

Decision 97-12-037 December 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
SFPP, L.P. PLC 009, for an Order to)	
issue Promissory Notes in an aggregate)	Application 97-05-023
principal amount not to exceed \$175)	(Petition for Modification
million, and to secure such Notes under)	filed September 23, 1997)
existing mortgages or other encumbrances))	
of utility property.)	

ORIGINAL

S U P P L E M E N T A L O P I N I O N

Summary of Decision

This supplemental decision grants SFPP, L.P. (SFPP), a pipeline company engaged in the business of transporting refined petroleum products, the authority requested in its Petition for Modification of Decision (D.) 97-07-048 (Petition).

Notice of the filing of the Petition appeared on the Commission's Daily Calendar of September 25, 1997 and October 7, 1997 (as corrected). No protests have been received.

D.97-07-048 dated July 16, 1997, in Application (A.) 97-05-023, authorized SFPP to issue promissory notes or Notes and obtain associated loans (for purposes of this Petition to be referred herein as Facility A Notes) in an aggregate principal amount not to exceed \$175 million, pursuant to the terms of a proposed Amended and Restated Credit Agreement (Amended Credit Agreement). The Facility A Notes will be secured by mortgages or liens on utility property as required by the terms of the Amended Credit Agreement and the existing Deeds of Trust. The decision also exempts SFPP from the Commission's Competitive Bidding Rule.

The Facility A indebtedness will take the form of revolving loans from commercial banks which are parties to the Amended Credit Agreement. As indicated in A.97-05-023, on approximately the middle part of the year 2000, the revolving credit facility will terminate and the outstanding balance of all

revolving loans will mature. SFPP plans to issue to each bank a Proposed Note evidencing SFPP's indebtedness, each in the aggregate principal amount of such bank's revolving loan commitment.

Modification Sought

Pursuant to the Petition, SFPP seeks modification of the decision with respect to three issues:

1. To alternatively issue notes (Facility B Notes) in an aggregate principal amount not to exceed \$25 million. The Facility B Notes will be secured by a first priority lien on all rights, title, and interest of SFPP in substantially all of its accounts receivable and inventory (Facility B Property; which property is separate and distinct from the Facility A Property) pursuant to the terms of a Working Capital Security Agreement to be entered into by SFPP. The aggregate principal amount outstanding under the Facility A Notes and the Facility B Notes will not at any time exceed \$175 million.
2. To use the proceeds of the Facility B Notes and related loans for general corporate purposes, including working capital requirements.
3. To provide that the aggregate principal amount outstanding under Facility A and Facility B remain outstanding and not mature until the "termination date" as defined in the Amended Credit Agreement¹, or such date to which the termination date has been extended pursuant to the terms of the Amended Credit Agreement.

This Petition is made pursuant to Public Utilities (PU) Code §§ 816, 817, 818 and 851, and Rule 47 of the Commission's Rules of Practice and Procedure.

¹ Pursuant to § 2.4(b) of the Amended Credit Agreement, SFPP may request that the banks extend the termination date for successive one-year periods. If the banks approve such request, the termination date shall be extended for one such year period.

SFPP states in the Petition that after the filing of A.97-05-023 and the issuance of the decision by the Commission, SFPP and the bank group party to the Amended Credit Agreement determined that the indebtedness under the Amended Credit Agreement should be separated into two parts, Facility A and Facility B. By separating the Amended Credit Agreement into Facility A and Facility B, the bank group can limit the amount of proceeds of loans that can be applied for general corporate purposes, including working capital. Additionally, the separation of Facility A and Facility B provides the bank group with a separate asset pool which secures each respective facility.

SFPP also determined that a termination date (as to both Facility A and Facility B) which could be extended would be advantageous to SFPP. To the extent that the Amended Credit Agreement satisfies any debt capacity requirements of SFPP on approximately the middle part of the year, SFPP can avoid unnecessary fees and expenses associated with refinancing the Amended Credit Agreement by simply extending the termination date pursuant to the terms of the Amended Credit Agreement.

