

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

BP Pipelines (Alaska) Inc. Docket No. OR05-10-000
ConocoPhillips Transportation Alaska, Inc.
ExxonMobil Pipeline Company
Koch Alaska Pipeline Company, L.L.C.
Unocal Pipeline Company State of Alaska

State of Alaska Docket No. OR05-2-000

v.

BP Pipelines (Alaska) Inc.
ExxonMobil Pipeline Company
ConocoPhillips Transportation Alaska, Inc.
Unocal Pipeline Company
Koch Alaska Pipeline Company

Anadarko Petroleum Corporation Docket No. OR05-3-000

v.

TAPS Carriers
BP Pipelines (Alaska) Inc. Docket No. IS05-82-000
ExxonMobil Pipeline Company Docket No. IS05-72-000
ConocoPhillips Transportation Alaska, Inc. Docket No. IS05-80-000
Unocal Pipeline Company Docket No. IS05-107-000
Koch Alaska Pipeline Company Docket No. IS05-96-000

ORDER ON PETITION
AND ESTABLISHING HEARING
AND CONSOLIDATING HEARINGS

(Issued August 24, 2005)

1. On July 20, 2005, BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., ExxonMobil Pipeline, Koch Alaska Pipeline Company LLC, and Unocal Pipeline Company (The TAPS Carriers) tendered for filing a petition pursuant to sections 13(3) and 13(4) of the Interstate Commerce Act (ICA), 49 U.S.C. App. §§13(3), 13(4) (1995).

2. The TAPS Carriers allege that the 2005 rates set by the Regulatory Commission of Alaska (RCA) for intrastate transportation on the Trans Alaska Pipeline System (TAPS) are unlawful because they create an undue preference in favor of intrastate shippers and are unjustly discriminatory against, and an undue burden on, interstate commerce. The TAPS Carriers ask that the Commission investigate the RCA-set TAPS intrastate rates, find those rates to be unduly preferential and unjustly discriminatory against, and an undue burden on interstate commerce, and set new TAPS intrastate rates equal to (in the case of deliveries to Valdez, Alaska) or comparable to (in the case of deliveries to intermediate points) the TAPS interstate rates. In addition, the TAPS Carriers seek to have the consideration of their petition consolidated with the on-going consolidated proceedings in Docket Nos. OR05-2-000, OR05-3-000, and IS05-82-000, *et al.* (the Interstate Rate Proceeding).

Notice of Filings and Pleadings

3. On July 29, 2005, the Commission issued notice of the TAPS Carriers' Petition, with comments, interventions or protests, due on or before August 5, 2005. Motions to intervene, and to reject the petition were filed by the State of Alaska (Alaska), Anadarko Petroleum Corporation (Anadarko), and Tesoro Alaska Company (Tesoro). Flint Hills Resources Alaska, LLC (Flint Hills), and Petro Star moved to intervene. Anadarko and Tesoro oppose consolidation, while Alaska and Flint Hills do not oppose consolidation. Alaska also requests that the Commission should consult with the RCA pursuant to section 13(3) of the ICA, and if an investigation is ordered, should invite RCA to participate in a joint investigation

Background

4. Under a Commission-approved Settlement¹ the TAPS Carriers are required to follow the prescribed TAPS Settlement Methodology (TSM) for computing the transportation rates on TAPS. Under the TSM, each TAPS Carrier calculates a single Total Revenue Requirement, which reflects the TAPS Carriers' total cost of service, for both interstate and intrastate deliveries. After calculating its Total Revenue Requirement, the TAPS Carrier then determines the portion of the Total Revenue Requirement allocable to interstate transportation.

¹ See *Trans Alaska Pipeline System*, 33 FERC ¶ 61,064 (1985); *Trans Alaska Pipeline System*, 35 FERC ¶ 61,425 (1986), *aff'd sub nom. Arctic Slope Regional Corp. v. FERC*, 832 F.2d 158 (D.C. Cir. 1987), *cert denied*, 488 U.S. 898 (1988).

5. In November 2002, the RCA issued Order No. 151,² and held that TAPS Carriers' intrastate rates for past years calculated using the TSM "do not satisfy the AS 42.06 requirement that pipeline rates be just and reasonable."³ The RCA also ordered refunds for past years, and directed the TAPS Carriers to establish lower intrastate rates using a new methodology prescribed by the RCA.⁴ That decision is on appeal before the Alaska Supreme Court.

6. The Interstate Rate Proceeding involves protests and complaints filed by Alaska and Anadarko to the TAPS Carriers' 2005 interstate tariff filings, which filings proposed increases to the existing rates. The Commission accepted and suspended the 2005 annual filings, subject to refund.⁵ Each protest also included a complaint relating to the tariff filings, and Alaska's complaint also related to previous tariff filings by the TAPS Carriers. Those protests and complaints are based, in part, on the differences between the interstate rates on TAPS established by the Commission, and the intrastate rates established on TAPS by the RCA. By order issued February 11, 2005,⁶ the Commission set the complaints for hearing and settlement procedures, and consolidated the hearings with the tariff filings hearings.

7. On April 15, 2005, Settlement Judge Bruce L. Birchman advised the Chief Judge that no settlement of the Interstate Rate Proceedings was possible at that time. On April 25, 2005, the Chief Judge terminated the settlement procedures and designated Administrative Law Judge Carmen A. Cintron the Presiding Judge in that proceeding.⁷

The Instant Petition

8. The TAPS Carriers allege that the intrastate rates prescribed by the RCA for deliveries to the Valdez Marine Terminal are approximately half the level of the filed TAPS Carriers' 2005 interstate rates for identical service. Similarly, they allege that intrastate movements, which are lower than the Valdez intrastate rate, are disproportionately low when compared to the filed 2005 interstate rates.

