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**Date of Issuance**
**March 13, 2012**

Decision 12-03-026 March 8, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| ARCO Products Company, Mobil Oil Corporation, and Texaco Refining and Marketing, Inc.,<br><br>Complainants,<br><br>vs.<br><br>Santa Fe Pacific Pipeline, L.P.,<br><br>Defendant. | Case 97-04-025<br>(Filed April 7, 1997) |
| And Related Matters. | Case 00-04-013<br>Case 06-12-031<br>Application 00-03-044<br>Application 03-02-027<br>Application 04-11-017<br>Application 06-01-015<br>Application 06-08-028 |

**ORDER GRANTING LIMITED REHEARING AND MODIFYING DECISION (D.) 11-05-045, AND DENYING REHEARING AS TO ALL OTHER ISSUES, AS MODIFIED**

## I. INTRODUCTION

In this Order we dispose of the applications for rehearing of Decision (D.) 11-05-045 (or "Decision") filed by SFPP. L.P. ("SFPP") and Indicated Shippers ("Shippers").

SFPP is an oil pipeline operator whose intrastate services are regulated by this Commission.[1] In 1997 Shippers filed a complaint (C.97-04-025) against SFPP

[1] SFPP was previously named Santa Fe Pacific Pipeline, L.P. SFPP's regulated intrastate pipeline network transports refined petroleum products such as gasoline, diesel, and jet fuel. SFPP's interstate operations are regulated by the Federal Energy Regulatory Commission ("FERC").

concerning the rates charged for transportation service.[2] In D.98-03-033,[3] the Commission resolved that complaint. Limited rehearing was subsequently granted in D.99-06-093.[4]

Decision 11-05-045 resolved issues subject to the limited rehearing as well as certain issues from seven related proceedings which were eventually consolidated with C.97-04-025.[5] The consolidated proceedings span a period of 13 years (1997-2010).

In pertinent part, the Decision determined:

- SFPP's Sepulveda Line is subject to Commission jurisdiction;
- SFPP is not entitled to a ratemaking allowance for federal income tax expenses;
- SFPP should reallocate certain environmental expenses;
- SFPP's Watson Station and Sepulveda Line facilities do not qualify for market-based rates;
- SFPP's capital structure should be set at 60% equity and 40% debt, with a Return on Equity ("ROE") of 12.61%;
- SFPP should be allowed a 2004 attrition adjustment for its North Line Expansion Project;
- SFPP should refund certain overcharges.

Other outstanding issues from the consolidated proceedings were left open so that parties could pursue settlement or a subsequent litigated determination.

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[2] Entities comprising Indicated Shippers are: BP West Coast Products LLC; Chevron Products Company; ConocoPhillips Company; ExxonMobile Oil Corporation; Southwest Airlines Company, Tesoro Refining and Marketing Company, Ultramar, Inc.; and Valero Marketing and Supply Company.

[3] *Arco Products Company et al. v. SFPP, L.P.* [D.98-08-033] (1998) 81 Cal. P.U.C.2d 573.

[4] *Arco Products Company, Mobil Oil Corporation, and Texaco Refining and Marketing, Inc., Complainants, vs. SFPP, L.P., Defendant* ("*Order Granting Rehearing*") [D.99-06-093] (1999) __ Cal.P.U.C. 3d __ , 1999 Cal. PUC LEXIS 442.

[5] The consolidated proceedings are C.00-04-013, C.06-12-031, A.00-03-044, A.03-02-027, A.04-11-017, A.06-01-015, and A.06-08-028. They are related complaints by Shippers and rate increase applications by SFFP.

SFPP and Shippers both filed timely applications for rehearing. SFPP challenges the Decision alleging it: (1) wrongly denied a ratemaking allowance for federal income tax expenses; (2) erred in determining the appropriate ROE; (3) ignored evidence which justified the requested environmental costs; (4) wrongly denied Test Year ("TY") recovery of North Line Expansion Project costs; (5) erred in denying market-based rates; and (6) violated the prohibition against retroactive ratemaking. SFPP also requests oral argument. A response was filed by Shippers.

Shippers challenge the Decision alleging it: (1) erred in allowing an attrition adjustment for the North Line Expansion Project; (2) wrongly determined the appropriate capital structure; and (3) erred in closing C.97-04-025. A response was filed by SFPP.

We have carefully considered the arguments raised in the applications for rehearing and are of the opinion that good cause has been established to: (a) grant limited rehearing regarding the refunds and adjustments ordered in connection with C.97-04-025 and A.03-02-027; and (b) grant limited rehearing regarding SFPP's request for market based rates. In addition, the Decision would benefit from modifications to: (a) clarify the amount of environmental costs that SFPP is authorized to recover; (b) correct the effective date of the attrition adjustment for the North Line Expansion Project; and (c) clarify our discussion regarding SFPP's adopted capital structure. In all other respects we deny the applications for rehearing of D.11-05-045, as modified herein, because no legal error has been shown.

## II. DISCUSSION

### SFPP's Application for Rehearing

#### A. Federal Income Tax Allowance

SFPP is a limited partnership, whereas most Commission regulated utilities are "C" corporations. All parties agreed that "C" corporations and partnerships are treated differently for federal income tax purposes. In particular, "C" corporations pay

any income tax due on their earnings. Partnerships do not pay a comparable tax themselves. Their partners (in their individual capacities) pay any tax due on the partnership's earnings. This difference is established by Internal Revenue Code ("IRC") Sections 11 and 701, which provide:

> § 11. Tax Imposed
>
> (a) Corporations in general. - A tax is hereby imposed for each taxable year on the taxable income of every corporation.

(26 U.S.C.A. § 11, subd. (a).)

> § 701. Partners, not partnership, subject to tax.
>
> A partnership as such shall not be subject to the income tax imposed by this chapter. Persons carrying on business as partners shall be liable for income tax only at their separate or individual capacities.

(26 U.S.C.A. § 701.)

Consistent with these statutes, any tax on SFPP's earnings is the responsibility of its affiliate partners, Kinder Morgan Energy Partners ("KMEP"), and Santa Fe Pacific Pipeline, Inc.[6] Because SFPP pays no income tax itself, the Decision found it was not entitled to an income tax allowance for ratemaking purposes.[7]

SFPP concedes it pays no income tax itself. Nevertheless, it argues the Decision erred because: (1) the Commission misunderstood a fundamental reality concerning partnership taxation; (2) the Commission failed to provide adequate due process; and (3) the Commission should have deferred to FERC's current income tax policy. (Rhg. App., at pp. 6-16.) These issues are discussed below.

**1. Partnership Taxation**

SFPP contends our Decision failed to properly grasp that its partners essentially *are* SFPP for tax purposes. (SFPP Rhg. App., at pp. 8-12, relying on

[6] See D.11-05-045, at pp. 9-11, Appendix C.

[7] D.11-05-045, at pp. 17-27.

*Interactive Corp., and USANI Sub LLC v. Vivendi Universal, S.A.* ("*Interactive Corp*.") (2004) Del. Ch. LEXIS 90; *Northwest Energetic Services, LLC v. California Franchise Tax Board* ("*NW Energetic Svcs*") (2008) 159 Cal.App.4th 841; and *Paine v. Franchise Tax Board* ("*Paine*") (2004) 118 Cal.App.4th 63.)

The Decision clearly shows that we did understand that SFPP's partners are responsible for any tax on its earnings.[8] What we rejected was SFPP's suggestion that SFPP and its partners are one and the same. Partnerships are viewed as "independently recognizable entities apart from the aggregate of their partners" for income tax purposes.[9]

Even if Shippers were correct, we also rejected the notion that federal income tax principles should apply by extension to control appropriate ratemaking treatment. It has consistently been this Commission's practice to view utilities as separate from their affiliates for ratemaking purposes. As a result, rates will include allowances only for expenses the utility itself pays.[10] The California Supreme Court has repeatedly upheld this practice.[11]

Further, nothing in the cases SFPP relies on would suggest the Decision is unlawful. None establish that income tax principles do, or should, have any bearing on ratemaking determinations.

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[8] D.11-05-045, at pp. 15-16.

[9] See e.g., *United States v. Basye* (1973) 410 U.S. 441, 448-454.

[10] See e.g., *Investigation on the Commission's Own Motion Into the Method to be Utilized by the Commission to Establish the Proper Level of Income Tax Expense for Ratemaking Purposes of Public Utilities and other Regulated Entities* [D.84-05-036] (1984) 15 Cal.P.U.C.2d 42, 49-51 See also *In the Matter of the Application of San Gabriel Valley Water Company for Authority to Increase Rates Charges for Water Service in its Fontana Water Company Division by $5,662,900 or 13.1% in July 2006; $3,072,500 or 6.3% in July 2007; and by $2,196,000 or 4.2% in July 2008* [D.07-04-046] __Cal. P.U.C.3d __ , at pp. 95-97 (slip op.).

[11] See City and County of San Francisco v. Public Utilities Commission ("City & County of SF v. PUC") (1971) 6 Cal.3d 119, 129; Southern California Gas Company v. Public Utilities Commission ("SoCalGas v. PUC") (1979) 23 Cal.3d 470.

**2. Due Process**

SFPP contends it was not afforded adequate due process because it was deprived of a reasonable opportunity to develop an evidentiary record concerning the tax liability of its partners. (SFPP Rhg. App., at pp. 12-14.)

Due process requires that we provide adequate notice and opportunity to be heard.[12] SFPP argues it submitted its evidence before 2005. On 2005 FERC reversed its policy on whether partnerships could receive a ratemaking allowance for income tax paid by their partners. According to SFPP, the original evidence was tied to FERC's earlier standard,[13] and it should also have had an opportunity to submit evidence tied to FERC's new policy. (SFPP Rhg. App., at p. 13, fn. 13, referring to *Inquiry Regarding Income Tax Allowances* ("*2005 Policy Statement*") (2005) 111 F.E.R.C. P61,334, ¶¶ 76-77; and *SFPP, L.P., And Related Matters* (2005) 113 F.E.R.C. P61,277, ¶¶ 2, 44-46.) Contrary to SFPP's claim, it did have an opportunity to submit additional evidence after 2005. As we noted in our Decision, in 2007 the parties asked the Commission to issue its decision based on *the existing* evidentiary record.[14] Even then, the Administrative Law Judge ("ALJ") reopened the record to take any additional evidence parties wanted to submit, as well as briefs.[15] SFPP simply chose not to take advantage of that opportunity. Further, it is misleading to suggest FERC's policy changes have any meaningful impact on the relevant evidence. Both here and at FERC the fundamental issue has always been the same, i.e., what if any tax did SFPP's partners pay on its earnings?[16] The evidence

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[12] *People v. Western Airlines, Inc.* (1954) 42 Cal.2d 621, 632*; Railroad Commission of California v. Pacific Gas and Electric Company* (1938) 302 U.S. 388, 393. SFPP raises no issue regarding notice.

[13] *Lakehead Pipeline Company, Limited Partnership* ("*Lakehead*") (1995) 71 F.E.R.C. P61,338, *62,313 - *62,316.

[14] See D.11-05-045, at pp. 8-9.

[15] D.11-05-045, at p. 9.

[16] SFFP also wrongly suggests that FERC changed or added to the type of evidence that was relevant. The decisions SFPP relies on do not support such a conclusion. In *SFPP, L.P., And Related Matters* ("*Order on Remand and Rehearing*") (2005) 111 F.E.R.C. P61,334, ¶¶ 76-77, FERC merely directed SFPP to file a brief explaining how the information that it already submitted meets the new *2005 Policy Statement.* Similarly, nothing in *SFPP, L.P., And Related Matters* ("*Order on Initial Decision and on Certain Remanded Cost Issues*") (2005) 113 F.E.R.C. P61,277, ¶¶ 45-46, required any new evidence. It

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SFPP chose to rely on never provided that information. It only discussed general tax principles and/or broadly asserted that taxes were paid.[17]

### 3. FERC Income Tax Policy

SFPP contends the Decision failed to adequately "grapple with" the reasons FERC gave for changing its tax policy. SFPP acknowledges that we are not bound by FERC's policy determinations. Nonetheless SFPP asserts we should have deferred to FERC on this matter, and not doing so without more discussion was arbitrary, capricious, and an abuse of discretion. (SFPP Rhg. App., at pp. 14-16.)

It is important to recognize that the issue in dispute is a policy matter, not a legal issue. Thus, pursuant to Public Utilities Code Section 1732 SFPP's challenge is not a permissible or proper subject of an application for rehearing.[18]

Even if we were to consider the challenge, the Decision met the requisite test that we examine the relevant information and provide an explanation for our determination which shows a "rational connection" between the information and the choice made.[19]

Our Decision demonstrated that we did examine the relevant FERC policy decisions.[20] The Decision also discussed relevant Court decisions reviewing FERC's orders.[21] However, there is no legal requirement that the Commission expressly discuss

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directed SFPP, using "materials at hand," to categorize the information in a particular way and provide related estimates (also noting that may have already been done to some extent).

[17] Exhibit ("Exh.") 3 [SFPP/Jones], at pp. 2-7; Exh. 102A [SFPP/Williamson], at pp. 11-14; Exh. 103A [SFPP/Williamson], at pp. 2-3; Exh. 206R [SFPP/Prim], at p. 2; and Exh. 207R [SFPP/Williamson], at p. 3. See also Exh. 206R [SFPP/Prim], at p. 2; and Exh. 207R [SFPP/Williamson], at p. 3.

[18] Pub. Util. Code, § 1732 [Limiting applications for rehearing to specification of legal error.] All subsequent section references are to the Public Utilities Code unless otherwise stated.

[19] See e.g., *Motor Vehicle Manufacturers Association v. State Farm Mutual Insurance Company* (1983) 463 U.S. 29, 43-44; *California Hotel and Motel Association v. Industrial Welfare Commission* (1979) 25 Cal.3d 200, 212-213.

