

112 FERC ¶ 61,326  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ConocoPhillips Transportation Alaska, Inc.

Docket No. IS05-449-000

ORDER ACCEPTING TARIFF

(Issued September 21, 2005)

1. On August 22, 2005, ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips) filed Supplement No. 2 to FERC Tariff No. 7. Supplement No. 2 proposes revisions to ConocoPhillips' prorationing rules and regulations applicable to crude petroleum movements on ConocoPhillips' capacity in the Trans Alaska Pipeline System (TAPS). Tesoro Alaska Company (Tesoro) protested the filing. As discussed below, the Commission accepts Supplement No. 2 to FERC Tariff No. 7 effective September 1, 2005, as proposed.

**Background**

2. On May 31, 2005, ConocoPhillips filed FERC Tariff No. 7 to implement a new proration policy for its share of the TAPS capacity.<sup>1</sup> ConocoPhillips based the new proration policy on historical usage from and after July 1, 2005. ConocoPhillips' FERC Tariff No. 7 became effective July 1, 2005. Tesoro did not intervene in that proceeding.

3. BP Exploration (Alaska) Inc. and BP Oil Supply Company (jointly BP) filed a complaint challenging the move to a historically-based proration policy. On July 20, 2005, in Docket No. OR05-8-000, the Commission issued a notice of the complaint against FERC Tariff No. 7. On August 1, 2005, ConocoPhillips filed its answer to the complaint. Tesoro did not intervene in the complaint proceeding. On August 2, 2005, ConocoPhillips filed Supplement No. 1 to FERC Tariff No. 7, proposing changes to the prorationing policy. Tesoro did protest Supplement No. 1 to FERC Tariff No. 7, but ConocoPhillips reached a settlement with BP as to the issues raised in BP's complaint

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<sup>1</sup> Docket No. IS05-315-000.

providing that ConocoPhillips would withdraw Supplement No. 1 and replace it with the instant filing -- Supplement No. 2 to FERC Tariff No. 7.

4. On August 22, 2005, ConocoPhillips withdrew Supplement No. 1 and filed Supplement No. 2. On August 23, 2005, BP withdrew its complaint against FERC Tariff No. 7, and on the same day, the Commission issued an order denying BP's complaint in Docket No. OR05-8-000 and stating, *inter alia*, that a historically-based prorationing policy is an acceptable means of allocating capacity on a pipeline.<sup>2</sup>

### **ConocoPhillips' Filing**

5. In Supplement No. 2 to FERC Tariff No. 7, ConocoPhillips proposes the following changes to its prorationing policy:

- (a) revisions to the definitions of "Average Regular Shipper Volume," "Regular Shipper," "Reserved Capacity," and Rolling Period;"
- (b) an increase in the capacity reserved for New Shippers from five percent to 10 percent of available capacity;
- (c) a delay in the implementation of the proration policy until July 1, 2006; and
- (d) a reduction in the penalty period from three months to one month and a reduction in the amount of the penalty to the volume of the shortfall in the month in which the penalty was incurred.

### **Interventions, Protest, And Answer**

6. On September 6, 2005, Tesoro filed its protest, urging the Commission to reject Supplement No. 2. The State of Alaska filed a motion to intervene, but did not protest or otherwise comment on the filing. ConocoPhillips filed its answer on September 12, 2005.

7. In its protest, Tesoro states that it is a shipper on the ConocoPhillips pipeline system and that it has a direct and substantial interest in the instant filing. Tesoro asserts that the proposed revisions to the proration policy in Supplement No. 2 violate section 3(1) of the Interstate Commerce Act, which provides that it shall be unlawful for any common carrier to make, give, or cause any undue preference to any shipper.<sup>3</sup>

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<sup>2</sup> *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213 (2005).

<sup>3</sup> 49 U.S.C. app. § 3(1) (1988).

8. Tesoro argues that ConocoPhillips' proposed changes are unduly preferential toward certain shippers, including ConocoPhillips' affiliate, ConocoPhillips Alaska, Inc. (CPAI). Tesoro asserts that, while the change in the amount of capacity allocated to New Shippers from five percent to 10 percent appears to be beneficial, in fact, it will not alleviate the adverse impact to seasonal shippers and the discrimination arising from the overall changes in the prorationing policy.

9. Further, Tesoro states that the proposed change to the definition of Average Regular Shipper Volume prejudices Regular Shippers who have been making consistent intrastate shipments and only occasional interstate shipments. Tesoro states that the change, which is based only on interstate volumes, will progressively exclude occasional interstate shippers from shipping on ConocoPhillips' capacity.

10. Tesoro contends that this type of preferential prorationing policy is also a product of the TAPS Settlement Methodology (TSM), which TAPS Carriers use to set their ceiling rates each year. Tesoro maintains that the TSM is not cost-based and thus allows carriers to establish annual rates based on projections of throughput and costs. Tesoro further maintains that this creates problems when TAPS Carriers with more production than pipeline capacity set a rate that is lower than the rates of other TAPS Carriers with less production than pipeline capacity. According to Tesoro, this situation results in artificial differences in rates, artificial incentives to ship on certain pipelines, and unduly preferential prorationing policies. Tesoro submits that, in the absence of cost-based rates, TAPS Carriers should allocate capacity on the basis of current nominations of all shippers to avoid discriminating against occasional shippers.

11. In its answer, ConocoPhillips responds that Tesoro fails to show that it has a substantial economic interest in the tariff filing. Moreover, states ConocoPhillips, Tesoro attacks the prorationing policy that is already in effect; therefore, Tesoro can only challenge the policy by filing a complaint. ConocoPhillips concludes that Tesoro's attack on the underlying prorationing policy established in FERC Tariff No. 7 has no merit.