² RCA Order No. P-97-4(151) (Nov. 27, 2002).

³ *Id.* at 2.

⁴ RCA decisions are not binding upon the Commission.

⁵ 109 FERC ¶ 61,276 (2004).

⁶ 110 FERC ¶ 61,129 (2005) (the February 2005 Order).

⁷ 111 FERC ¶ 63,018 (2005).

9. The TAPS Carriers assert that they provide exactly the same service on a length of haul basis to both interstate and intrastate shippers. They contend that intrastate shippers are not covering their fair share of the TAPS Carriers' total revenue requirement by paying only half as much as interstate shippers pay for the same service that the intrastate shippers receive. The TAPS Carriers assert that by permitting intrastate shippers to pay only half as much as its interstate shippers, the RCA has created an undue preference in favor of the intrastate shippers, and an undue burden on interstate commerce.

10. The TAPS Carriers contend that under section 13(4) of the ICA, the Commission has the authority to remedy such an unjust rate disparity by raising the intrastate rates to a reasonable level. That section forbids and declares to be unlawful a rate imposed by authority of a State that causes "any undue, unreasonable, or unjust discrimination against, or undue burden on interstate or foreign commerce...." Furthermore, that section provides that if the Commission finds, after a full hearing, such "unjust discrimination" or "undue burden," the Commission shall prescribe the [intrastate] rate, fare, or charge ... thereafter to be charged ... in such manner as, in its judgment, will remove such ... discrimination, or burden."

The Protests

11. Alaska, Anadarko, and Tesoro all urge rejection of the petition on various grounds. They contend that the TAPS Carriers have not made specific allegations as to the injury to the interstate shippers from the alleged disparity in the rates. In addition they argue that the petition is not ripe for investigation because there are no final "just and reasonable" interstate and intrastate rates since this Commission has not issued its final order setting the 2005 interstate rates but only set the rates for hearing, and the RCA rate is on appeal before the Alaska Supreme Court.

12. Alaska contends that the TAPS Carriers fail to allege any facts that would support their contention that interstate ratepayers are subsidizing intrastate ratepayers. Moreover, Alaska points out that the petition was not brought by the alleged victims of the undue preference, the interstate shippers. Rather, the petition was brought by the pipeline owners themselves, who set the interstate rates. Alaska states that the TAPS Carriers are defending their filed 2005 rates in the Interstate Rate Proceedings against the protests that those rates are unjust and unreasonable, and are inconsistent with the terms of the TAPS Settlement Agreement.

13. Tesoro states that the TAPS Carriers' sole argument for its request is a disparity in the interstate and intrastate rates. However, Tesoro argues, both the Supreme Court and this Commission recognize that the ICA does not require uniformity of rates even when the service is identical.⁸

14. Moreover, Tesoro argues, the comparison in rates which the TAPS Carriers refer to are for disparate periods. The interstate rates are temporary rates subject to refund by this Commission for the year 2005, while the intrastate rates are those set by the RCA in the closed-end period in 2000, which rates are still subject to appeal before the Alaska Supreme Court.

Discussion

15. The issues in the Interstate Rate Proceeding pertain to application of the TSM to the TAPS Carriers' 2005 Tariffs. The parties have different understandings of how the terms of the TSM apply when there are orders from the RCA that may be inconsistent with the TSM. In the February 2005 Order the Commission held that there was insufficient information to enable the Commission to resolve the dispute, and therefore it was in the public interest to establish hearing procedures to examine the issues raised in the complaints and protests.

16. In the Interstate Rate Proceeding, the argument has been raised by protestors that the Commission should find the rate differentials between the TAPS Carriers' interstate and intrastate rates to be unjustly discriminatory, and that the Commission should order the TAPS Carriers to remedy the discrimination by reducing their interstate rates to the level of the intrastate rates.⁹ In their petition, the TAPS Carriers are requesting that the Commission order an increase in the intrastate rates to remove the disparity between the interstate and intrastate rates.

17. Clearly, the two proceedings are related, and must be decided at the same time. Accordingly, the Commission finds good cause to consolidate this petition with the Interstate Rate Proceeding. That proceeding pertains to the application of TSM to the TAPS Carriers' 2005 interstate tariffs with conflicting orders from the RCA with respect to the TAPS intrastate rates. It is apparent that the disparity between the interstate and intrastate rates must be addressed in resolving these matters. Both proceedings implicate application of the TSM to setting the TAPS Carriers' interstate rates, and both raise the issue of the disparity between the interstate and interstate rates for the same services.

⁸ Tesoro cites *In Re Amoco Pipeline Co.*, 67 FERC ¶ 61,378 at 62,297 (1994).

⁹ See Protest of Alaska at 13, and Protest of Anadarko at 9-11.

18. It would be in the interest of all parties if all the issues were examined in a consolidated proceeding in order that all issues may be resolved in an efficient and consistent manner.

19. Although the Commission has consistently encouraged parties to resolve disputes of this nature through settlement, it is unrealistic to believe that this proceeding could be resolved through settlement when the Interstate Rate Proceedings were not. Therefore we will not refer the matter to a settlement judge.

20. Under the existing procedural schedule in the Interstate Rate Proceeding the direct testimony and exhibits are not to be filed until November 7, 2005. The Presiding Judge can determine the most appropriate way to handle this petition in conjunction with that ongoing proceeding.

The Commission orders:

(A) Pursuant to the authority of the Interstate Commerce Act, particularly section 13(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by the TAPS Carriers' Petition, and the hearing is consolidated with the hearings in the Interstate Rate Proceedings, in Docket No. OR05-2-000, *et al.*

(B) The Chief Judge may authorize a change to the Trial III procedures established in OR05-2-000, *et al.* as necessary.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.