[20] D.11-05-045, at pp. 24-27, discussing *Lakehead, supra*, 71 F.E.R.C. P61,338; and the *2005 Policy Statement, supra*, 111 F.E.R.C. P61,139.

[21] D.11-05-045, at pp. 24-27, discussing *BP West Coast Products, LLC v. FERC* (2004) 374 F.3d 1263; and *Exxonmobil Oil Corporation v. FERC* (2007) 487 F.3d 945.

every issue or reason that FERC may have considered. And SFPP offers no such authority.

The Decision also demonstrated a "rational connection" between the information considered and our ultimate determination. We explained that regardless of FERC's changed policy, we have consistently treated utilities separately from their affiliates for ratemaking purposes.[22] We also explained that SFPP's evidence failed to show it was entitled to an income tax allowance under this Commission's standards.[23] SFPP continues to disagree with this Commission's policy. However, disagreement does not constitute legal error on the part of the Commission.[24]

### B. Return on Equity

SFPP contends the Decision erred in setting the ROE at 12.61% because it: (1) compared SFPP with an improper proxy group; and (2) relied on a flawed Discounted Cash Flow ("DCF") methodology. (SFPP Rhg. App., at pp. 16-20.) These issues are discussed below.

#### 1. Proxy Group

SFPP contends the Decision contravened established ratemaking principles which provide that when determining an appropriate ROE, a utility must be compared with entities having similar risks. (SFPP Rhg. App., at pp. 17-18, relying on *Federal Power Commission v. Hope Natural Gas Co.* ("*Hope* ") (1944) 320 U.S. 591; *Petal Gas Storage, L.L.C. v. Federal Energy Regulatory Commission* ("*Petal Gas*") (2007) 496 F.3d 695; and *Composition of Proxy Groups for Determining Gas and Oil Pipeline Companies* ("*Proxy Group Policy Statement*") (2008) 123 F.E.R.C. P61,048.)[25]

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[22] D.11-05-045, at pp. 17-19, 20-21, 26.

[23] D.11-05-045, at pp. 21, 26, 39 [Finding of Fact Number 4], p. 40 [Conclusion of Law Number 1], & p. 41 [Conclusion of Law Number 3].

[24] *Southern California Edison Company v. Public Utilities Commission* (2005) 128 Cal.App.4th 1, 8.

[25] *Petal Gas* is not controlling here. The Court merely found that FERC failed to explain why the companies it chose as proxies were relevant. (*Petal Gas, supra,* 496 F.3d at p. 700.) *Proxy Group Policy Statement* is also not relevant here. FERC specifically stated it would not decide what companies should comprise a proxy group. (*Proxy Group Policy Statement, supra,* 123 F.E.R.C. P61,048, at

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The general principle SFPP states is correct. However, SFPP is wrong that the Decision relied on a proxy group of energy utilities for purposes of the ROE analysis. We did generally note the authorized ROEs for Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Sierra Pacific Power Company during the same 2003 time frame.[26] However, we specifically stated that the differences between SFPP and energy utilities required that we evaluate authorized returns on a case-by-case basis.[27]

It is also relevant to note that this Commission regulates very few oil pipeline companies that we can look to for comparison purposes. For this and other reasons, the Courts recognize that the Commission has a good deal of flexibility in the methods used to reaching ratemaking determinations.[28]

In this instance the ROE analysis was consistent with normal and established Commission practice. Regardless of any relevant proxy group, the Commission generally evaluates the utility's financial and/or business risks. Here, SFPP claimed a higher ROE was warranted (15.86%) because it allegedly has greater business risks attendant to competition. (Rhg. App., at p. 18.) We considered SFPP's evidence regarding competition, but found SFPP did not clearly establish that risk.[29]

In addition, we generally reason that as a utility's debt level increases, a higher ROE may be authorized to compensate for the higher associated financial risk. Here, however, SFPP's authorized debt level is 40%.[30] That is relatively low compared

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¶¶ 1, 51) And even if it had, unlike FERC this Commission regulates very few oil pipeline companies that it can look to for comparison purposes.

[26] D.11-05-045, at pp. 32-33.

[27] D.11-05-045, at p. 33.

[28] See e.g., *Hope, supra,* 320 U.S., at p. 602; *Pacific Telephone & Telegraph Company* ("*Pac. Tel. & Tel.*") (1965) 62 Cal.2d 634, 647.

[29] D.11-05-045, at pp. 28-29.

[30] D.11-05-045, at p. 30.

to other Commission regulated utilities, and suggests it was reasonable to set ROE well below SFPP's proposed level of 15.86%.

Finally, we typically set ROE at the lowest level that meets the "zone of reasonableness" between the low and high end of ROE's proposed in a proceeding. Here, parties proposed a low of 12.28% and a high of 15.86%.[31] The authorized 12.61% is well within that zone, and it is notably higher than the ROE's authorized for the energy utilities during the same time period. Accordingly, there is nothing to suggest the adopted ROE was unlawful or unreasonable.

**2. DCF Methodology**

SFPP contends the Decision erred because it failed to determine whether SFPP or the Shippers used the correct DCF methodology. (SFPP Rhg. App., at pp. 19-20.)

This argument wrongly presumes we are required to deem one party "right." There is no legal authority which establishes such a requirement. Similarly, SFPP wrongly presumes that an adopted ROE must match one particular DCF model or methodology. That is incorrect.

DCF analyses are merely one tool the Commission uses as a starting point to estimate a fair ROE. And all financial models have certain flaws. For that reason, they are not rigidly applied or viewed as definitive proxies to determine ROE. They are merely used to provide a rough gauge of the range of reasonable outcomes.[32] In this case we reviewed the DCF analyses presented by both parties, and reasonably exercised our discretion to make pragmatic adjustments to the recommended outcomes based on the factors discussed above.

[31] Exh. 200A [Shippers/O'Loughlin], at p. 22; Exh. 103A [SFPP/Williamson], at p. 9.

[32] See e.g. *Application of California Water Service Company for Authority to Establish its Authorized Cost of Capital for the Period from January 1, 2009 Through December 31, 2011, and Related Matters* [D.09-05-015] (2009) __ Cal.P.U.C.3d __ , at pp. 15, 25-26 (slip op.).

### C. Environmental Costs

SFPP contends the Decision ignored evidence which proved it was entitled to $2.8 million in California-jurisdictional environmental costs.[33] (SFPP Rhg. App., at pp. 21-23.) As explained below, $2.8 million appears to be slightly more than is justified. However, there is sufficient evidence to warrant approval of $2.5 million in environmental costs.

The Decision did not award SFPP any specific dollar amount for environmental costs. Based on some uncertainty regarding how much of SFPP's total environmental costs had been allocated to its California operations, and how much may also have been improperly included as related to terminal (rather than pipeline) operations, we directed SFPP to allocate costs accordingly.[34]

After more extensive review, we agree the record reflects evidence which provides sufficient information to determine the costs attributed to each California and non-California pipeline location.[35] It also shows costs associated with terminal operations.[36] Based on this evidence, it can be seen that the total California costs were approximately $3.8 million.[37] That amount included costs related to seven terminal locations.[38] Eliminating those terminal costs reduces the California expense to $3 million.[39]

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[33] SFPP cites Exh. 203R [SFPP/Kilkenny], at pp. 3-5; Exh. 204R [SFPP/Turner], at pp. 2-7, Attachment TAT-3; Reporter Transcript ("R.T.") Vol. 7, at pp. 770.

