STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 941023298

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 24-01-020 ET AL.:

This is the proposed decision of Administrative Law Judge Theresa Moore. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's **August 13, 2026** Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC: smt

Attachment

Decision **PROPOSED DECISION OF ALJ MOORE** (Mailed 7/10/2026)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SFPP, L.P. (PLC-9) for Authority to Increase Rates for Transportation of Refined Petroleum Products.	Application 24-01-020
And Related Matters.	Application 23-01-016 Application 22-01-016 Application 21-01-015

INTERIM PROPOSED DECISION DETERMINING SFPP'S EXCLUDED CONNECTED DESTINATION TERMINALS ARE JURISDICTIONAL ASSETS

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INTERIM PROPOSED DECISION DETERMINING SFPP'S EXCLUDED CONNECTED DESTINATION TERMINALS ARE JURISDICTIONAL ASSETS

Summary

In its consolidated applications, SFPP, L.P. (SFPP) seeks to increase its existing rates and charges for intrastate transportation of refined petroleum products for the period covering 2021-2024. This decision finds that SFPP's connected terminals are pipeline system jurisdictional assets per Public Utilities Code § 227. Because SFPP's rate increase applications and evidence do not include the revenue and cost information associated with these jurisdictional terminal assets, this decision finds that SFPP's applications do not comply with all applicable sections of the Public Utilities Code.

SFPP is directed to serve supplemental testimony, as directed by the assigned Commissioner and/or assigned Administrative Law Judge to this proceeding, to include all necessary information related to its rate increase requests between 2021-2024, including SFPP's connected terminal jurisdictional assets and service.

This proceeding remains open.

1. Background

SFPP, L.P. (SFPP or Applicant)[1] is authorized to do business in the State of California as a pipeline corporation as defined by the California Public Utilities Code § 228.[2] According to its filings, SFPP filed its rate requests pursuant to §§ 454 and 455.3 and in accordance with Rules 2.1, 2.2, 3.2, and 7 [*sic]* of the Rules

[1] SFPP was previously named Santa Fe Pacific Pipeline. SFPP's regulated intrastate pipeline network system transports refined petroleum products such as gasoline, diesel, and jet fuel.

[2] All § or Section references are to the California Public Utilities Code, unless otherwise specified.

of Practice and Procedure (Rules)[3] of the California Public Utilities Commission (Commission). SFPP requests that the Commission authorize SFPP's proposal to increase its existing rates and charges for intrastate transportation of refined petroleum products.

This is a consolidated proceeding consisting of four applications filed by SFPP in 2021, 2022, 2023, and 2024 in which SFPP requests to increase its intrastate rates, seeking annual rate adjustments (Applications). Pipeline Shippers have protested each Application. As described below, at the parties' request, the 2021-2023 cases were held in abeyance/stayed pending mediation. After the filing of the 2024 Application, the cases resumed.

1.1. Procedural Background

1.1.1. 2021 Application

On January 28, 2021, SFPP filed Application (A.) 21-01-015, seeking to increase its rates and charges for intrastate transportation of refined petroleum products by an aggregate total of 25.57 percent. Pursuant to § 455.3 and Commission General Order 96-B,[4] Applicant also filed Advice Letter 44-O requesting a 10 percent interim rate increase effective March 1, 2021.

On March 3, 2021, protests to A.21-01-015 were filed by Tesoro Refining & Marketing Company LLC (Tesoro), and Chevron Products Company, Phillips 66, Southwest Airlines Co., and Valero Marketing and Supply Company (Joint Protestants). Motions for Party Status were filed by American Airlines, Inc., Delta Airlines, United Airlines, Inc. (Airline Protestants) (Motion filed March 3,

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[3] Article 7 of the Rules contains Rules 7.1 -- 7.6.

[4] Section 455.3 and Commission General Order 96-B permit an oil pipeline corporation to increase rates by 10 percent on an interim basis, subject to refund, upon the filing of an Advice Letter and 30 days' notice.

2021, granted April 27, 2021), PBF Holding Company LLC (Motion filed February 17, 2022, granted April 22, 2022), Pilot Travel Centers LLC, Pro Petroleum LLC, and Southern Counties Oil Co. (Pilot Shippers) (Motion filed March 9, 2022, granted April 21, 2022).[5]

On March 15, 2021, SFPP filed a reply to the protests filed.

A prehearing conference (PHC) was held on May 13, 2021. On September 20, 2021, an assigned Commissioner's Scoping Memo and Ruling was issued setting forth the category, need for hearing, scope and schedule of the proceeding including dates for the evidentiary hearing (EH) to commence on January 18, 19, 20, and 21, 2022 and February 1, 2, and 3, 2022. Discovery proceeded. A Status Conference was held on December 9, 2021 to assess readiness for evidentiary hearing. On December 27, 2021 the scheduled hearing dates were vacated. Following a March 11, 2022 Status Conference the EH was rescheduled for August 30-31, 2022, September 1, 2022, and September 6-9, 2022. On August 1, 2022, the hearing dates were vacated, and Application 21-01-015 was referred to the Commission's Alternative Dispute Resolution (ADR) Program.

1.1.2. 2022 Application

Applicant filed A.22-01-016 on January 28, 2022, seeking to increase rates by 10 percent effective March 1, 2022 and, concurrently, filed Advice Letter 46-O requesting an interim rate increase of 10 percent effective March 1, 2022.

On March 9 and March 10, 2022, protests to A.22-01-016 were filed by the Pilot Shippers, Joint Protestants, and Marathon Petroleum Company LP (Marathon).

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[5] PBF Holding Company LLC and Pilot Shippers filed Motions for Party Status after the original EH dates were continued, and the 2022 Application and Advice Letter 46-0 were filed.

On March 23, 2022, SFPP filed a reply to the protests.

A PHC was held on April 11, 2022, and an assigned Commissioner's Scoping Memo and Ruling was issued on August 11, 2022, wherein the Commission stayed A.22-01-016 until the final decision on A.21-01-015 issued. On August 19, 2022 the parties were referred to the Commission's Alternative Dispute Resolution (ADR) Program to join the resolution process with A.21-01-015.

1.1.3. 2023 Application

Applicant filed A.23-01-016 on January 27, 2023, seeking to increase rates by 12.93 percent and, concurrently, filed Advice Letter 49-O requesting an interim rate increase of 10 percent effective March 1, 2023.

On March 2, 2023, Marathon, the Pilot Shippers, and the Joint Protestants each filed protests to A.23-01-016. PBF Holding Company LLC sought and received party status.

On March 13, 2023, SFPP filed a reply to the protests.

A PHC was held on April 28, 2023, to discuss the category, need for hearing, scope and schedule of the proceeding. At the request of the parties before preparing a procedural schedule, A.23-01-016 was placed in mediation with A.21-01-015 and A.22-01-016, facilitated by the Commission's ADR Program. The Commission extended the applicable statutory deadlines in those proceedings as necessary so that the ADR process could continue.[6]

[6] *See* Decision (D.) 22-07-017, D.23-05-017, D.23-08-011, D.23-11-018, D.24-03-016, D.24-03-017, D.24-07-024, and D.26-03-030.

1.1.4. 2024 Application and Consolidation

Applicant filed A.24-01-020 on January 30, 2024, seeking to increase rates by 18.663 percent and, concurrently, filed Advice Letter 51-O requesting an interim increase of 10 percent effective March 1, 2024.

The Pilot Shippers, Marathon, and the Joint Protestants filed protests to A.24-01-020 on February 29, March 7, and March 8, 2024, respectively. PBF Holding Company LLC filed a motion for, and was granted, party status.

On March 18, 2024, SFPP filed a reply to the protests.

On June 21, 2024, a PHC was held to determine parties, discuss the scope, schedule, and other procedural matters. In addition, during the PHC parties discussed whether A.21-01-015, A.22-01-016, A.23-01-016, and A.24-01-010 (Applications) should be consolidated.

On August 16, 2024, an assigned Commissioner's Scoping Memo and Ruling was issued (Consolidated Scoping Memo). After considering the Applications, protests, the parties' July 11, 2024 joint statement, and discussion at the June 21, 2024 PHC, the Scoping Memo determined that consolidation of the proceedings would facilitate an efficient and consistent resolution of each proceeding, minimizing the unnecessary use of Commission and party resources. Accordingly, each of the above-captioned proceedings was ordered consolidated for all purposes, with A.24-01-020 designated as the primary proceeding number.