12. ConocoPhillips states that Tesoro provides no information on the size and frequency of its interstate TAPS shipments. Further, ConocoPhillips maintains that Tesoro has not alleged that it has nominated on ConocoPhillips' capacity, that it intends to do so often enough in the future to move from the New Shipper to the Regular Shipper category, or that it will ever nominate enough as a New Shipper that would exceed the capacity available to New Shippers.

13. ConocoPhillips states that Tesoro's primary challenge is to the prorationing policy established in FERC Tariff No. 7, which became effective July 1, 2005. ConocoPhillips points out that Tesoro did not challenge FERC Tariff No. 7 before it became effective, and more importantly, failed to intervene in the complaint proceeding challenging FERC Tariff No. 7.

14. ConocoPhillips also rejects Tesoro's challenge to the revised definition of Average Regular Shipper Volume, which includes only interstate movements. ConocoPhillips states that this revision does not prejudice intrastate shippers because their shipments are prorated first so that they receive their shares of ConocoPhillips' capacity before ConocoPhillips allocates capacity to interstate shippers.

15. ConocoPhillips points out that Tesoro decides when and if it ships on the ConocoPhillips TAPS capacity. ConocoPhillips explains that any party can become a Regular Shipper under FERC Tariff No. 7 by shipping for as little as one month between now and July 1, 2006, and can retain that status for as long as it ships at least once a month during any consecutive 12-month period. Thus, ConocoPhillips argues that it is speculative whether the wording change in Supplement No. 2 will ever affect Tesoro. ConocoPhillips emphasizes that historically-based prorating policies do reward shipper loyalty, but that the Commission has found them permissible. In addition, ConocoPhillips points out that the current excess of capacity on TAPS is projected to continue for some time.

16. ConocoPhillips challenges the allegation that its historically-based prorating policy is intended to benefit its affiliate, CPAI. ConocoPhillips observes that, in its answer to the complaint in Docket No. OR05-8-000, it addressed at length the legitimate business reasons for its policy,<sup>4</sup> and that the Commission denied BP's complaint. According to ConocoPhillips, its prorating policy is designed to give shippers an incentive to ship regularly on its TAPS capacity to minimize the problems of unused capacity and other logistical issues created by shifting shipment patterns. ConocoPhillips also contends that Tesoro has not shown that CPAI can avoid prorating when all interstate shippers exceed ConocoPhillips' capacity. ConocoPhillips emphasizes that all shippers have an equal opportunity to avail themselves of the prorating policy, and it notes again that Tesoro presents no evidence that shows specifically how the policy will affect Tesoro adversely. Finally, ConocoPhillips asserts that Tesoro's challenges to the TSM are inappropriate and irrelevant in this proceeding where ConocoPhillips seeks only to clarify provisions of its currently-effective prorating policy.

### **Discussion**

17. The Commission rejects the arguments in Tesoro's protest and accepts Supplement No. 2 to ConocoPhillips FERC Tariff No. 7. Tesoro's challenge to the prorating policy is primarily a collateral attack on the policy established in FERC Tariff No. 7 that is already in effect. Supplement No. 2 does not materially alter the prorating policy, but merely clarifies it. Further, Tesoro's arguments concerning the TSM and cost-based

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<sup>4</sup> ConocoPhillips attaches as Exhibit A a copy of its answer in Docket No. OR05-8-000.

rates are irrelevant to this filing, and its claims of potential harm from application of the prorationing policy are speculative.

18. If it has not shipped interstate volumes on the ConocoPhillips capacity since July 1, 2005, Tesoro can become a Regular Shipper by shipping volumes one time between now and June 30, 2006.<sup>5</sup> The same opportunity is available to all shippers, whether or not affiliated with ConocoPhillips. Moreover, there is no discrimination inherent in the requirements that Regular Shippers must meet to retain that status. In any event, even if Tesoro becomes a Regular Shipper and loses that status, it retains the ability to use a portion of the 10 percent of capacity that ConocoPhillips will reserve for New Shippers before other shippers' volumes are prorated.

19. Tesoro claims that the historically-based prorationing policy disadvantages shippers such as itself that ship interstate movements only on an occasional basis. However, the Commission affirmed in its Order on Complaint in Docket No. OR05-8-000 that a prorationing policy based on historical volumes is an acceptable means of allocating capacity on a pipeline.<sup>6</sup> In the instant case, the Commission finds that the revisions proposed in Supplement No. 2 will benefit ConocoPhillips' shippers by providing additional reserved capacity for New Shippers who do not have historical patterns of shipment on ConocoPhillips' TAPS capacity. Further, delaying implementation of the new prorationing policy to July 1, 2006, will afford all current and potential shippers an equal opportunity to achieve Regular Shipper status. After that time, each shipper can retain that status as provided in the definition of "Regular Shipper." Although the prorationing policy rewards shipper loyalty, the Commission reiterates that it is not unduly discriminatory, as all have an equal opportunity to become loyal shippers.

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<sup>5</sup> The revised definition of Regular Shipper states in part as follows:

"Regular Shipper" means a Shipper who has shipped interstate volumes at any time during the period July 1, 2005 through June 30, 2006, or any Shipper who thereafter ships interstate volumes each month during any consecutive twelve-month period; provided, however, that once a Shipper becomes a Regular Shipper, it will lose its Regular Shipper status only if it does not ship interstate volumes at all during a period of twelve (12) consecutive months.

<sup>6</sup> *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213 at P 28 (2005).

The Commission orders:

Supplement No. 2 to FERC Tariff No. 7 is accepted effective September 1, 2005, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.