[34] D.11-05-045, at pp. 27-28.

[35] Exh. 204R [SFPP/Turner], at pp. 2-7, and Attachment TAT-3, at pp. 1-3.

[36] Exh. 204R [SFPP/Turner], at pp. 2-7, and Attachment TAT-3, at pp. 1-3.

[37] Exh. 204R [SFPP/Turner], Attachment TAT-3, at p. 2.

[38] Exh. 204R [SFPP/Turner], Attachment TAT-3, at p. 2 [Mission Valley Terminal ($698,421), Orange Terminal ($216), Imperial Terminal ($3,354), Brisbane Terminal ($11,173), Chico Terminal ($31,522), San Jose Terminal ($22,697), and Stockton Terminal ($3,258).].

[39] Exh. 204R [SFPP/Turner], Attachment TAT-3, at p. 2 [Mission Valley Terminal ($698,421), Orange Terminal ($216), Imperial Terminal ($3,354), Brisbane Terminal ($11,173), Chico Terminal ($31,522), San Jose Terminal ($22,697), and Stockton Terminal ($3,258).].

It is then necessary to determine the appropriate percentage of costs that should be attributed to CPUC jurisdictional (intrastate) versus FERC jurisdictional (interstate) operations. SFPP proposed a 75% CPUC jurisdictional allocation, consistent with its allocation for other expenses.[40] We did not find 75% to be unreasonable. However, we were concerned that that on whole, SFPP may have allocated too much of its total environmental costs to California (90%), and too little to non-California locations.[41]

The evidence shows that with terminal costs eliminated, the California and non-California environmental expenses were essentially even (50/50).[42] We find that amount is reasonable. Applying the 75% to this evidence allows for approval of $2.5 million in environmental expense and we will modify the Decision accordingly.

**D. North Line Expansion Project**

SFPP contends the Decision erred in excluding North Line Expansion Project costs from its authorized Test Year ("TY") 2003 rate base, because doing so contravened the requirement that TY expense include all "known or reasonably expected" costs. (SFPP Rhg. App., at pp. 23-25, relying on *Pac. Tel. & Tel., supra,* 62 Cal.2d at p. 645.)[43] Although we do not find legal error, we will modify the Decision as set forth in the Ordering Paragraphs of this Order to correct the effective date for the authorized attrition adjustment.

We agree that *Pac. Tel. & Tel.* generally contemplates that TY rates should reflect all reasonably foreseeable expenses. However, *Pac. Tel. & Tel.* also states:

> …the general approach employed by the commission…is to determine with respect to a "test period" (1) the rate base of

[40] Exh. 204R [SFPP/Turner], at pp. 5-7.

[41] D.11-05-045, at p. 27.

[42] Exh. 204R [SFPP/Turner], Attachment TAT-3, at pp. 2-3.

[43] SFPP wrongly relies on *PT&T Co.* [D.90642] (1979), 2 Cal.P.U.C.2d 89; and *P.G.&E. Co.* [D.78186] 71 Cal.P.U.C. 724 to support its position. Neither case allowed costs in rate base for capital projects not yet in service.

> the utility, i.e., *value of property devoted to public use*, (2) gross operating revenues, and (3) costs and expenses allowed for ratemaking purposes, resulting in (4) net revenues produced, sometimes termed results of operations….
>
> …The commission here followed its long-established principle of determining rate base by taking original cost of the property *devoted to public service*, and deducting depreciation therefrom.

(*Pac. Tel. & Tel., supra,* 62 Cal.2d at p. 645 (emphasis added).)

Consistent with this principle, the cost of capital additions is not included in rate base or rates until a project is placed into service and "devoted to public service." The evidence showed that the project would not be placed into service until the last quarter of 2004.[44] Accordingly, the Decision lawfully excluded project costs from TY 2003. However, we note the Decision authorized the attrition adjustment as of January 1, 2004.[45] To maintain consistency with normal ratemaking practice, we will modify the Decision to authorize the adjustment as of the last quarter of 2004.

### E. Market Based Rates

SFPP contends the Decision incorrectly denied its request for market based rates for Watson Station and the Sepulveda Line. In particular, SFPP asserts: (1) the Commission ignored evidence of competitive alternatives; and (2) denial of SFPP's request due to the Commission's own delay was inappropriate. (SFPP Rhg. App., at pp. 25-31.) These issues are discussed below.

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[44] R.T. Vol. 3 [SFPP/Turner], at p. 326; Exh. 100 A [SFPP/Morgan], at p. 2; Exh. 101 A [SFPP/Morgan], at p. 2. Record evidence also indicated SFPP was unsure just how much money had been spent on the Project in 2003 and how much was expected to be spent in 2004.
(R.T. Vol. 3 [SFPP/Turner], at pp. 327-328.)

[45] D.11-05-045, at p. 34.

### 1. Competition

SFFP asserts the Decision is unlawful because it failed to even discuss SFPP's evidence which allegedly proved there were competitive alternatives to Watson Station and the Sepulveda Line.[46] (SFPP Rhg. App., at pp. 26-29.)

Contrary to SFPP's suggestion, we are not required to discuss every piece of evidence that is put before us.[47] Thus, there is no basis to conclude the Decision is unlawful on that ground. However, in reviewing the record in response to the applications for rehearing, the evidence presented was less robust than desired. For example, much of SFPP's evidence discussed only broad principles regarding competitive markets. It did not clearly show there were viable competitive alternatives.[48] At the same time, Shippers did not appear to clearly establish that no competition was available. The evidence just claimed there were no viable alternatives.[49]

Accordingly, we will revisit the issue of competition and any justification for market based rates. We grant limited rehearing and by this Order provide parties notice and opportunity to submit further evidence on these issues, in order that we will have a more complete record for a resulting determination. Pending a determination on limited rehearing, the rates authorized by D.11-05-045 shall remain in place, subject to adjustment.

### 2. Alleged Impermissible Delay

SFPP contends the Decision erroneously denied its request for market based rates because it took the Commission so many years to resolve this proceeding. SFPP contends it amounted to an impermissible delay, which effectively punished SFPP

[46] SFPP cites to Exh. 202R [SFPP/Morgan], at pp. 6-7, 13, Attachment 1; Exh. 209R [SFPP/Cox], at pp. 90-91, 96, Attachment 4, and Exh. 4R [SFPP/Greco]; R.T. Vol. 9, at pp. 1064-1067.

[47] *Toward Utility Rate Normalization v. Public Utilities Commission* (1978) 22 Cal.3d 529, 540-541.

[48] See e.g., Exh. 5 [SFPP/Higgins], at pp. 2-9; Exh. 8 SFPP/Hall/Woodward, at pp. 3-8; Exh. 106 SFPP/Cox] Exh. 107 SFPP/Cox [Largely reiterating information in Exh. 106].