On October 7, 2024, SFPP served its direct and supplemental direct testimony, with additional prepared supplemental direct testimony on December 2, 2024. Protestant (Marathon) served supplement reply and reply testimony on March 4, 2025. Protestant (Joint Protestants) served supplemental reply and reply Testimony on March 3, 2025. SFPP served supplemental rebuttal and rebuttal testimony on April 26, 2025 with additional supplemental rebuttal Testimony on May 2, 2025.

Joint Protestants filed a motion to compel discovery on December 12, 2024. The motion to compel was filed after SFPP served objections to the discovery, and after the failure of the required meet and confer sessions. In the motion to compel, Protestants presented their reasoning and offer of proof behind their request for discovery, and the issue of whether the pipeline connected terminals are in fact jurisdictional assets pursuant to § 227. SFPP filed its opposition response on December 23, 2024.

On January 10, 2025, Joint Protestants filed a Motion to Hold the Deadline to File Supplemental Reply and Reply Testimony in Abeyance or in the Alternative Grant An Extension, and further requested to hold in abeyance or extend the time on the current schedule due to the significant delays in SFPP's production of discovery. On January 21, 2025, SFPP filed its response opposing the motion for abeyance or extension of time. On January 27, 2025, the ALJ denied the motion opposed by SFPP to hold the deadline in abeyance but granted an extension to serve supplemental reply and reply testimony.

On April 3, 2025, Joint Protestants and Pilot Shippers filed an unopposed motion for supplemental testimony. On April 9, 2025, the ALJ granted the unopposed motion and extended the agreed upon amended schedule to propound discovery and to submit testimony. The requested dates were given for Joint Protestants' supplemental reply and reply testimony.

On June 9, 2025, a Status Conference took place with all parties present. At that conference, the ALJ stated that if counsel wanted, they were welcome to file motions for additional time for hearing or preparation.

Evidentiary hearings took place as scheduled in person June 16 through June 20, 2025, in San Francisco. The terminal assets were at issue in the served written testimony, as well as the hearings, where documentary evidence and testimony were admitted and witnesses were cross-examined under oath.

On July 15, 2025, parties filed a Joint Motion for Adoption of Stipulated Post-Hearing schedule, which included Briefing on the terminal jurisdictional asset issues. On July 25, 2025, SFPP filed a Motion to Strike the Written and Oral Testimony of Mr. Michael Tolleth Addressing the Jurisdictional Status of SFPP's Terminal Facilities. On July 28, 2025, the parties filed a Joint Submission of Outline of Disputed Issues for Pipeline and Terminal Briefs, and a Joint Summary of Positions on Disputed Issue. On August 8, 2025, the ALJ filed a Ruling Granting Joint Motion for Adoption of Stipulated Post-Hearing Schedule and Joint Motion to Correct Transcript.

On September 19, 2025 Applicant SFPP, and Joint Protestants, Pilot Shippers and Marathon (together herein as Protestants or Shippers) filed Opening Briefs on the California Terminals Jurisdictional Assets, and on October 17, 2025 filed their Closing Briefs on the California Terminals Jurisdictional Assets.

On November 14, 2025 Applicant SFPP, and Joint Protestants, Pilot Shippers and Marathon filed Opening Briefs on the Pipeline rates issues, and on January 12, 2026 filed their Closing Briefs on the Pipeline rates issues.

On February 2, 2026 the last of multiple motions was filed.

1.2. Factual Background

SFPP, L.P. is a common carrier pipeline that transports refined petroleum products in California and has intrastate tariffs on file with the Commission.

Kinder Morgan Operating LLC "D" is the general partner of SFPP. [7] From its inception in the 1950s, SFPP has evolved into a critical transportation artery for California's refined products. SFPP operates as a pipeline common carrier of refined petroleum products in six states, including California. SFPP's California intrastate pipeline system includes: (1) the North Line, which consists of approximately 864 miles of pipeline in five segments that transport refined petroleum products from Bay Area refineries at Richmond and Concord, California, to Brisbane, Sacramento, Chico, Fresno, Stockton, and San Jose, California; (2) the San Diego Line, a 135-mile pipeline serving major population areas in Orange County and San Diego, California; and (3) the West Line, which consists of approximately 515 miles of primary pipeline and transports refined petroleum products from the Los Angeles Basin to destinations in California and out of state, as well as a connection at Colton to out of state.[8]

Integral to its pipeline operations, but excluded from its cost-of-service, rate base, and revenues in the current rate Applications, SFPP owns and operates connected destination terminals, which provide short-term product storage that facilitates necessary originations and deliveries along its Commission-jurisdictional pipeline systems, as well as truck loading, vapor handling, additive injection, dye injection, and oxygenate blending.[9] These available, requested, and necessary services are at customer requests and often

[7] In 1998, Santa Fe Pacific Pipeline Partners, L.P. was purchased by Kinder Morgan Energy Partners, L.P. After the acquisition Santa Fe Pacific Pipeline Partners, L.P. became SFPP. (D.97-10-071, Final EIR 1998 SFPP) Kinder Morgan Operating LLC "D" is the general partner of SFPP.

[8] A22-01-016 SFPP Application at 5, August 11, 2022 Scoping Memo at 2.

[9] JP Opening Brief (OB) (Terminal) at 34; See Exhibit No. JP-MRT-0072.

legally required by California. The terminals in question can be found in terminal and station destination locations throughout the pipeline in California.

SFPP owns the predominant amount of terminal and related tankage facilities at all its origins and destinations. The use of these facilities is necessary for all shippers who have product to be transported on SFPP's intrastate system. SFPP is the only provider of terminal facilities capable of accepting deliveries at a minimum of six of SFPP's destinations.[10] At these destinations, shippers are thereby restricted to utilizing only SFPP terminals to obtain transportation service on SFPP's pipeline system. For destinations where both third-party terminals and SFPP storage facilities exist, some shippers must use SFPP's terminal tankage because third-party tankage is not sufficient to handle all deliveries. The third-party facilities are not always capable of handling all the deliveries to such destinations, such that the SFPP terminal facilities are required to facilitate transportation to these destinations.[11]

As a result, shippers are required to secure terminal storage in advance to transport product on SFPP's pipelines. SFPP has terminal agreements and requirements with its shippers governing this storage.[12] The SFPP terminals are marketed to interested entities. The evidentiary record shows that SFPP has terminal contracts with multiple and varied customers.[13,14] SFPP's terminal contracts make terminal operations available to all shippers, as evidenced by

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[10] *Id.* fn 73, 74

[11] *Id. at 28-30*

[12] *Id.* at 30-31

[13] JP Closing Brief (CB) (Terminal) at 16; Exhibit Nos. JP-MRT-0094 at 24, 26; JP-MRT-0095 at 1, 30; JP-MRT-0096 at 26-27; JP-MRT-0098 at 24-25, 28; JP-MRT-0099 at 26, 28; and JP-MRT-0100 at 27, 29. SFPP Opening Brief at 66.

[14] Reporter's Transcript (RT*)*. Vol. 1, at 184:8-9.

SFPP's terminaling agreements and descriptions of the facilities. SFPP markets its services through its advertising brochure, as well as by marketing the terminals on its website.[15]

With regard to newer products, such as Renewable Diesel (RD), SFPP conditions shippers' ability to ship RD, and requires multiple conditions, including long term terminal contracts, and minimum commitments,[16] which guarantees RD related terminal capital costs. This includes work at the terminals to allow terminals to receive RD from SFPP's pipeline system and segregate the RD from other products being handled at the terminals.[17]

After any necessary storage, services or treatments such as the aforementioned truck loading, vapor handling, additive injection, dye injections and oxygenate blending, the product is then delivered to the customer.[18]

There is no separation between the corporate management that makes strategic, financial, and operational decisions for SFPP's regulated pipeline system and its terminal operations.[19]

1.3. Submission Date

The matter was submitted on January 12, 2026, upon submission of closing/reply briefs.

2. Jurisdiction and Burden of Proof

The Commission has jurisdiction over the activities of public utilities.[20]

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[15] Exhibit SFP-21 006679; JP (OB) (Terminal) at 34; Exhibit No. JP-MRT-0072.