In the interest of maintaining continuity of negotiations with the bank group, SFPP determined to use its resources to finish negotiations with the bank group party to the Amended Credit Agreement and then file the Petition after entering into the Amended Credit Agreement. Although the Amended Credit Agreement contemplates the issuance of the Facility B Notes and the granting of a security interest in the Facility B property, the Amended Credit Agreement expressly provides that SFPP shall not issue the Facility B Notes or grant a security interest in the Facility B property until approval of the Commission is obtained.

Description of Facility B Indebtedness

PU Code § 818 provides:

No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition

to the other requirements of law it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied... and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income..

SFPP proposes to issue the Facility B Notes pursuant to the terms of the Amended Credit Agreement allowing SFPP to borrow funds in an aggregate principal amount, at any time outstanding, not to exceed \$25 million. Under the terms of the Amended Credit Agreement, at no time shall the aggregate principal amount outstanding under the Facility A Notes and the Facility B Notes exceed \$175 million. The borrowings to be made under the Facility B Notes from time to time will take the form of revolving loans from commercial banks which are parties to the Amended Credit Agreement. For a period of forty-five consecutive days during each calendar year, SFPP shall have no loans outstanding under the Facility B Notes². The Facility B revolving credit facility will

² Facility B loans fall under PU Code § 818 because the loans may be outstanding for a period of more than 12 months. For example: From January 1, 1998, through February 15, 1998, there are no Facility B loans outstanding. On February 16, 1998, SFPP draws down funds from Facility B. On November 14, 1999, SFPP pays down all Facility B loans and leaves a zero balance. From November 15, 1999 through December 31, 1999, SFPP does not draw down any funds from Facility B. Under this example, SFPP can have Facility B loans outstanding from the period beginning February 16, 1998 and ending November 14, 1999, a 21-month period, while satisfying the requirement of having no Facility B loans outstanding during 45 consecutive days in each of the 1998 and 1999 calendar years. PU Code § 823(d) does not apply.

Pu Code § 823(d) states that "No note payable at a period of not more than twelve months after the date of issuance of such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates or other evidence of interest or ownership, of bonds, notes or any term or character, or any other evidence of indebtedness, without the consent of the commission."

terminate and the outstanding balance of all revolving loans will mature on termination date.

SFPP plans to issue to each bank a Facility B Note evidencing SFPP's Facility B indebtedness, each in the aggregate principal amount of such bank's Facility B loan commitment.

Any given loan under the Facility B Notes will accrue with interest at a rate calculated by reference to either a base rate, Eurodollar rate or rate determined by competitive bid, and SFPP will determine which rate will apply to each loan. Interest on all loans will be payable upon payment or prepayment of principal and at maturity. In addition, interest on base rate loans and loans with an interest determined by competitive bid will be payable quarterly, and interest on Eurodollar rate loans will be payable at the last day of the selected interest period (but in no event less frequently than every three months.) The principal of all loans will be subject to voluntary and mandatory prepayment.

The principal of and interest on the loans evidenced by the Facility B Notes will be secured by a first priority lien on all rights, title and interest of SFPP in substantially all of its Facility B Property pursuant to the terms of the Working Capital Security Agreement.

SFPP's proposed Facility B indebtedness raise no questions that should dissuade us from giving favorable consideration to the authorization requested in the Petition. We make no finding regarding the reasonableness of the proposed debt and we place SFPP on notice that the Amended Credit Agreement may be reviewed in conjunction with a future ratemaking proceeding to the extent that it affects rates.

The authorization herein given is for the purpose of this proceeding only and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

We note herein that SFPP may request that the banks extend the termination date pursuant to the terms of the Amended Credit Agreement at a future time should the need arise.

Use of Proceeds

SFPP intends to issue the Facility B Notes and enter into the related loans for the purposes of applying the net proceeds therefrom to provide for general corporate purposes, including working capital. SFPP states in the Petition that no specific general corporate purposes or working capital expenditures have been identified at this time. However, these expenditures must continue to be made on a regular basis to maintain the level of service that SFPP currently provides.

SFPP intends to issue the Facility B Notes and borrow the related funds comport with the purposes set forth in PU Code § 817(b), (c) and (h).