[49] See e.g., Exh. 219A – 222A [Shippers/Watson]; Exh. 9 [Brickhill/Shippers].

for the Commission's own inaction. (SFPP Rhg. App., at pp. 29-31, relying on *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.* ("*Bowman*") (1974) 419 U.S. 21; and *Wisconsin v. Federal Power Commission* ("*Wisconsin v. FPC*") (1963) 373 U.S. 294.)

We find nothing in *Bowman* that would establish there was an impermissible or unlawful delay here. In fact, *Bowman* lends support to the fact that administrative delays are justifiable when there are complicated issues which require deliberate and careful consideration.[50] That was certainly the case here, where the Decision entailed review of multiple applications and complaints involving intricate ratemaking issues. Similarly, nothing in *Wisconsin v. FPC* suggests the Decision was unlawful, as even in that case the Court found no error.[51]

Nevertheless, as explained above we find it is preferable on whole to grant limited rehearing to further develop the evidentiary record. We will do so as set forth in the Ordering Paragraphs of this Order to reflect that result.

### F. Alleged Retroactive Ratemaking

SFPP contends the Decision violated the prohibition against retroactive ratemaking by ordering refunds in connection with C.97-04-025 and A.03-02-027. (SFPP Rhg. App., at pp. 32-34, relying on *Pac. Tel. & Tel., supra,* 62 Cal.2d at pp. 650, 655; *Johnson v. Santa Clarita Water Company* [D.96-01-026] (1996) 64 Cal. P.U.C.2d 520, 527.)[52]

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[50] *Bowman, supra,* 419 U.S. at pp. 294-295.

[51] *Wisconsin v. FPC, supra,* 373 U.S. at pp. 313-314.

[52] If nothing else, SFPP requests the Commission exempt rates for Watson Station and the Sepulveda Line from any refund adjustments as a matter of equity. SFPP argues subjecting those rates to refund would undo freely negotiated contract rates. (SFPP Rhg. App., at pp. 34-35.) There is no evidentiary record concerning the contracts that may be in place between SFPP and various shippers. And an application for rehearing is not an appropriate forum to undertake review of new issues and evidence.

As a general rule, the Commission has the power to prescribe rates prospectively only.[53] However, the prohibition against retroactive ratemaking only applies to final rates which have been approved by the Commission in a true ratemaking proceeding.[54] Therefore, in determining whether the rule against retroactive ratemaking applies in a particular situation, it is necessary to determine the origin of the rates underlying the refunds being challenged.[55]

In the case of oil pipeline companies, Section 455.3 may also be relevant as it provides for an exception to the general prohibition against retroactive ratemaking in certain circumstances. Section 455.3 eliminated the traditional requirement for Commission approval prior to implementation of rate increases. In pertinent part, the statute provides:

> (a) Notwithstanding any other provision of law…the commission shall adopt rules and regulations that substantially revise the manner in which oil pipeline corporations may change and use rates.
>
> (b)(1) Pipeline corporations shall be required to give the commission and all shippers no less than 30 days' notice of rate changes.

(Pub. Util. Code, § 455.3, subd. (a), (b)(1).)

Pursuant to these provisions, oil pipeline companies may implement rate increases automatically after providing 30 day notice in an advice letter filed with the Commission. However, the Legislature recognized that after the fact review is needed for such automatic rate increases. Thus, the statute explicitly allows the Commission to order refunds if the rates that were implemented are later reviewed and determined to be unjust or unreasonable. Specifically, Section 455.3 states:

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[53] See e.g., *City of Los Angeles v. Public Utilities Commission* ("*City of LA*") (1972) 7 Cal.3d 331, 356-357; *Pac. Tel. & Tel., supra*, 62 Cal.2d at pp. 650-651.

[54] *Southern California Edison Company v. Public Utilities Commission* ("*Edison v. PUC*") (1978) 20 Cal.3d 813, 816,

[55] *Ponderosa Telephone Company v. Public Utilities Commission* ("*Ponderosa*") (2011) 197 Cal.App. 4th 48, 61-64.

> (b)(4) Pipeline corporations shall refund, with interest, any portion of the rate change that is subsequently disallowed by the commission to all shippers within 30 days of the commission's decision becoming final. Interest shall accrue from the date the new rate is first charged.

(Pub. Util Code, § 455.3, subd. (b)(4).).[56]

### 1. Refunds Related to A.03-02-027

Related to A.03-02-027, the Decision adopted a new capital structure for SFPP.[57] It also directed SFPP to make refunds as warranted. SFPP does not argue that no refunds can be ordered. Rather, it contends the scope of review attendant to A.03-02-027 was limited to consideration of an electric power cost surcharge. In SFPP's view any refunds must therefore be limited to electric power costs, and any other adjustments can be made prospectively only. (SFPP Rhg. App., at pp. 33-34.)

We are not persuaded by SFPP's argument concerning the permissible scope of review because SFPP erroneously cites to a June 26, 2003, "Scoping Memo." The referenced document was in fact only an ALJ Ruling, not a Scoping Memo.[58] The scope of A.03-02-027 was set by the June 5, 2003 Scoping Memo and Ruling of the Assigned Commissioner, as directed by the full Commission in Resolution O-0043, and it is those documents that control. They clearly put all SFPP's rates, costs, and charges at issue.[59]

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[56] See also Pub. Util. Code, § 455.3(c), and Sen. Comm. on Energy, Utilities and Communications, Analysis of Assembly Bill ("AB") 515 (1995-1996 Reg. Sess.), as amended June 19, 1995, at pp. 1-2.

[57] D.10-04-045, at p. 30 [Adopting a new capital structure of 60% equity / 40% debt, and a ROE of 12.61%.].

[58] ALJ Ruling Setting the Procedural Schedule and Clarifying the Scoping Memo, dated June 26, 2003.

[59] See e.g., Scoping Memo and Ruling of the Assigned Commissioner, dated June 5, 2003, at p. 1 [On February 21, 2003, SFPP filed an application pursuant to Commission Resolution (R.) O-0043 issued October 24, 2002….In R.O-0043, the Commission indicated its intention to review the overall reasonableness of SFPP's existing intrastate rates in relation to a current cost-of-service showing."], p. 2 ["SFPP's request for the electric surcharge cannot be decided until the Commission determines whether SFPP's overall, system-wide intrastate pipeline transportation rates are reasonable or not…"], & p. 3 ["The scope of this proceeding is whether SFPP should be permitted an electricity surcharge. However, before the Commission can address this issue…the Commission must determine…whether or not SFPP's intrastate pipeline rates are reasonable."].

Nevertheless, after review it is a concern that the evidentiary record in this proceeding is not adequate to resolve the necessary issues. Our preliminary review suggests that between 1992 and 2001 there did not appear to be any change in the tariff rates SFPP charged. In 2001 SFPP filed AL 14 with related tariffs to pass on to its customers its increased electric power costs via an electric power cost surcharge. The related rate increases appear to have been implemented automatically under Section 455.3, without Commission approval on June 9, 2001. As automatic rate increases, Section 455.3(b)(4) establishes that at least the amount recovered through the electric power surcharge was open for review and possible refund in this proceeding.