[16] JP OB (Terminal), at 30, fn 82.

[17] *Id*. at 30-32, 59; RT 272:17-273:21 (Sanborn).

[18] *Id.* at 34; fn 95

[19] *Id.* at 59 fn. 157; RT. 292:21-293:9 (Sanborn).

[20] Section 216(a).

Section 451 provides that "all charges demanded or received by any public utility … shall be just and reasonable." Pursuant to § 454(a):

> a public utility shall not change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.

It is well-established that, as the applicant, SFPP must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. SFPP has the burden of affirmatively establishing the justness and reasonableness of all aspects of its application.[21] The Commission has held that the standard of proof the applicant must meet in rate cases is that of a preponderance of the evidence.[22] Preponderance of the evidence usually is defined "in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.'"[23]

As the Applicant, SFPP has the burden of affirmatively establishing, by a preponderance of the evidence, the justness and reasonableness of all aspects of its request. Should the Protestants provide evidence raising a reasonable doubt as to the justness and reasonableness of their request, SFPP must respond and overcome this doubt. If it does not, then it has not met its ultimate burden of proof.[24] Although the utility bears the ultimate burden to prove the reasonableness of the relief it seeks and the costs it seeks to recover, the Commission has held that when other parties propose a different result, they too have a "burden of going forward" to produce evidence to support their position

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[21] D.09-03-025 at 8; D.06-05-016 at 7.

[22] D.09-03-025 at 8; D.06-05-016 at 7.

[23] D.08-12-058 at 19, citing Witkin, Calif. Evidence, 4th Edition, Vol. 1 at 184.

[24] Section 451, 454(a), D.21-08-036 at 9-10.

and raise a reasonable doubt as to the utility's request.[25] This does not shift the burden of persuasion.[26] If a reasonable doubt is raised, the initial party must rebut the evidence to meet its burden of persuasion. A party has an obligation to introduce evidence to avoid a ruling against it.[27] Generally, the burden of producing evidence is initially on the party bearing the burden of proof.[28]

Since the evidence and arguments in this proceeding are voluminous,[29] the discussion in this decision focuses on the major points of contention and does not provide detailed summaries of the evidence and arguments for every issue. However, we have reviewed and considered the exhibits in this proceeding pertaining to each section, the evidentiary hearing transcripts, and all the arguments raised by the parties, in deciding the revenue requirements and related policy directives adopted in this decision.

3. Issues Before the Commission

The August 16, 2024, Consolidated Scoping Memo determined that the following four issues were raised by the consolidated Applications:

1. Do the Applications and the proposed rate increase requests comply with all applicable Pub. Util. Code Sections, General Orders, Rules, and Commission decisions such that the Application should be approved?

[25] D.20-07-038 at 3-4; D.87-12-067 at 25-26, 1987 Cal. PUC LEXIS 424, *37.

[26] *See* Cal. Jur. 3d Evidence § 99; Evid. Code § 550, Law Revision Commission Comment.

[27] *See* California Evidence Code section 110.

[28] *See* California Evidence Code section 550.

[29] Marathon Reply Brief (RB) (Terminals) at 4."Copious exhibits were entered into the record of this proceeding (over 100 exhibits from each party and nearly 300 from Joint Protestants), many of which include terminal discovery documents obtained from SFPP through discovery. The evidentiary record also includes hundreds of pages of hearing transcripts transcribed during the week of evidentiary hearings."

2. Are the proposed rate increases reasonable and in the public interest?
3. Are there any safety considerations?
4. Impacts on environmental and social justice communities, including the extent to which the proposed rate increases impact the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.

Only issues one and two are contested.

4. Oil Pipeline Destination Terminals are Commission-Jurisdictional Assets

The primary issue before the Commission in this decision is whether Commission regulated SFPP Pipeline's jurisdictional assets include connected destination terminal facilities and services pursuant to § 227.[30] In this case, the issue came to light when discovery revealed to Protestants that SFPP appeared to be using its connected destination terminal facilities to provide jurisdictional services in connection with SFPP's transportation service, but without subjecting such service to the Commission's regulatory oversight.[31] The terminals in question can be found in terminal and station locations throughout the pipeline in California.[32] In the past, SFPP treated these facilities as largely non-

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[30] For clarification we refer to the terminals in question as the "connected" or "excluded" or "terminals" which are destination terminal facilities.

[31] Joint Protestants sought to compel information related to SFPP's terminal assets and operations to investigate "an effective 'tying arrangement' requiring [SFPP's] storage customers to use SFPP's jurisdictional transportation assets at certain levels in order to retain their terminal storage position. Joint Protestants' Motion to Compel [Public Version] (Dec. 12, 2024), at 23, https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M549/K057/549057618.PDF.

[32] SFPP, L.P. Opening Brief (OB) (Terminals) at 20; Exhibit SFPP-EGW-0034, noting "Non-Carrier" terminal assets at the following 14 terminal and station locations: Bradshaw, Brisbane, Chico, Colton, Fresno, Imperial, Mission Valley, Niland, Oakland, Ontario, Orange, Roseville, San Jose and Watson. JP-MRT-0072 at 4, 12-17, 25-29.

jurisdictional, which the Commission and SFPP's customers accepted without opposition or investigation. Beyond the jurisdictional issue of destination terminals, parties do not dispute whether SFPP appropriately included all other pipeline assets in its rate increase Applications. It is also undisputed that SFPP is a pipeline corporation and public utility regulated by the Commission.

As explained below, Protestants successfully satisfied their burden of producing evidence establishing that the connected destination terminals are necessary, Commission-jurisdictional assets. SFPP failed to provide sufficient record evidence to rebut the evidence put forward by Protestants. The evidence, or lack thereof, presented by SFPP was not sufficient to sustain its burden in light of all the evidence presented.

Because SFPP's terminals are determined to be Commission-jurisdictional assets, and since SFPP excluded these terminal assets from its cost of service and related revenue requirement showings in this consolidated proceeding, SFPP's Applications are incomplete. SFPP is directed to serve supplemental testimony to include all necessary information related to its rate increase requests between 2021-2024, including SFPP's connected terminal jurisdictional assets and service, for further consideration by the Commission. The assigned Commissioner and/or assigned Administrative Law Judge to this proceeding will provide further instruction on the schedule and process for service of this supplemental testimony following the issuance of this decision.

4.1. Applicable Law

We turn now to the analysis of jurisdictional assets to determine if the proposed rate increase requests "comply with all applicable Pub. Util. Code Sections, General Orders, Rules, and Commission decisions such that the Applications should be approved," as provided in Issue 1 in the Scoping Memo.

The first step is for the Commission to determine what are the jurisdictional assets of the SFPP pipeline system operation, and are the excluded terminal assets included in that operation. If the excluded terminal assets fall within the statutory definition of § 227, such assets would be regulated in the same manner as the pipeline transportation operations, so long as such assets were also dedicated to public service.[33]

4.1.1. Party Positions

SFPP asserts that: (1) the terminals have never been considered as a Commission-jurisdictional asset; (2) its excluded terminal operations are beyond the scope of those which it performs as a pipeline corporation; (3) the services performed and provided at the connected terminals do not fit within the definition of pipeline under § 227; (4) the properties which are employed in the terminal operations have never been dedicated to public use; and (5) that said operations and the financial results thereof should have no bearing on the pipeline services.

SFPP's witness Mr. Sanborn[34] testified that SFPP's pipeline system has adequate breakout tankage and other facilities at all of its origin points and delivery points to allow SFPP to provide transportation services without any involvement from SFPP's terminals.[35] SFPP also contends that certain services performed by the connected excluded terminals are ancillary to the pipeline and preclude them from falling within the confines of § 227.

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[33] Section 211, 216 (a)(1), 228.

[34] On April 25, 2025, SFPP served its Supplemental Rebuttal Testimony. SFPP's witnesses included KMI personnel Mr. Daniel Sanborn, Mr. Charles Childs, and Mr. Michael Hanak; SFPP also submitted testimony from Mr. Erik Wetmore, Ms. Jacquelyn Woods, and Dr. Michael Webb, all outside consultants.

[35] Exhibit No. SFPP-DWS-0025 at 41:8-43:6 (citing to Exhibit No. JP-MRT-0020 at 154:6-9).

Protestants' argument, on the other hand, is that SFPP's excluded terminals are used to facilitate the delivery of the petroleum products which are transported through the company's pipeline; that the revenues from the terminals are generated by using the same public utility properties used in the transportation operations; and that the terminals are an integral and unavoidable part of the transportation process, and should be accounted for and treated as part and parcel of the pipeline system. Protestant Shippers provided specific evidence, and testimony of Mr. Tolleth who discussed in detail, among other things, SFPP's connected terminal operations, their interconnectedness with SFPP's carrier operations;[36] and how SFPP's terminal operations play a significant role in SFPP's transmission of petroleum products in California.[37]

4.1.2. Discussion

Our analysis begins with the statutory language. In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.[38] In examining the statutory language, we give the words "their usual, ordinary and commonsense meaning." If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, we may then look to a variety of extrinsic sources, including the ostensible objects to be achieved and the legislative history.[39]

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[36] Exhibit No. JP-MRT-0020 at 8:10-12.

[37] *Id*. at 154:16-23 (citing to Resolution O-0043 at 8 (Oct. 24, 2002) (Commission Energy Division explaining, with respect to a SFPP proposed rate increase, that comprehensive information is needed to properly assess whether a carrier "actually needs to increase its rates to maintain a reasonable rate of return.")) at 155:3-6, 156:3-16.

[38] *Day v. City of Fontana* (2001) 25 Cal. 4th 268, 272.

[39] *Day v. City of Fontana*, supra, 25 Cal. 4th at 272.

The issue at hand is whether SFPP's connected but excluded terminals qualify as a component of the SFPP pipeline under § 227. The role of the terminals in the pipeline system is pertinent to the discussion. It is undisputed that the excluded terminal properties in question are all owned, controlled, operated, or managed by SFPP. At this stage, the inquiry is limited to applying the statutory text as written to determine whether the property and services in question meet the criteria of § 227 to qualify as a component of the pipeline.

Section 227 defines a "pipe line" to include:

> [A]ll real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipe lines.

To begin, it is noted that the entire language of the statute is written in a broad manner to include multiple aspects of the entire operational system of a pipe line, including the four activities of "transmission, storage, distribution, or delivery." The defined property included in those actions are also similarly described in such a broad manner as to include "all real estate, fixtures, and personal property...," using the word "all" to include all manner of property within each realm. The defined property is property "owned, controlled, operated or managed…", again to include any means of control. And finally, the defined property need not actually do the four activities of operation, as the definition includes property that merely "facilitates or is managed in connection with," the four activities, once again, giving a broad swath definition to capture a large spectrum. Specifically of note is that the sections do not exclude anything, except for water, going through the pipes. The legislature could have chosen to exclude terminals, but it did not.

SFPP argues it has never included the excluded terminals in its jurisdictional assets, that these connected terminals are referred to in-house as non-carrier assets, and that the excluded terminals may only fall within the confines of § 227 if their function occurs "*as*" the crude oil is going through the pipeline.[40] We decline to read or insert into the statute a temporal requirement of simultaneous flowing of oil. The plain, ordinary meaning of the verbiage within the statute governs, and in looking at the whole of the statute, it is contradictory to the commonsense meaning to add "as" the oil is flowing. These terminals are at the destination or delivery portion of the pipeline, and § 227 specifically includes distribution and delivery as a function of the pipeline and its assets in connection with or to facilitate such functions. The evidence shows that certain services or functions regularly must take place in the terminals before the product can be onloaded or offloaded from the pipeline company's property and delivered to the customer.[41] Nor is it a reasonable interpretation to place a specific limitation with such broadly worded functions contained within the statute, where the legislature has not placed limitations. The legislature did not exclude terminals, nor did they make any distinctions surrounding the movement of the product through the system.

In addition to the plain meaning of the language in § 227, in practice SFPP's pipeline operations are co-dependent on its terminal operations. Protestant Shippers contend they must secure connected terminal storage in advance to transport product on the SFPP's pipeline. SFPP's tariff provisions require that shippers or anyone taking delivery of petroleum products have a

[40] SFPP OB at 16-17; CB at 22.

[41] SFPP OB at 30.

home on a pipeline-connected tank for that delivered barrel.[42] SFPP therefore effectively ties its terminal operations to its jurisdictional transportation operations, making each co-dependent on the other. Because SFPP is the only provider of terminal facilities capable of accepting deliveries at a minimum of six of SFPP's destinations, Shippers are restricted to utilizing only SFPP's terminals to obtain transportation service on SFPP.[43] For destinations where both third-party terminals and SFPP storage facilities exist, some shippers must use SFPP's terminal tankage because third-party tankage is not sufficient to handle all deliveries.[44]

In short, the evidence shows that, in the majority of the instances, customers are not free to ship product without being required to use the SFPP terminals, even where third party terminals exist. Therefore, Shippers are functionally restricted to utilizing SFPP terminals to obtain adequate transportation service on SFPP.[45]

SFPP also contends that the services performed and provided at the connected terminals do not fit within the definition of pipeline under § 227. SFPP argues that the connected excluded terminals are "located at the terminus of SFPP's pipeline system and are used to provide elective services to customers following the completion of transportation on SFPP's pipeline system." SFPP

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[42] JP OB at fn 69; RT 223:7-225:10 (Sanborn); See Exhibit No. SFPP-DWS-0025 at 24:8-13 (SFPP witness Sanborn explaining how the carrier's tariff (Item 60) requires all shippers to have a home for deliveries of product shipped on its system such as RD).

[43] *See* Exhibit No. JP-MRT-0020 at 156:4-16 (Brisbane, Bradshaw, Chico, Fresno Imperial, Mission Valley, and Orange).

[44] *Id.*

[45] RT 223:7-225:10 (Sanborn), *See* Exhibit No. JP-MRT-0020 at 156:4-16 (Brisbane, Bradshaw, Chico, Fresno Imperial, Mission Valley, and Orange).

provides examples of a gasoline additive, and a red dye injection service provided at the terminal for an additional fee before the product is distributed to its destination.[46] However, the argument is not persuasive, since this service occurs before gasoline is loaded onto a truck at a terminal truck rack and before delivery to the customer.[47] SFPP argues that these services are elective and unrelated to the operation of SFPP's pipeline system. SFPP fails to recognize that in both instances, the product is added while under the control of SFPP and on its connected property, and as enunciated in its example, the service occurs before the product is delivered or offloaded to the customer. Indeed, shippers do not have the option to forego these services as a legal or practical matter and must pay the additional service fee. Certain additives are legally required by California law,[48] others are requested by the customer, and all must be completed before transfer and delivery to the customer, easily falling into the § 227 requirement of "managed in connection with or to facilitate the transmission, storage, distribution, or delivery."

Ultimately, if a pipeline activity takes place, SFPP collects a terminal throughput fee for taking delivery of the product and also collects unregulated fees for the above described "ancillary" services performed at the terminal. SFPP's description of ancillary is a misnomer, as these services are necessary

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[46] SFPP OB at 30-31.

[47] *See* SFPP OB at 30; citing Exh. JP-010 at 5-10, which contains a rate escalation sheet for all of the elective terminal services that SFPP offers one of its customers at its terminals. On Page 5 of this exhibit, Lines II.A, B and C show the terminal fees that SFPP charges this customer for injection of a generic gasoline additive versus a proprietary gasoline additive.

[48] Under California law gasoline in California has a required oxygen content, and currently most gasoline in California contains 10 percent ethanol by volume. Red dye is a required addition to diesel fuel sold in California that is for nontaxable, off highway use such as farm equipment.

and unavoidable for the customer and must take place before offloading the product from the pipeline system. As SFPP's witness Sanborn generally affirmed, in almost all instances the only way to avoid paying for any services offered at one of SFPP's pipeline-connected delivery terminals would be to simply not use the terminal at all.[49] It is impossible for a shipper to avoid these services where it ships product by pipeline to destinations where SFPP owns the only available pipeline-connected terminal.

In addition, SFPP requires terminal agreements with its shippers. SFPP witness Sanborn confirmed that certain tying arrangements of these terminal agreements on the Commission-jurisdictional pipeline applies to the shipment of all petroleum products shipped on SFPP's system, including jet fuel, motor gasoline, and diesel.[50] RD shipments require multiple conditions including long-term contracts to receive service from SFPP's pipeline system, guaranteeing RD related terminal capital cost.[51] These agreements, and their amendments, demonstrate that unregulated terminal operations provide a fertile environment for monopolistic conduct and discriminatory pricing.[52] The evidence shows that SFPP's owned and controlled terminal assets have been managed with the purpose of facilitating the interrelated transportation, storage, delivery, and distribution of petroleum products with California.[53]

In summary, terminal facilities assets and services fall within the definition of § 227 and are a part of the pipeline operation system and process

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[49] JP OB (Terminals) 9/19/2025 at 36; RT 228:10-12 and 229:10-12 (Sanborn).

[50] JP OB (Terminals) at 29-30 citing RT 272:17-273:21 (Sanborn).

[51] *Id.* at 30, fn 82.

[52] *Id.* at 3-4.

[53] *Id.* at 30-32

because these terminal services are necessary, requested, and often legally required before receipt of the product by the customer. The statutory language within § 227 provides a definitive and broad definition, that clearly includes terminals and their services. Terminal assets are also managed in connection with, or to facilitate the "storage, delivery, [and] distribution" of petroleum products. Once oil leaves SFPP's property and control, it is no longer considered on the SFPP pipeline, but until then, it is part of the regulated pipeline facility, the public utility pipeline. We therefore find that the terminal facilities are functionally necessary to offtake product from the pipeline before it can be received and placed into storage or tankage, or transferred to truck racks, pipes or rail etc., for delivery,[54] and, based on the evidence, that these assets fall within the definition of § 227.

4.1.3. Statutory Purpose in Public Interest

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, in an abundance of caution, we test our conclusion against the apparent general purpose of the statute.[55] Since inclusion in the pipeline is a statutory regulation, our resolution of this issue requires that it ultimately be decided in the public interest, and we look to the general ostensible purposes in the public interest of these statutes. The California Supreme Court provides guidance that one may look to extrinsic sources, including the ostensible objects of the statute and legislative history, and "select the construction that comports most closely with the apparent intent

[54] Marathon OB (Terminals) at 5. fn 27. *See* RT Vol. 2, at 224-225 (discussing how the rate of flow off a pipeline necessitates intermediate delivery to a terminal prior offloading for receipt via rail, pipe, truck, etc.).

[55] *See* Day v. City of Fontana, 25 Cal. 4th at 274.

of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."[56] With a scarcity of legislative history, we also look to the history at the relevant time. In the 1980's California clarified its regulatory framework for utilities and energy infrastructure, following record high prices post the 1979 energy crisis. In 1980 the legislature repealed the warehousemen statute for operators of storage facilities that are not also pipeline corporations from Commission jurisdiction, while specifically retaining public utility status for pipeline corporations with such facilities.[57] The apparent intent was to capture or retain the full scope of pipeline corporation operations. The broad statutory definition ensures that components of an oil transportation operation system, not just the physical pipe, are subject to Commission oversight. This is important because it prevents companies from avoiding regulation by claiming certain assets are not part of the pipeline, and ensures reliability, and uniform standards across the entire system.

Pipelines carrying crude oil and similar substances pose significant environmental and public safety risks. By defining the term expansively, the ostensible purpose is to give regulators the authority to oversee pipelines carrying crude oil and similar substances that pose public risks. By defining the term expansively, the legislature gave regulators the authority to oversee the entire pipeline operation system.[58]

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[56] *Ibid*. *Day v. City of Fontana*, supra, 25 Cal. 4th at 272.

[57] *See* D.22-12-022, *Zenith Energy W. Coast Terminals LLC* (Dec. 2, 2022).

[58] The safety of liquid pipelines such as crude oil and products pipelines is regulated by a number of different agencies, including the State Fire Marshall.

Oil pipelines are critical infrastructure. The broad definition supports the oversight of reasonable returns for the pipelines. This regulatory compact between California and the pipeline seeks to prevent monopolistic or discriminatory practices, and ensures fair access to pipeline systems, while maintaining stable energy transportation markets.

Application of settled principles of statutory construction compels us to promote rather than defeat the general purpose of a statute. We conclude, based on the evidentiary record, that §§ 227-228 includes SFPP's connected excluded destination terminals and their services.

4.2. Consistency with Prior Decisions

In 2022, the Commission relied on and confirmed the appropriateness of such a statutory analysis in addressing the jurisdictional status of similar terminals facilities in *Zenith Energy West Coast Terminals LLC.* (*Zenith*).[59] In *Zenith,* the Commission found that because the storage tanks and terminal assets were managed "in connection with" the pipelines to facilitate delivery, the entire facility fell under the definition of a pipeline per § 227.[60]

The Commission's recent determination in *Zenith* supports a finding that SFPP's terminal assets are jurisdictional. In *Zenith*, an entity owning and controlling 127 miles of pipeline (of which 52 miles were operational) and providing oil terminaling and storage services to third-party customers sought to remove its designation as a public utility. *Zenith* pointed to a series of transactions that split the Commission-regulated pipeline infrastructure from the terminal and storage services now provided by *Zenith*. As here, *Zenith*

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[59] D.22-12-022, *Zenith Energy W. Coast Terminals LLC* (Dec. 2, 2022).

[60] *Id*. at 4-5.

claimed that any pipeline transportation services it continued to provide were merely incidental to its terminaling and storage services. The Commission's decision denied *Zenith*'s application, finding that its operations squarely fall within the definition of "pipeline corporation" under § 228 and "pipe line" under § 227. The Commission emphasized that, "the determination of whether an economic activity is within the Commission's jurisdiction is a question for the legislature." Having concluded that *Zenith* and its facilities and services clearly fall within a plain reading of the statutes applicable to a jurisdictional determination over *Zenith*'s terminal facilities, the Commission could not remove the public utility designation "without infringing on the legislature's authority to determine what constitutes a public utility."

SFPP attempts to distinguish *Zenith* by relying heavily on its own *Arco Products* cases.[61] We reject the accuracy of SFPP's blanket assertion that "[t]he Commission's prior finding that non-carrier terminal assets are not jurisdictional."[62] SFPP relies on the fact that the Commission did not question its treatment of these facilities in the past and in one case allocated environmental costs to SFPP's terminal operations. A review of the above decision relied on by SFPP plainly shows that the Commission never engaged in any jurisdictional analysis of SFPP's terminal operations. The Commission therein characterized the divisions of SFPP's California operations as between "California pipeline

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[61] *ARCO Products Co., et al. v. Santa Fe Pacific Pipeline, L.P.*, (2011 Order), D.11-05-045, 2011 Cal. PUC LEXIS 299 (2011); *ARCO Products Co., et al. v. Santa Fe Pacific Pipeline, L.P.*, (2012 Order), D.12-03-026, 2012 Cal. PUC LEXIS 135 (2012); *ARCO Products Co. v. SFPP, L.P.*, (*Arco Products*), D.98-08-033, 1998 Cal. PUC LEXIS 593 (1998).

[62] SFPP OB at 28.

operations, terminal operations, and non-jurisdictional operations,"[63] clearly distinguishing terminal operations from non-jurisdictional operations.

In D.11-05-026,[64] the Commission determined that San Pablo Bay Pipeline Company (San Pablo Bay*)* had improperly designated certain of its ancillary assets, such as truck racks and storage tanks, as non-common-carrier assets. There, the Commission explained that when a utility seeks Commission authorization to implement new rates, as SFPP has done here, the utility applicant bears the burden of proving that the costs it seeks to impose on customers are just and reasonable. A necessary component to this inquiry is an investigation into which assets are, or are not, necessary or useful for the services provided by that utility.[65] In the Commission's decision setting San Pablo Bay's rates, the Commission determined that certain assets owned and operated by the utility had been improperly designated non-carrier, noted the effect that such a designation had on the overall rates, and required their inclusion. D.11-05-045 unambiguously places the burden of proof on the utility.

In the face of compelling evidence showing the terminals are an integral part of the Pipeline, SFPP failed to show that the excluded terminal property is unnecessary to operation of the Pipeline, which is an essential part of

[63] D.11-05-045 at 2.

[64] D.11-05-026, Decision Setting Rates for Transportation of Crude Oil Between the San Joaquin Valley and the San Francisco Bay Area, Ordering Refunds and Adopting Tariffs for Heated Oil Service.

[65] *See also,* A.21-11-010, Zenith Application, citing Decision No. (D) 78329 where the Commission found storage terminals did not fall within the then current Warehouseman exemption because it was "unproved in the absence of evidence disclosing how SDPC's responsibilities for the shipments as a carrier terminate and those as a warehouseman are assumed." Showing that a pipeline corporation includes terminal operations where there is no clear distinction between its warehouseman and pipeline operations.

demonstrating the reasonableness of the requested rates.[66] SFPP made no effort to provide the evidence showing the terminals were neither useful nor necessary to the Pipeline. SFPP has not put forth evidence affirmatively or in rebuttal to meet its burden on the jurisdictional asset issues.

It is a well-established legal principle that where a party has the ability to produce stronger evidence but elects to present weaker and less satisfactory evidence, evidence presented should be viewed with distrust.[67] SFPP was well aware of the issues in this case and had multiple opportunities to submit the necessary evidence. If there were insufficient evidence in the record to determine the jurisdictional assets and the revenues and costs of the terminals, as SFPP claims, it is only SFPP's own conduct that is the cause, and its own informed choice to forgo its opportunity to rebut evidence.[68] And, in this case, as previously found by the Commission in D.12-03-026, we conclude that SFPP cannot bemoan the lack of process or record where "SFPP simply chose not to take advantage of th[e] opportunity [to develop it]."

4.3. Public Dedication

In addition to the statutory requirement of § 227, for SFPP's public utility terminal assets to be considered subject to the Commission regulation, SFPP

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[66] D.11-05-026 at 5 fn.8, quoting Pacific Gas and Electric Co., D.00-02-046, 2000 Cal. PUC LEXIS 239, at *55 "Applicant's ultimate burden is to prove that the rates it seeks are reasonable. Proving that the excluded property is unnecessary to operation of the Pipeline is an essential part of demonstrating the reasonableness of the requested rates. '[T]he ultimate burden of proof of reasonableness…never shifts from a utility which is seeking to pass its costs of operation on to ratepayers…' "

[67] Cal. Evid. Code § 412.

[68] *E.g.* RT Vo. 1; at 28-29, STC June 9, 2025. Seven days before the hearing the ALJ stated counsel were welcome to file motions for additional time for hearing or preparation.

must be found to have dedicated such terminal assets to public use.[69] Dedication can be achieved expressly or impliedly and is met, "not necessarily by service to all of the public, but to any limited portion of it, such portion, for example as could be served by [the utility's] own system, as counter distinguished from [the utility's] holding [its]self out as serving or ready to serve only particular individuals either as a matter of accommodation or for other reasons peculiar and particular to them."[70]

SFPP argues first that neither SFPP nor its predecessors have ever dedicated the excluded terminals to public use, as required by § 228. SFPP claims its in-house property database shows that SFPP has recorded and treated the terminal assets as being "non-carrier" since their inception or acquisition.[71] Having unilaterally taken this position, SFPP has not filed a tariff with the Commission for the services offered at its "non-carrier" terminal assets. SFPP has consistently excluded these assets from its pipeline tariff and cost-of-service filings at the Commission. SFPP further alleges it does not contract with everyone who wants to use these services, because its terminal contracts are not

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[69] Thayer v. Cal. Dev. Co. (1912) 164 Cal. 117, 134-136 (establishing doctrine of dedication); Van Hoosear v. R.R. Com. of State of Cal. (1920) 184 Cal. 553, 554 (explaining that the dedication may be "express[] or implied[]" and "not necessarily to all of the public, but to any limited portion of it [that] . . . could be served by [its] system"); Indep. Energy Producers Assn., Inc. v. State Bd. of Equalization (2004) 125 Cal.App.4th 425, 442 ("[A]lthough not expressly contained in article XII, section 3, the state Constitution also requires a dedication to public use to transform private businesses into a public utility.").D.07-07-040 at 15, Chevron Prods. Co. v. Equilon Enters. LLC (Aug. 1, 2007); D.99-06-093, 1999 Cal. PUC LEXIS 442, at *3.

[70] D.99-06-093, 1999 Cal. PUC LEXIS 442, at *3 (citing Van Hoosear v. R.R. Comm'n of Cal., 184 Cal. 553, 554 (1920)).

[71] SFPP OB (Terminals) at 23; fn 52 *See* SFPP-EGW WP 48 - Prop Database (CPUC)(3-23 to 2-24 and 2024 Test Year) (updated).

guaranteed to renew.[72] SFPP claims its direct actions indicate it does not consider these assets to be dedicated to public use.

Protestant Shippers counter that evidence shows that SFPP's connected terminal assets are dedicated to public use, such as by SFPP's advertising brochure, as well as by marketing the terminals on its website. SFPP requires all shippers to use its storage terminal assets at a significant number of the carrier's destinations where they are the only terminal facilities available.[73] And, as previously noted, where SFPP is not the sole storage terminal provider, the record demonstrates that SFPP's storage terminals are necessary and useful because SFPP could not transport the level of volumes currently demanded without using those facilities.

The evidentiary record shows that SFPP has terminal contracts with multiple and varied customers.[74] Mr. Tolleth's evaluation of SFPP's terminal contracts shows that SFPP makes terminal operations available to all shippers, as evidenced by SFPP's terminaling agreement, including descriptions of the facilities.[75] SFPP's chart in its opening brief shows the values of SFPP's self-designated carrier and non-carrier terminals, giving an indication of significant financial effects on the consumer of placing these terminal assets out of the pipeline regulatory jurisdictional realm,[76] and indicating monopoly power and

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[72] *See, e.g.*, RT. at 183:9-19 (indicating that there is no assurance a terminal contract will be renewed).

[73] *See* Exhibit No. SFPP-DWS-0025 at 24:8-13 (SFPP witness Sanborn explaining how the carrier's tariff (Item 60) requires all shippers to have a home for deliveries of product shipped on its system such as RD).

[74] *See* RT Vol. 1, at 184:8-9.

[75] JP OB (Terminal) at 16.

[76] SFPP OB (Terminal) at 20, Chart, source SFPP witness Wetmore Exh. No. SFPP-EGW-0034

potential monopolistic price discrimination activities.[77] There is unrebutted evidence that there is no separation between Applicant's corporate management that makes strategic, financial, and operational decisions for SFPP's regulated pipeline system and its terminal operations.[78] Evidence presented by the Protestant Shippers also indicates how the pipeline corporation's management could be incentivized to discriminate against Commission-jurisdictional SFPP pipelines in favor of unregulated terminal operations.[79]

In *Arco Products* the Commission found that certain ancillary facilities (initiating facilities) owned and operated by SFPP had been dedicated to public use and were improperly designated as non-carrier assets.[80] The Commission concluded that the subject facilities "meet the definition of 'pipeline' contained in P[ublic] U[tilities][] Code Section 227" and that "[t]he facts show that the Watson initiating facilities have been dedicated to public use."[81]

The facts in *Arco Products* are similar to those presented here. SFPP advertises its terminal services to the public.[82] The record herein includes clear evidence of public dedication. SFPP's brochure markets its terminaling and pipeline services to the portion of the public capable of receiving both transport and terminal services.[83] A similar marketing brochure was relied on in D.99-06-

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[77] *See e.g*. JP OB (Terminal) at 32, fn 87

[78] JP OB (Terminal), at 59 fn. 157; RT. 292:21-293:9 (Sanborn).

[79] Exhibit No. JP-022 at 6-7; Tr. 228:10-12 and 229:10-12 (Sanborn); Exhibit No. JP-022 at 6-7.

[80] ARCO Products Co. v. SFPP, L.P. (1998) 81 CPUC 2d 573, D.98-08-033 (rehearing granted on unrelated issues/findings).

[81] *Id*.

[82] Marathon RB (Terminals); at 11; D.99-06-093, 1999 Cal. PUC LEXIS 442, at *6-7.

[83] Exhibit No. JP-MRT-0072.

093 to establish the Commission's jurisdiction over SFPP's Sepulveda facilities.[84] Additionally, the SFPP terminals are marketed to all interested entities as evidenced by their inclusion on SFPP's website.[85]

The record also demonstrates that SFPP contractually ties its transportation and storage terminals operations whereby it is a condition that SFPP's terminal customers also be pipeline transportation shippers on its system. This clearly makes SFPP's terminal operations, and use thereof, necessary for facilitating both storage and transportation operations, as well as delivery and distribution functions, and fosters discriminatory customer pricing.