Pursuant to PU Code § 818, we will approve SFPP's intended use of proceeds (including purposes reasonably required in its operation) from the proposed Facility B Notes.

SFPP is placed on notice by this supplemental decision that the proceeds from the proposed transaction cannot be charged to operating expenses or income.

Exemption from Competitive Bidding

Exhibit A to Commission Resolution F-616 dated October 1, 1986, states, "Securities privately placed with specific lenders and bank term loans obviously may be negotiated . . . variable interest rate debt is normally completed on a negotiated basis. It is reasonable that these types of debt instruments should be exempt from the Competitive Bidding Rule." Furthermore, the Competitive Bidding Rule applies only to utilities with bond ratings of "A" or higher.

The June 1997 and earlier issues of Standard and Poor's Bond Guide do not include SFPP in its broad list of bonds.

Because the proposed Facility B Notes and related loans would be completed on a negotiated basis, and in the absence of a debt rating, we will exempt SFPP from the requirements of the Competitive Bidding Rule.

Fee

No additional fee under PU Code § 1904(b) is required for the filing of this Petition because the aggregate principal amount outstanding under the Facility A Notes and the proposed Facility B Notes combined will not exceed \$175 million. SFPP has previously paid the fee associated with A.97-05-023.

Findings of Fact

1. The proposed Facility B Notes and related loans thereof would be for proper purposes and would not be adverse to the public interest.

2. The granting of a security interest in the Facility B Property pursuant to the Amended Credit Agreement would not be adverse to the public interest.

3. As may be necessary, the extension of the termination date pursuant to the terms of the Amended Credit Agreement and subject to bank approval, would be for proper purposes and would not be adverse to the public interest.

4. PU Code § 818 provides that no public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it shall first have secured from the Commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

5. The money, property, or labor to be procured or paid for by the proposed Facility B Notes and related loans is reasonably required for the purposes specified in the Petition.

6. There is no known opposition to the Petition and there is no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.
2. The Proposed Facility B Notes and related loans are for proper purposes and the money, property, or labor to be procured or paid for by the issue of the notes authorized by this supplemental decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
3. PU Code § 823(d) does not apply to SFPP's proposed Facility B Notes.
4. The Petition should be granted to the extent set forth in the supplemental order that follows.
5. The following supplemental order should be effective today.

S U P P L E M E N T A L O R D E R

IT IS ORDERED that:

1. The authority granted to SFPP, L.P. (SFPP) by Decision (D.) 97-07-048 in Application (A.) 97-05-023 is modified to authorize SFPP to issue Facility B Notes in an aggregate principal amount not to exceed \$25 million and enter into the Facility B loans contemplated by the Amended and Restated Credit Agreement (Amended Credit Agreement); the Facility B Notes and related loans being upon terms and conditions substantially consistent with those set forth in or contemplated by SFPP's Petition for Modification (Petition).
2. SFPP may secure the Facility B Notes and related loans by executing and delivering liens on the Facility B Property as required by the terms of the Amended Credit Agreement, the Working Capital Security Agreement, and related security documents.

3. The total aggregate principal amount at any time outstanding of the promissory notes or Notes and associated loans authorized in D.97-07-048 (for purposes of this Petition, to be referred herein as Facility A Notes) and the Facility B Notes which may be issued and the associated loans which may be made pursuant to this Petition shall not exceed \$175 million, and the proceeds from the Facility A Notes and Facility B Notes shall be applied for the respective purposes referred to in the Application and Petition.

4. The aggregate principal amount outstanding under Facility A and Facility B Notes shall remain outstanding and not mature until the termination date or such date to which the termination date has been extended pursuant to the terms of the Amended Credit Agreement.

5. SFPP's proposed issuance of Facility B Notes and obtaining associated loans are exempted from the requirements of the Commission's Competitive Bidding Rule.

6. SFPP shall file with the Energy Division copies of the Working Capital Security Agreement and other security instruments not later than 15 days after the documents have been executed.

7. The Petition is granted as set forth above.

8. In all other respects, D.97-07-048 remains in full force and effect.

A.97-05-023 ENERGY/RHG

9. A.97-05-023 is closed.

This supplemental order is effective today.

Dated December 3, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners