rates for pipeline transportation)
services within California.)
_____)

Application No. 09-05-014
(Filed May 12, 2009)

And Related Matters.)
_____)

Application No. 08-06-008
Application No. 08-06-009
(Filed June 6, 2008)

**MOTION OF SFPP, L.P. FOR FULL COMMISSION
RECONSIDERATION OF ALJ RULING DENYING REQUEST
FOR ORAL ARGUMENT AND OFFICIAL NOTICE**

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I.

INTRODUCTION

The Proposed Decision (PD) of Administrative Law Judge (ALJ) Bemesserfer was issued on June 22, 2011 in the subject proceedings involving SFPP, L.P. (SFPP). On June 27, 2011, SFPP filed a request pursuant to Rule 13.13 for final oral argument. On July 8, 2011, SFPP filed a motion pursuant to Rule 13.14(b) of our Rules of Practice and Procedure to set aside submission for purposes of taking official notice of Opinion 511 issued by the Federal Energy Regulatory Commission (FERC).

By ruling dated July 20, 2011, the presiding administrative law judge denied SFPP's request for oral argument and its request for official notice of Opinion 511. The request for oral argument was denied on grounds that the issues in controversy in the subject proceedings "largely overlap" issue resolved in other pending Commission dockets (the "ALJ Long" cases) in which SFPP has previously been provided its opportunity for oral argument before the

Commission. The request for official notice was denied apparently on the basis that the FERC opinion at issue is neither relevant nor is it binding upon the Commission. As set forth below, in denying the two motions, the ALJ ruling violates the Commission's Rules of Practice and Procedure and constitutes an abuse of discretion. Consequently, the Commission should reverse the ALJ's ruling and grant SFPP's requests for oral argument and for official notice of FERC Opinion 511.

II.

ARGUMENT

A. SFPP Is Entitled To Oral Argument In Accordance With the Commission Rules of Practice and Procedure.

Rule 13.13(b) addresses the right of a party in a ratesetting proceeding that has been the subject of hearing "to make a final argument before the Commission," reading in pertinent part as follows:

In ratesetting and quasi-legislative proceedings in which hearings were held, a party has the right to make a final oral argument before the Commission, if the party so requests within the time and in the manner specified in the scoping memo or later ruling in the proceeding. A quorum of the Commission shall be present; however, a Commissioner may be present by teleconference to the extent permitted by the Bagley-Keene Open Meeting Act.

These proceedings, in which hearings were held, are all categorized as ratesetting, including complaint cases challenging the reasonableness of rates that are categorized as ratesetting in accordance with Commission Rule 1.3(e). No time limit has been set, either by a scoping ruling or later ruling that precludes the granting of SFPP's request. Consequently, SFPP is entitled as a matter of right to make a final oral argument before the Commission.

The ALJ Ruling, in denying SFPP's request for oral argument, violates Commission Rule 13.13(b). Its rationale for denying SPPP's request neither justifies violation of the Commission's Rules of Practice and Procedure nor is it accurate. The PD, while suggesting that SFPP's request is untimely, expressly indicates that the request is not rejected "on the basis of timeliness." Nor could it be given that neither the scoping memo nor later ruling set a time limit with respect to a request for oral argument.¹

Rather, the ALJ Ruling denies oral argument based upon an incorrect as well as irrelevant assumption that SFPP has previously been afforded an opportunity to make oral argument in a prior Commission proceeding with respect to same matters at issue in the subject proceeding. Even if this were true, it would not be a basis for denying SFPP's right to an oral argument as set forth in Rule 13.13(b), which limits the basis for rejection of oral argument request to lack of timeliness.