In addition, on October 24, 2002, the Commission issued Resolution O-0043. In addition to holding that the electric power cost surcharge could be subject to refund,[60] it found that SFPP had failed to justify the reasonableness of its total rates. Thus, SFPP was directed to file an application (A.03-02-027) to justify its total system rates, and its rates were made subject to refund pending the outcome of that proceeding.[61]

This information suggests that the adjustments ordered in D.11-05-045 were lawful since both the electric power cost surcharge as well as the underlying (or total) rates were made open for review and possible refund related to A.03-02-027.[62] We

[60] See e.g., Resolution O-0043, dated October 24, 2002, at p. 13 [Ordering Paragraph Number 1 (d) ["If SFPP does not file its application within the specified time period, its rate surcharge will be terminated and all revenues associated with the rate surcharge, from today, shall be refunded to customers."].

[61] Resolution O-0043, dated October 24, 2002, at p. 1 ["We require SFPP to file an application to justify its current rates...and show its current rate of return. SFPP's rates shall be subject to refund, pending the outcome of this cost of service application….If SFPP does not file its cost of service application…its rate surcharge will be terminated and revenues associated with the surcharge will be refunded to customers."], p. 8 ["SFPP did not provide enough information in its advice letter to show that it actually needs to increase its rates to maintain a reasonable rate of return….We will require SFPP to file with the Commission an application in order to justify its total rates, including the increased costs of electricity….Making SFPP's rates subject to refund is necessary because: 1) we have not made a determination whether SFPP's total rates are reasonable at this time in the above complaints; 2) SFPP did not justify its total current rates in AL [Advice Letter] 14; and 3) SFPP has already put its surcharge into effect."], & p. 13 [Ordering Paragraph Number 1 (a) ["SFPP shall file an application to justify its total rates"] & 1 (c) ["SFPP's revenues are subject to refund, pending the outcome of the Commission's decision on SFPP's application to justify its current rates."].

[62] Resolution O-0043, dated October 24, 2002, at p. 1 ["SFPP's rates shall be subject to refund, effective today."].

also note that Resolution O-0043 was never challenged and SFPP's claim here may be an improper collateral attack on a final Commission determination.[63]

That said, we are not satisfied that the record as it currently stands is adequate to support the above conclusions. Accordingly, we will grant limited rehearing as specified in the below Ordering Paragraphs to develop a record necessary to support any resulting Commission determination. Refunds ordered pursuant to D.11-05-045 shall be stayed, subject to adjustment, pending a determination on the limited rehearing.

**2. Refunds Related to C.97-04-025**

Related to C.97-04-025, the Decision directed SFPP to refund amounts that SFPP charged in rates for its federal income tax and environmental expenses.[64] SFPP contends that the rates which Shippers challenged were final rates approved by the Commission in D.92-05-018. Accordingly, SFPP argues that adjustments can be made prospectively only, and the refunds are impermissible as violating the prohibition against retroactive ratemaking. (SFPP Rhg. App., at pp. 32-33.)

In evaluating SFPP's claim we have sought to determine both the origin and finality of the challenged rates. In particular, we reviewed the evidence regarding the income tax and environmental costs SFPP relies on to argue that the challenged rates originated in D.92-05-018. However, we do not see that it clearly establishes any link to the rates adopted in D.92-05-018 since it was 1996 cost data.[65] That does not appear to be the evidence the Commission used to adopt the rates set in D.92-05-018 (i.e., 1990-1991 cost data).[66]

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[63] Section 1709 provides: "In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive." (See *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630-631.)

[64] D.11-05-045, at pp. 15-28, 39-40 [Finding of Fact Numbers 4 & 5], p. 41 [Conclusion of Law Numbers 3 & 7], p. 42 [Ordering Paragraph Number 2]. (See *Order Granting Rehearing* [D.99-06-093], *supra*, 1999 Cal. PUC LEXIS 442, * 1.)

[65] See e.g., Exh. 204R [SFPP/Turner], Attachment TAT-3, at pp. 2-3 [Showing SFPP's 1996 environmental expenses].

[66] See D.98-08-033, *supra*, 81 Cal.P.U.C.2d at p. 597 [Finding of Fact Number 38] ["The best evidence on this record for defendant's 1996 tax expense is that given by defendant, $ 5.4 million."]. Compare

(continued on next page)

A preliminary review of advice letters and tariffs SFPP filed with the Commission show the rates charged during the relevant time period, i.e., 1992-1997. That information gives us cause to question the refund determination reached in D.11-05-045. Accordingly, to resolve this matter with certainty we will grant limited rehearing as specified in the below Ordering Paragraphs to further develop a complete record of information and evidence regarding the approved rates, the actual rates charged, and any refunds that may be warranted during the relevant time period. Refunds ordered pursuant to D.11-05-045 shall be stayed, subject to adjustment, pending a determination on the limited rehearing.

**G. Request for Oral Argument**

SFPP requests oral argument on the application for rehearing pursuant to Rule 16.3 of the Commission's Rules of Practice and Procedure. (SFPP Rhg. App., at p. 1, fn. 1.)

Rule 16.3 provides that a request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate how it raises issues of major significance consistent with the following criteria:

> (a) adopts new precedent or departs from existing Commission precedent without adequate explanation;
>
> (b) changes or refines existing Commission precedent;
>
> (c) presents legal issues of exceptional controversy, complexity, or public importance; and/or
>
> (d) raises questions of first impression that are likely to have significant precedential impact.

(Cal. Code of Regs., tit. 20, § 16.3, subd. (a).)

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(continued from previous page)
with SFPP A.91-12-034 [in support of D.92-05-018], Att. B [Showing 1990-1991 income tax information].

Rule 16.3 provides that the Commission has complete discretion to determine the appropriateness of oral argument in any particular matter.[67] Here, SFPP fails to demonstrate how any Rule 16.3 criteria are triggered. Similarly, it fails to explain any way in which oral argument would materially assist us in resolving this matter. The entire request consists of a one sentence footnote which makes the sweeping statement that the Rule was triggered. (SFPP Rhg. App., at p. 1, fn. 1.) Such summary requests are inadequate on their face.

**Indicated Shippers Application for Rehearing**

**H. North Line Expansion Project**

Shippers contend the Decision erred because allowing the attrition adjustment for the North Line Expansion Project was contrary to Commission policy and precedent. (Shippers Rhg. App, at pp. 5-9, relying on *Re Pacific Gas & Electric Company,* [D.85-12-071], *supra,* 19 Cal.P.U.C.2d 453.) .)

Shippers support their argument based on the following Commission statement:

> Attrition is the year-to-year decline in a utility's earnings caused by increased costs that are not offset by increased rates or sales. In order to protect utility shareholders from the effects of attrition to some extent, the Commission has adopted a ratemaking mechanism called the Attrition Rate Adjustment (ARA). The mechanism was designed to provide the utilities with the reasonable opportunity of achieving their authorized rate of return during years in which they are not permitted under the Commission's rate case plan procedures to file for general rate relief but in which they still face volatile economic conditions. (D.85-12-076, Finding of Fact 1, 19 CPUC2d 453, 476.)