It is implausible that SFPP dedicated to public use its pipeline operations to serving such destinations but did not also dedicate the only means by which all or most of such transportation, delivery, and distribution can be completed i.e., SFPP's connected destination terminals.

The weight of the evidence[86] herein clearly shows that SFPP manifested an unequivocal dedication to public use of its connected excluded terminal facilities and services.

4.4. Alternate Legal Theories

SFPP seeks to excuse the lack of supporting evidence by pivoting and claiming without proper authority or analysis several alternate legal arguments,

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[84] JT Protestants CB at 16; D.99-06-093, 1999 Cal. PUC LEXIS 442, at *6-7.

[85] https://www.kindermorgan.com/Operations/Products/Index#tabs-terminals (choose "terminals" from dropdown and then view various terminals referend in text under "Pacific Operations-Northern Region" tab and "Pacific Operations-Southern Region" tab) as of June 29, 2026.

[86] SFPP OB at 9 (quoting D.20-12-004, Decision Approving PacifiCorp's 2020 Energy Cost Adjustment Clause Rates, at 8 (Dec. 7, 2020)); see also Joint Shippers' Opening Brief, at 9 ("Where Joint Shippers' evidence and explanation causes the Commission to doubt SFPP's position and SFPP does not present evidence overcoming it, SFPP has not met its ultimate burden of proof.").

including Judicial Estoppel, lack of Due Process of others, lack of Scoping Memo notice to others, an alternate burden of proof, and by misstating holdings[87] and decisions. SFPP has not presented proper authority or analysis for any these claimed positions and has not met its burden of proof on the issues.

SFPP claims that judicial estoppel prevents a subset of the Protestants herein from challenging SFPP's judicial assets designation. SFPP claims that in *Arco Products*, a prior SFPP rate setting case, Joint Protestants took the opposite position from that herein and therefore should be barred from proceeding. However, the question of what constitutes jurisdictional assets was not an issue in the *Arco Products* case, and was neither discussed nor analyzed. In its argument SFPP failed to address or apply in any manner the elements of judicial estoppel.[88] In reviewing the requirements and the prior case, the Commission finds that the Joint Protestants did not take clearly inconsistent positions, the issues before the Commission at that time were different, with different facts and for a different time period. Therefore, SFPP has not made a prima facia showing of judicial estoppel.[89]

SFPP claims in this matter that the higher burden of § 851, where assets are divested, should fall on Protestants since they are the ones questioning the jurisdictional status of terminals. Applicant claims the Commission must

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[87] *See* e.g. *supra* 4.2

[88] The requirements of judicial estoppel are as follows:(i) the same party has taken two positions; (ii) the positions were taken in judicial or quasi-judicial administrative proceedings, (iii) the party was successful in asserting the first position, (iv) the two positions are totally inconsistent; and (v) the first position was not taken as a result of ignorance, fraud, or mistake. *Order Modifying Shell Trading*, at 8 (quoting *Jackson v. County of Los Angeles* (1997), 60 Cal.App.4th 171, 183).

[89] *See* Jackson v. Cnty. of L.A., 60 Cal. App. 4th 171, 182 (1997) (judicial estoppel does not apply unless the two positions are "clearly inconsistent so that one necessarily excludes the other" (quoting Coleman v. S. Pac. Co., 141 Cal. App. 2d 121, 128 (1956))).

individually analyze each asset that SFPP has self-dedicated as non-carrier.[90] However, there is neither valid authority nor evidence offered by SFPP to support either argument.

As noted by the Federal Energy Regulatory Commission (FERC) in a similar situation with SFPP, the proper procedure would have been for SFPP to bring this to the Commission's attention much earlier than now, presenting the evidence and reasons why it considered the agency not to have jurisdiction .[91] Given that opportunity here, it has failed to do so.

SFPP argues there is a due process notice violation of others. SFPP agrees that while there is adequate notice of the investigation of the justness and reasonableness of SFPP's requested pipeline system tariff rate increases in the Consolidated Scoping Memo, "If it had been clear that this proceeding would turn into an investigation of SFPPs terminal activities and associated fees, … customers may have wished to have their interest protected."[92] However, SFPP has not alleged any facts sufficient to assert third party standing, nor provided any analysis or authority for this argument. In addition to the Consolidated Scoping Memo, there was ample public notice of this issue in the motions and

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[90] *See* San Pablo Bay, 221 Cal.App.4th 1436, 1459, (2013) "[T]hey have cited no authority requiring the Commission to resolve the dedication issue on an asset-by-asset basis when the parties have not presented evidence and argument about whether a specific asset is operated or managed in connection with the enterprise alleged to be a public utility."

[91] *Texaco Refin. & Mktg. Inc. v. SFPP, L.P.*, 112 FERC ¶ 63,020, at P 16,17 (2005) (Zimmet, J.), *aff'd* 117 FERC ¶ 61,285 (2006) (citing *Texaco Refin. & Mktg. Inc. v. SFPP, L.P.*, 104 FERC 63,022, at P 6 (2003) ("If SFPP believed that the service was non-jurisdictional, it should have nevertheless filed a proposed tariff with the Commission before ever commencing service and coupled that with a motion to dismiss, presenting the reasons why it considered the agency not to have jurisdiction, thereby giving the Commission the opportunity to address the question. SFPP elected at its peril not to follow that procedure." (citing Schenley Distillers Corp. v. United States, 326 U.S. 432, 436 (1946))).

[92] SFPP OB at 66.

rulings filed on the public docket. SFPP lacks standing to assert due process notice rights of its customers, customers are fully capable of asserting their own rights and the utility's interests are not identical to theirs.[93]

Applicant has no complaint of lack of notice to anyone including itself. The California Supreme Court in *Golden State Water Co. v. Pub. Utils. Comm'n* held that,

> A scoping memo need not detail every possible outcome. Rather, the scoping memo must fairly include the issue, such that an informed observer would reasonably have understood that an issue was within the scope. If the scoping memo describes issues such that there is a reasonable possibility of a particular outcome, that outcome is fairly within the scope.[94]

The issue resolved today about the makeup of jurisdictional assets for the requested rate increase is an element of Scoping Memo issue 1 in that we are analyzing whether the Applicant's rate increase requests complies with all applicable Public Utilities Code Sections, General Orders, Rules, and Commission decisions and that the proposed rates are reasonable and in the public interest. The statutory analysis of § 227 and the weighing of the evidence provided goes directly to the issues described above.

As recently ruled by the Commission in *Zenith,* it was made clear that terminals are included in jurisdictional assets. SFPP is presumed to know the law, and to claim ignorance is not credible, nor is it a defense. As described by

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[93] *Brenner v. Universal Health Servs. of Rancho Springs, Inc.,* 12 Cal. App. 5th 589, 605 (2017) --- "As a general rule, a third party does not have standing to bring a claim asserting a violation of someone else's rights"; *Six4Three, LLC v. Facebook, Inc.,* 49 Cal. App. 5th 109, 115 (2020) --- "The injured interest also must belong *to the party*: a would-be appellant 'lacks standing to raise issues affecting another person's interests.' "

[94] *Golden State Water Co. v. Pub. Utils. Comm'n*, 16 Cal. 5th 380, 396 (2024) (*Golden State*).

the California Supreme Court in *Golden State*, SFPP is clearly an informed observer that would reasonably have understood that an issue was within the scope. No sufficient authority or analysis was presented with these facts for any of these theories. SFPP has not met its burden of proof on the above theories.

4.5. Remedy

Here, we determine that SFPP's connected destination terminals and related services facilitate and are operated and managed in connection with SFPP's transportation, storage, delivery, and distribution services per § 227. Accordingly, the Commission must review SFPP's terminal assets and revenues against the rate increase SFPP seeks to implement in this consolidated rate proceeding.

A reasonable cost-of-service and related revenue requirement associated with its Commission-jurisdictional operations must account for the revenue SFPP receives from all of its jurisdictional assets and services. When revenue is gained from jurisdictional assets, the Commission's traditional approach is to incorporate these revenues in the cost and revenue analysis so that all the jurisdictional costs and revenues are accounted for in evaluating rates.[95]

SFPP objects to Protestants' proposed remedy of monetary credits to Shippers for excess revenue being generated by SFPP's self-designated non-carrier terminal operations. The proposed credit is based on financial information attested to by SFPP.[96] Although SFPP agrees that the financial information is accurate, SFPP also claims there is insufficient evidence in the record. Despite SFPP's claims, this proceeding has already provided ample

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[95] D.94-10-044, S. Cal. Edison Co., 56 CPUC 2d 642, 1994 Cal. PUC LEXIS 683, at *13-14 (Oct. 26, 1994).

[96] JP OB at 41; Exhibit No. SFPP-EGW-0035 at 86:2-6.

opportunities for SFPP to provide a terminal and cost-of-service analysis that includes the destination terminals.

We are tasked with setting pipeline operation prices based on an accurate and complete record of actual jurisdictional assets. At this point, our task requires two lines of review. First, we need to determine a just and reasonable transportation price for the past periods, during which the Pipeline operated as a common carrier, with all of its jurisdictional assets disclosed to the Commission and reflected in rates. Then we need to determine a just and reasonable Pipeline transportation rate on a going forward basis, reflecting all jurisdictional assets, and approve a tariff that incorporates that rate.

Therefore, we re-open the record, and order SFPP to serve supplemental testimony that includes an updated cost-of-service study to reflect SFPP's Commission-jurisdictional terminal assets, covering the associated revenue requirements for SFPP's service and operations for the 2021-2024 period and the current ratemaking period.

5. Motion to Strike Testimony

SFPP's Motion to Strike the Written and Oral Testimony of Mr. Michael Tolleth Addressing the Jurisdictional Status of SFPP's Terminal Facilities is denied.

For the reasons outlined above, we find that the testimony of Mr. Tolleth is relevant, and affirm the previous ruling by the ALJ at the evidentiary hearing. SFPP has not made a requisite showing on relevance or any other valid grounds to strike the written and oral testimony. SFPP's arguments do not go to the admissibility of the evidence, but rather to the weight given.

However, we note that this decision does not preclude SFPP from filing a subsequent application in the future under § 851 for permission to remove a specific asset from public service in the future. Unlike § 227 and § 228 which are broad and inclusive statutes, § 851 is designed to review a specific or unique asset to determine if it should be removed from public utility service.

6. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(a) requires that all written public comment submitted prior to the submission of the proceeding are part of the administrative record of the proceeding. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

No comments were received prior to the submission date of this proceeding.

7. Conclusion

We find that Protestant Shippers met their burden of production and proof by presenting compelling evidence that the connected destination terminals are an integral part of the regulated jurisdictional pipeline; and that their segregation has a detrimental public effect on pricing, revealing an unregulated environment with an economic incentive to independently control the facilities and maximize discriminatory pricing.

SFPP has not effectively rebutted the arguments and evidence presented by Protestants, including that excluding those assets facilitates tying arrangements and monopolistic conduct and that SFPP's terminals are necessary.

The operation of these terminals and terminal services outside of the regulated utility cultivates discriminatory treatment, and the retention of all pipeline assets in the regulated pipeline is a way to ensure adequate, reliable and non-discriminatory service to all shippers.

The Commission finds that the Applications and requested rate increases do not comply with all applicable Public Utilities Code Sections. The Commission finds that SFPP's connected destination terminals are pipeline system jurisdictional assets per § 227 and their revenues and costs should have been included in the applications. An evaluation and analysis of the revenue needs of the pipeline services includes a determination of the revenue and costs of the connected destination terminal operations and should be taken into account in connection with said evaluation. SFPP did not provide the necessary revenue and cost information about these jurisdictional assets. Therefore, the record of this proceeding is re-opened, and SFPP is ordered to serve supplemental testimony that includes an updated cost-of-service study to reflect SFPP's Commission-jurisdictional connected destination terminal assets, covering the associated revenue requirements for SFPP's service and operations for the 2021-2024 period.

8. Procedural Matters

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding.

9. Comments on Proposed Decision

The proposed decision of ALJ Moore in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on __________, and reply comments were filed on _____________ by ________________.

10. Assignment of Proceeding

Matthew Baker is the assigned Commissioner and Theresa D. Moore is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SFPP is a common carrier pipeline transporting refined petroleum products in California and has intrastate tariffs on file with the Commission.
2. Kinder Morgan Operating LLC "D" is the general partner of SFPP.
3. Applicant SFPP is authorized to do business in the State of California as a pipeline corporation as defined by § 228.
4. Applicant SFPP requests to increase its intrastate rates in four Consolidated Applications filed by SFPP in 2021, 2022, 2023, and 2024.
5. Pipeline Shippers have protested each Application.
6. SFPP's California intrastate pipeline system includes: (1) the North Line, which consists of approximately 864 miles of pipeline in five segments that transport refined petroleum products from Bay Area refineries at Richmond and Concord, California, to Brisbane, Sacramento, Chico, Fresno, Stockton, and San Jose, California. (2) the San Diego Line, a 135-mile pipeline serving major population areas in Orange County and San Diego, California; and (3) the West Line, which consists of approximately 515 miles of primary pipeline and transports refined petroleum products from the Los Angeles Basin to destinations in California and out of state, as well as a connection at Colton to out of state.
7. The California connected destination terminals provide short-term product storage that facilitates necessary originations and deliveries along its CPUC-jurisdictional pipeline systems, as well as truck loading, vapor handling, additive injection, dye injection, and oxygenate blending.

8. The connected destination terminals are useful and necessary to the conduct of the SFPPs business.

9. These available, requested, and necessary connected destination terminal services are needed by customers and often legally required by California.

10. The connected destination terminals can be found in terminal and station destination locations throughout the pipeline in California.

11. SFPP owns the predominant amount of terminal and related tankage facilities at all its origins and destinations. The use of these facilities is necessary for all shippers who have product to be transported on SFPP's intrastate system.

12. For destinations where both third-party terminals and SFPP storage facilities exist third-party facilities are not always capable of handling all the deliveries to such destinations such that the SFPP terminal facilities are required to facilitate transportation to these destinations.

13. Shippers must have a home for deliveries of product shipped on its system on the pipeline per the pipeline tariff.

14. Shippers are required to secure terminal storage in advance to transport product on SFPP's pipelines per the pipeline tariff.

15. SFPP has terminal agreements and requirements with its shippers governing terminal storage and use of services.

16. SFPP has terminal contracts with multiple and varied customers.

17. SFPP makes terminal operations available to all shippers.

18. SFPP markets the terminals through its advertising brochure and on its website to all interested entities.

19. SFPP's brochure markets its pipeline and terminaling services to the portion of the public capable of receiving both transport and terminal pipeline services.

20. SFPP manifests an unequivocal intention to dedicate its Pipeline transport and terminal services to the public.

21. Corporate management makes strategic, financial, and operational decisions for SFPP's regulated pipeline system and its terminal operations.

22. Connected destination terminals are integral to SFPP's pipeline operation system.

23. SFPP excluded the connected destination terminals from cost-of-service, rate base, and revenues in the current rate Applications.

24. SFPP owns, operates, controls, and manages its California terminals.

25. The connected destination terminals facilitate the transmission, storage, distribution, and delivery of refined petroleum products.

26. SFPP possesses and has exercised considerable market power.

27. SFPP has not filed for tariffs for its connected destination terminal facilities or services.

Conclusions of Law

1. SFPP is a "pipeline corporation" as defined in § 228.

2. SFPP is a public utility as defined in § 216(a)(1).

3. SFPP dedicated its California connected destination terminal assets to public use.

4. SFPP's connected destination terminals are jurisdictional assets per § 227.

5. The SFPP pipeline has a monopoly on the connected destination terminals.

6. SFPP should serve supplemental testimony for 2021, 2022, 2023, and 2024 to include revenue and costs for all jurisdictional assets including the connected destination terminals.

7. SFPP should file a tariff which includes the connected destination terminals to govern the future operation of the SFPP pipeline.

O R D E R

IT IS ORDERED that:

1. SFPP, L.P. shall serve, within 30 days of the date of this Decision, supplemental testimony to include the revenues and costs of all jurisdictional assets, including the connected destination terminals. The supplemental testimony shall include the revenues and costs of the connected destination terminals as they existed during the relevant periods of time of the requested rate increases.
2. Application 24-01-020 et al. remain open.

This decision is effective today.

Dated ________, at San Francisco, California.