Furthermore, it is factually incorrect to state that the "issues in ALJ Long's cases largely overlap the issues in this case." The only common issue between the two proceedings relates to the treatment of income tax allowance. As set forth in SFPP's comments on the PD in the subject proceedings, the matters at issue relate to myriad cost of service issues relating to SFPP's Test Year 2009 cost of service. These issues, among other things, relate to SFPP's forecasted throughput, overhead cost allocations, and cost of capital. It is illogical and unlawful to assume that the ALJ Long cases are the "law of the case" in the subject proceedings with respect to 2009 TY results and somehow govern the outcome of their resolution, under either a theory of collateral estoppel or *res judicata*. The PD itself resolves only the income tax allowance issue by

¹ SFPP disputes any assertion that its request for oral argument is "very late filed, coming some 14 months after submission." The logical time for requesting an oral argument necessarily follows issuance of a PD, which itself came some 14 months after submission.

reference to the ALJ Long cases and certainly does not purport to resolve any other issue in the subject proceedings based upon a theory of collateral estoppel or *res judicata*. While there are common subject areas in both the ALJ Long cases and the subject proceedings, as would be expected with respect to general rate case filing for different periods of time, it is simply incorrect to assert that “the issues in ALJ Long’s cases largely overlap the issues in this case.” (emphasis added).

B. Denial of SFPP’s Request for Official Notice of FERC Opinion 511 Is an Abuse of Discretion.

SFPP does not assert that the Commission is bound by FERC policy precedent or even that the Commission is required to give consideration to any decision, policy, or practice of the FERC. Instead, SFPP has requested official notice of FERC Opinion 511 because it is directly relevant to and inconsistent with an assertion in the PD that it is FERC practice and policy to adjust regulatory capital structure to back out purchase accounting adjustments (PAAs).

[Tesoro’s expert] used KMEP’s reported capital structure as of September 30, 2009, modified by backing out certain purchase accounting adjustments (PAAs) to derive a 2009 regulatory capital structure for SFPP. PAAs are adjustments made to an entity’s capital accounts when additional assets are purchased at a price other than book value. Capital accounts are either written up to reflect a purchase price above book value or written down to reflect a purchase price below book value. In keeping with Federal Energy Regulatory Commission (FERC) methodology [Tesoro’s expert] reversed both sorts of entries to produce a regulatory capital structure for SFPP based on the historic book value of its assets. (emphasis added).²

While the PD may have reasons independent of reference to FERC practice to support its produced reduction of SFPP’s capital structure by backing out PAAs, the rationale as set forth

² PD at 5, fn. 5.

above, i.e. purported consistency with FERC practice, is squarely at odds with FERC Opinion 511, the FERC order for which official notice is sought.

FERC Opinion 511 directly bears on the issue of the FERC's methodology for dealing with PAAs in the context of developing a regulatory capital structure for SFPP. FERC Opinion 511 holds that PAA's should not be excluded from KMEP's capital structure for SFPP, with the relevant discussion beginning at p. 81. Specifically, FERC states the following:

175. The Commission notes that KMEP's capital structure without any modification for the PAA is consistent with the capital structure of other pipelines and does not indicate any excess in the equity component...However, based upon the factors considered in this decision and the more extensive evidence presented by the parties in this proceeding, the Commission concludes that KMEP's capital structure is not distorted by PAAs.³

Consistent with Commission Rule 13.9, FERC Opinion 511 is a matter "as may be judicially noticed by the courts of the State of California." It is relevant to the PD's assertion regarding the FERC's practice with respect to treatment of PAAs in developing regulatory capital structure. There is no basis for denial of SFPP's requests for official notice of FERC Opinion 511.

III.

CONCLUSION

For all of the foregoing reasons, SFPP asks that the Commission reconsider the ALJ's ruling and require the issuance of a revised ruling granting SFPP's request for oral argument and its request for the Commission to take official notice of FERC Opinion 511. A proposed form of order is included as Attachment A hereto.

³ There is no logical basis for the PD's assertion that the FERC opinion can be read to mean that neither including nor excluding PAAs has any distorting effect on capital structure.

Respectfully submitted this 21st day of July, 2011 at San Francisco, California.

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