(*Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and*

[67] Rule 16.3(a) of the Commission's Rules of Practice and Procedure. (Cal. Code of Regs., tit. 20, § 16.3, subd. (a).)

*Charges for Gas Service Effective on January 1, 2003, and Related Matters* [D.04-05-055] __ Cal.P.U.C.3d __, at p. 23 (slip op.).)

Shippers argue that SFPP is not subject to the rate case plan, thus the circumstance we contemplated as justifying such an allowance did not exist. That may be true. However, D.85-12-071 did not limit such adjustments to only that circumstance. Nor does it prohibit us from exercising our discretion to allow similar adjustments for utilities not covered by the plan.

The crux of Shippers challenge really appears to be a dispute with our rationale. The Decision reasoned an adjustment was reasonable since it would avoid the need for SFPP to file again in 2004 to recover project costs.[68] SFPP argues that reasoning was flawed because SFPP *did* file again in 2004.

SFPP ignores the context for our rationale. Specifically, that although we are now aware SFPP filed again in 2004 to recover those costs, our review of this issue was necessarily limited to only the record in support of SFPP's TY 2003 rate case calculations.[69] As a result the determination could not consider the subsequent 2004 filing.[70] In that context, it was reasonable to conclude that an attrition adjustment could have avoided the need to again file for recovery of the project costs. Further, as discussed above, our approval was consistent with normal regulatory practice to allow such recovery when a project is placed into service.

Shippers also suggest we allowed a double recovery of project costs. They argue that will occur since SFPP was awarded the attrition allowance and it also included those costs in A.04-11-017. (Shippers Rhg. App., at p. 9.) Shippers are wrong.

[68] D.11-05-045, at p. 36. Shippers also argue the Decision improperly allowed SFPP to recover project costs before project was placed into service. (Shippers Rhg. App. at pp. 7-8.) The recommendation in Part D above resolves this issue. Accordingly discussion is not reiterated here.

[69] SFPP Application in A.03-02-027, dated February 21, 2003, at pp. 3-4.

[70] D.11-05-045, at p. 36.

The Decision authorized only a 2004 attrition adjustment. Nothing in the Decision approved any costs associated with A.04-11-017, and that proceeding remains open for subsequent disposition.

## I. Capital Structure

The Decision approved SFPP's proposed capital structure (60% equity, 40% debt), stating in part that it best represented the capital structure of SFPP's financing source, KMEP.[71] Shippers contend no evidence showed 60% / 40% was KMEP's "actual" capital structure. It was merely KMEP's "target" structure. Accordingly, Shippers argue the Decision is not supported by substantial evidence and it is improperly based on an artificial equity-debt ratio. (Shippers Rhg. App., at pp. 10-16.)

We were aware the evidence shows that the adopted equity-debt ratio was KMEP's "target" structure.[72] To the extent our Decision could be interpreted incorrectly, we will modify it to reflect that clarification. The proposed modifications are set forth in the Ordering Paragraphs of this Order.

Notwithstanding that clarification, nothing demonstrates the Decision was unlawful. Shippers argument assumes it is only lawful to approve a capital structure that matches an entity's "actual" equity-debt ratio. (Shippers Rhg. App., at pp. 13, 16.)

Shippers cite to no legal authority to supports such a proposition. There is no set rule or formula for determining an appropriate capital structure. In determining capital structures, the Commission generally considers a number of factors. These often include: the frequency of rate case reviews; the nature of capital investments; operating, business and financial risks; liquidity and borrowing capability; credit rating impacts; interest rates; the ability to attract capital; cost of debt; and the interplay with ROE. The Commission then makes various adjustments which in its judgment it finds appropriate.

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[71] D.11-05-045, at p. 33.

[72] Exh. 102A [SFPP/Williamson], at p. 2 [KMEP target 60% equity 40% debt]; Exh. 200A [Shippers/O'Loughlin], Attachment B, p. 19 [KMEP 2003 equity-debt with PPA removal 44.1% / 55.9% and without PPA removal 47.5% / 52.5.].

Commission policy and practice requires only that the adopted capital structure reflect a reasonable balance of all these factors in any particular case.[73]

Consistent with normal practice, we considered several of these factors in this case. Only one factor considered was SFPP's financing source, KMEP. We also considered the nature of SFPP's capital investments, how capital structure would impact its ability to attract capital, its risk levels, and its liquidity and borrowing capability.[74] In addition, we considered the fact that a 60% equity level would allow for a reduction to the ROE.[75]

These considerations were supported by the record evidence.[76] We fulfilled our legal duty to weigh that evidence, and we applied our expertise to make adjustments as deemed reasonable under the circumstances.

**J. Status of C.97-04-025**

Shippers contend it was unreasonable for the Decision to close C.97-04-025 because we failed to resolve: (1) whether SFPP must refund alleged overcharges in rates for Watson Station and the Sepulveda Line; and (2) whether SFPP must continue to charge separate rates for those facilities. Shippers request that if we decline to resolve these issues in this rehearing, we keep C.97-04-025 open to resolve them through settlement or further litigation. (Shippers Rhg. App., at pp. 16-35, citing *Order Granting Rehearing* [D.99-06-093], *supra*, __ Cal.P.U.C. 3d __ , 1999 Cal. PUC LEXIS 442.)

Since we did not address these issues in D.11-05-045, it would be inappropriate to resolve them as part of this Order. It is also not our preference to leave C.97-04-025 open since that docket is so old and there are other related dockets that are

[73] See e.g., *Application of Pacific Gas and Electric Company for Authority to Establish its Authorized Rates of Return on Common Equity for Electric Utility Operations and Gas Distribution for Test Year 2003* [D.02-11-027] (2002) __ Cal.P.U.C.3d __, 2002 Cal.PUC LEXIS 718, *8.

[74] D.11-05-045, at pp. 30-34.

[75] D.11-05-045, at p. 34.

[76] See e.g., Exh. 102A [SFPP/Williamson]; Exh. 103A [SFPP/Williamson]; Exh. 105A [SFPP/Turner]; Exh. 200[Shippers/O'Loughlin].

still open. Accordingly, we direct that if parties wish to seek resolution of the two issues specified above they may request consideration in the related open proceedings (C.06-12-031, A.04-11-017, A.06-01-015, & A.06-08-028).

## III. CONCLUSION

For the reasons stated above, we grant limited rehearing and modify D.11-05-045 as discussed herein and as specified below. The application for rehearing of D.11-05-045, as modified, is denied as to all other issues because no legal error has been shown.

**THEREFORE, IT IS ORDERED** that:

1. We grant limited rehearing of D.11-05-045 regarding the issue of competition and SFPP's request for market based rates.

2. Within 60 days of the effective date of this Order SFPP and Shippers shall file any information they believe will specifically show whether there were, or are, actual or potential competitive alternatives related to the routes and service as between SFPP and Shippers. As part of those filings SFPP and Shippers should include any legal information or argument regarding whether market based rates, if approved, may apply prospectively only or as of the date of SFPP's original request.

3. We grant limited rehearing of D.11-05-045 regarding whether any refunds and adjustments ordered in connection with C.97-04-025 and A.03-02-027 are barred by the rule against retroactive ratemaking. Pending a determination on limited rehearing, refunds ordered pursuant to D.11-05-045 shall be stayed, subject to adjustment.

4. Within 60 days of the effective date of this Order SFPP shall file in this consolidated proceeding:

   a. All advice letters and accompanying tariffs filed from 1997 to the present. SFPP shall include all related letters to or from CPUC staff, and any Commission resolutions disposing of the advice letters.

   b. Information showing: (i) SFPP's tracking of the total revenue it received from the electric power cost surcharge from October 24, 2002, through the date of D.11-05-045, as required by Resolution O-0043, at p. 10; and (ii) the total revenue SFPP received from

the surcharge from the date it was first imposed until October 24, 2002.

c. Information showing all amounts SFPP has refunded to date pursuant to D.11-05-045. The information should separately show any amounts refunded in connection with A.03-02-027 and C.97-04-025.

d. In providing the refund amounts, SFPP shall include the calculations used to determine refunds for the following specific periods: (i) the date rates adopted in D.92-05-018 became effective to the date the electric power cost surcharge was first imposed; (ii) from the date the electric power cost surcharge was first imposed to October 24, 2002; and (iii) from October 24, 2002 to the date SFPP stopped calculating refunds.

e. Information showing what, if any, prospective changes to rates are warranted to reduce the revenue requirement to reflect the changes to SFPP's cost of capital, and income tax and environmental costs ordered by D.11-05-045.

f. Any other documents SFPP believes may be related to and within the scope of the limited rehearing granted herein on the issue of retroactive ratemaking.

5. On rehearing of D.11-05-045 the Commission shall develop a record sufficient to show what, if any, prospective changes to rates are warranted to reduce the revenue requirement to reflect the changes to SFPP's cost of capital, and income tax and environmental costs ordered by D.11-05-045.

6. On rehearing related to C.97-04-025 the Commission shall develop a record to reflect information which includes, at a minimum:

a. All SFPP advice letters, tariffs, and other relevant evidence to show the rates authorized and rates SFPP charged between 1997 and 2002.

b. Any other evidence which demonstrates the rates approved in D.92-05-018 and the rates challenged in C.97-04-025.

c. If the rates challenged in C.97-04-025 are not the same as the rates approved in D.92-05-018, the parties shall provide evidence to demonstrate whether or not the challenged rates were ever final approved rates.

d. Any other factual and/or legal information to support arguments concerning retroactive ratemaking and the lawfulness of refunds associated with SFPP's income tax and environmental expenses.

7. On rehearing related to A.03-02-027 the Commission shall develop a record to reflect information which includes, at a minimum:

a. ALL SFPP advice letters, tariffs, and other relevant evidence to show the rates approved and the rates SFPP charged from 2002 to present.

b. Evidence to establish the Commission authorized SFPP capital structure in place prior to D.11-05-045.

c. Evidence to show the authorized rates associated with the approved capital structure prior to and after D.11-05-045.

8. Within 120 days of the effective date of this Order Shippers may respond to SFPP's refund-related filing and either stipulate that the time-relevant documentation as provided is complete, or Shippers may submit additional contemporaneous documents to supplement what SFPP may have omitted, with an explanation of how the documents relate to SFPP's data. Shippers documentation shall be limited to actual relevant data (e.g., tariffs, rate sheets, advice letters, letters, etc.), and not argument regarding the interpretation of data.

9. D.11-05-045 is modified as follows:

a. Section 6.4 titled Environmental Costs beginning on page 27 is modified to delete all text after the first full paragraph and replace as follows:

"In D.99-06-093 the Commission questioned whether SFPP had allocated too much of its costs (approximately 90%) to its California operations rather than other jurisdictional operations. Our review of the record found there was evidence to show the specific costs SFPP attributed to each California and non-California pipeline location, as well as costs associated with terminal operations. Based on this evidence, it can be seen that the total California costs were approximately $3.8 million. That amount included costs related to seven terminal locations. Eliminating those terminal costs reduces the California expense to $3 million.

It is then necessary to determine the appropriate percentage of costs that should be attributed to CPUC jurisdictional (intrastate) versus FERC jurisdictional (interstate) operations. SFPP proposed a 75% CPUC jurisdictional allocation, consistent with its allocation for other expenses. We do not find a 75% jurisdictional allocation to be unreasonable. Further review also shows that with terminal costs eliminated, the California and non-California environmental expenses were essentially even (50%/50%) rather than the 90%/10% originally feared. Nothing suggests this is unreasonable, particularly considering California had more pipeline locations. Applying the 75% to this evidence would result in a recoverable environmental expense of $2.5 million. We will authorize SFPP to recover that amount of California environmental costs."

b. The first sentence of Section 8.1.1. on page 30 is modified to read:

"SFPP requests a 2003 capital structure of 60% equity and 40% debt, based on the target capital structure of KMEP the affiliated entity that manages SFPP's finances."

c. The first sentence of the last paragraph on page 33 is modified to read:

"We will adopt SFPP's proposed capital structure, 60% equity, 40% debt because it best reflects the target structure of the actual financing source, KMEP, and the forecast for KMEP's cost of debt at 7.08%."

d. The last sentence of Section 8.2. on page 34 is modified to read:

"We adopt a ratemaking adjustment for rates beginning the last quarter of 2004 that includes the plant in rate base."

e. Finding of Fact Number 5 on page 39 is modified to read:

"The evidence is adequate to determine the amount of California-jurisdictional environmental costs SFPP should be allowed to recover.

f. Finding of Fact Number 8 on page 40 is modified to read:

"A capital structure of 60% equity and 40% debt is consistent with the target capital structure of SFPP's affiliate, KMEP."

g. Finding of Fact Number 11 on page 40 is modified to read:

"The North Line Expansion Project was placed into service in the last quarter of 2004 and after Test Year 2003."

h. Conclusion of Law Number 6 on page 41 is modified to read:

"The Commission has discretion to adopt an attrition adjustment effective the last quarter of 2004 to reflect capital addition costs associated with the North Line Expansion Project as of the date the plant was put into service."

i. Conclusion of Law Number 7 on page 41 is modified to read:

"SFPP should be allowed to recover $2.5 million in California jurisdictional environmental costs."

j. Conclusion of Law Number 9 on page 41 is deleted.

k. Ordering Paragraph Number 1 on page 42 is deleted and on rehearing as ordered herein the Commission shall determine whether any refunds and adjustments made pursuant to Ordering Paragraph Number 1 shall remain in place or whether further Commission action is required.

10. This proceeding, Case (C.) 97-04-025, remains open to address the issues subject to the limited rehearing ordered herein.

This order is effective today.

Dated March 8, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners