129 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

BP Canada Energy Marketing Corp. Docket No. OR09-13-000

v.

Kinder Morgan Cochin LLC

ORDER ON COMPLAINT AND ESTABLISHING HEARING

(Issued October 30, 2009)

1. On June 19, 2009, BP Canada Energy Marketing Corp. (BP) filed a complaint against Kinder Morgan Cochin LLC (KM Cochin). BP challenges KM Cochin's Line Fill Policy,[1] which BP contends has expired by its own terms, although KM Cochin continues to apply it. BP asks the Commission to find that the Line Fill Policy is inconsistent with Commission precedent and KM Cochin's own tariff, as well as unlawful under the Interstate Commerce Act (ICA),[2] and to require KM Cochin to cease applying the Line Fill Policy. In the alternative, BP asks the Commission to establish a technical conference or a hearing to resolve the complaint.

2. In response, KM Cochin asks the Commission to deny the complaint. KM Cochin asserts that, by its own terms, the Line Fill Policy, as incorporated into its FERC Tariff No. 26, continues in full force and effect. Further, states KM Cochin, the policy is consistent with its tariff, Commission precedent, and applicable law.

3. As discussed below, the Commission finds that there is ambiguity in KM Cochin's tariff and that the record lacks sufficient evidence to determine whether its Line Fill

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[1] Line fill is the inventory or volume of product required in a pipeline at all times to maintain pressure and ensure uninterrupted flow or transportation and delivery.

[2] 49 U.S.C. App. § 1 *et seq*. (1988).

Policy remains in effect and whether it is unjust and unreasonable. Accordingly, the Commission establishes a hearing to address the issues raised by BP's complaint.

Background

4. KM Cochin states that its pipeline system consists of an approximately 1,900-mile, 12-inch pipeline that transports propane from Western Canada (Fort Saskatchewan, Alberta) into the United States (near Maxbass, North Dakota), and then back into Canada (near Windsor, Ontario).

5. KM Cochin states that, prior to March 2007, BP Canada Energy Company (BP Canada Energy), an affiliate of BP, was the majority owner and exclusive operator of the pipeline system, as well as the majority owner and operator of the facilities at both the origin and terminus of the pipeline. KM Cochin further states that BP Canada Energy continues to own and operate certain associated facilities, including a joint venture facility at Fort Saskatchewan (Fort Saskatchewan Facility), where most of the propane is injected. KM Cochin maintains that, as operator of that facility, BP Canada Energy controls the flow rate, sequential order, and timing of the injections of shippers' volumes.

6. KM Cochin states that, when it implemented its Line Fill Policy, it continued BP Canada Energy's operational division of the pipeline into two segments: the West Leg and the East Leg. KM Cochin emphasizes that the Line Fill Policy requirements apply only to shippers on the West Leg, while East Leg shippers are served by a sequential batching system.

7. On May 1, 2009, in Docket No. IS09-221-000, KM Cochin filed FERC Tariff No. 33, Rules and Regulations Tariff, to be effective June 1, 2009. KM Cochin stated that FERC Tariff No. 33 updated its Line Fill Policy to be effective during the period from April 2009 through March 2010. BP protested the filing. The Commission accepted and suspended the tariff to be effective January 1, 2010, subject to the outcome of a technical conference.[3] However, the Commission pointed out that a large portion of the protest was devoted to BP's concerns about the operation of KM Cochin's Line Fill Policy rather than the tariff that was filed in Docket No. IS09-221-000 and that such concerns are addressed more appropriately in a complaint. On June 5, 2009, KM Cochin withdrew FERC Tariff No. 33 and stated that FERC Tariff No. 26, reflecting the pre-existing Line Fill Policy, would remain in effect unchanged.

[3] *Kinder Morgan Cochin, LLC*, 127 FERC ¶ 61,205 (2009).

BP's Complaint

8. BP asserts that, prior to establishing its Line Fill Policy, KM Cochin operated a batched system, which allowed a shipper to inject a batch into the pipeline and receive that batch, after transit time, at a delivery point on the pipeline. BP states that KM Cochin filed its FERC Tariff No. 26 on March 28, 2008, proposing to implement the Line Fill Policy for the first time. According to BP, the Line Fill Policy was dated April 1, 2008, and by its terms applied to the "Contract Year" of April 2008 through March 2009. BP acknowledges that, in the absence of a protest, FERC Tariff No. 26 became effective without Commission action. BP further states that when KM Cochin withdrew FERC Tariff No. 33, the Line Fill Policy established in FERC Tariff No. 26 already had expired by its own terms and was no longer in effect, despite the fact that KM Cochin continues to apply this policy to its shippers.

9. BP explains that Item 20 of the Line Fill Policy requires a shipper to make an annual selection among four line fill options. BP states that Option 1 requires shippers to provide their *pro rata* shares of line fill, while Option 2 allows shippers that are willing to increase their tariff payments and injections by at least 50 percent over the previous calendar year to avoid the line fill requirement. Similarly, continues BP, under Option 3, shippers that make deliveries only to destinations on the East Leg segment are not required to provide line fill and may elect to have their barrels sequenced down the pipeline on a strictly transit-time basis. Finally, BP states that Option 4 provides that all shippers that wish to enhance their proportionate allocation shares may do so by electing to provide incremental line fill inventory. BP states that its circumstances made Option 1 the only feasible choice for it and that it provides nearly half of the total West Leg line fill requirement.

10. BP contends that the Line Fill Policy provides assurance to shippers that any barrels they inject at Canadian receipt points will be available immediately, without transit time, at any of the West Leg terminal destinations. However, continues BP, for the East Leg segment, the line fill requirement allows barrels pumped into the system at a Canadian receipt point to become immediately available at a point just downstream of the New Hampton terminal, while barrels nominated to East Leg destinations beyond New Hampton must be sequenced with other barrels nominated to East Leg destinations.

11. BP argues that Item 1 of the Line Fill Policy expressly provides that the policy applies during the 2008-2009 Contract Year and that Item 4(c) defines the 2008-2009 Contract Year as the period "from April 1 of the current year [2008] through March 31 of the next year [2009]." Further, adds BP, the letter agreement by which shippers elected their options was entitled "Letter Agreement for KM Cochin Line Fill Program for 2008-

2009 Contract Year."[4] BP maintains that there is no provision in the 2008-2009 Line Fill Policy that would allow it to be extended. In fact, states BP, KM Cochin recognized this fact in its May 1, 2009 filing, which proposed to extend the Line Fill Policy to cover the Contract Year 2009-2010.

12. BP cites other cases in which it claims the Commission rejected *pro rata* line fill policies when the pipelines failed to demonstrate that their proposals were legally justified and necessary for the operation of their systems.[5] In the instant case, continues BP, KM Cochin's Line Fill Policy also is unjust and unreasonable and unduly discriminatory, in part because BP's only viable alternative is to elect Option 1 of the Line Fill Policy, which effectively requires it to bear greater costs for transportation service than Option 2 or Option 3 shippers. BP asserts that this violates ICA section 4(1), which prohibits a common carrier from charging or receiving greater compensation for a shorter rather than for a longer distance over the same line or route in the same direction.

13. BP next contends that KM Cochin's Line Fill Policy allows some shippers to withdraw their line fill inventories in a manner that adversely affects other shippers. BP claims that it has experienced situations in which the pipeline could not deliver its volumes at a specific destination on the West Leg for a number of days, despite the fact that BP had injected sufficient volumes and maintained 100 percent of its *pro rata* share of line fill.

14. BP next asserts that KM Cochin's tariff does not require that it provide on-demand service. In addition, BP contends that the Line Fill Policy's application to the West Leg and East Leg segments are not referenced within any of KM Cochin's Tariffs. Further, states BP, KM Cochin's inability to deliver BP's volumes on certain occasions is inconsistent with Item 23 of KM Cochin's FERC Tariff No. 32 (Scheduling of Receipts and Deliveries), which provides that, when shippers request receipt by the pipeline and subsequent delivery from the pipeline's propane terminals of volumes of product greater than can be immediately delivered, the pipeline must schedule such receipts and

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[4] BP states that, on April 4, 2009, KM Cochin requested that shippers execute similar letter agreements for the "2009-2010 Contract Year." BP states that it declined to execute such an agreement, given its significant concerns with the 2008-2009 and proposed 2009-2010 Line Fill Policies, and it provided written notice of its decision to KM Cochin.

[5] BP cites *Mid-America Pipeline Co*., 99 FERC ¶ 61,119 (2002), *reh'g denied*, 103 FERC ¶ 61,233 (2003); *Mid-America Pipeline Co*., 106 FERC ¶ 61,140 (2004); *Kinder Morgan Operating L.P. "A"*, 99 FERC ¶ 61,133, *reh'g denied*, 101 FERC ¶ 61,017 (2002).

deliveries among all shippers on an equitable basis. According to BP, KM Cochin's failure to manage volumes and deliveries on a daily basis and in a transparent process prevents shippers from managing their volumes effectively and creates the potential for KM Cochin to discriminate among shippers.

15. BP next argues that KM Cochin's Line Fill Policy includes unjustified penalties. For example, states BP, Item 5(i), pertaining to Option 1, states that a shipper that fails to deliver a binding nomination must pay a 10-percent "non-compliance penalty" in addition to the "full tariff" rate. BP claims that the Line Fill Policy also states that such a shipper will be locked out of the balance of its remaining inventory on the system until the corresponding *pro rata* share of line fill inventory has been restored.

16. BP does not seek reparations from KM Cochin, but instead asks the Commission to require KM Cochin to cease and desist from applying its Line Fill Policy to shippers. In the alternative, BP asks the Commission to establish a hearing or technical conference. BP states that it has not been able to negotiate a resolution of its concerns with KM Cochin, but that it is willing to engage in further settlement discussions with KM Cochin.

Notice and Responsive Pleadings

17. Notice of the complaint was issued on June 24, 2009, providing for interventions and protests to be filed no later than July 9, 2009. KM Cochin filed its answer on that date. BP filed a response to the answer, and KM Cochin filed an answer to the response. No interventions were filed; however, CHS Inc., a shipper on KM Cochin's system, filed a letter supporting the Line Fill Policy and asking the Commission to allow the Line Fill Policy to remain in its current form, at least through March 31, 2010.

KM Cochin's Answer

18. KM Cochin states that, although it no longer transports ethane on the pipeline, it otherwise continues to operate the system as did BP Canada Energy. For example, KM Cochin explains that it has continued to require shippers to be responsible for 100 percent of the line fill inventory, and the shippers continue to be responsible for determining how they meet that responsibility.

19. KM Cochin states that, at the behest of its customers and trade associations, it implemented the Line Fill Program to address shipper dissatisfaction with the operation of the pipeline prior to 2008. KM Cochin asserts that the Line Fill Policy implemented in FERC Tariff No. 26 was approved by all shippers, including BP, and it went into effect April 1, 2008. KM Cochin states that Item 20(a) of FERC Tariff No. 26 provides that, on an annual basis, shippers must select the line fill options they wish to use for the specified year, as detailed in its Line Fill Policy dated April 1, 2008. KM Cochin explains that it withdrew FERC Tariff No. 33 to avoid prolonged operational uncertainty during the current Contract Year. As a result of the withdrawal of FERC Tariff No. 33, KM Cochin

contends that its FERC Tariff No. 26 remains in effect unchanged, contrary to BP's allegations that it was only to apply for one year.

20. KM Cochin observes that a majority of the shippers on its system request delivery on the West Leg, and because there are very few shippers and deliveries on the East Leg, it would be unreasonable to require the West Leg shippers to subsidize East Leg operations through additional line fill commitments. According to KM Cochin, in return for their line fill obligations, West Leg shippers have the option of receiving expeditious deliveries of their products, and they also have the option of drawing out up to 50 percent of their line fill in exchange for making a binding nomination that replenishes the withdrawn line fill in the same delivery period. KM Cochin adds that, with the division of the pipeline system into the West and East Legs, no shipper can lock up a West Leg terminal by stockpiling and not lifting its barrels at the limited community storage that is available at the terminals.

21. KM Cochin explains that, on the East Leg, the line fill inventory is composed of: (1) barrels owned by KM Cochin;[6] (2) customers' barrels with East Leg deliveries; and (3) those barrels with West Leg deliveries that are stored temporarily in the East Leg in accordance with its tariff. KM Cochin asserts that East Leg shippers benefit somewhat from the Line Fill Policy on the West Leg because their products move down the West Leg before entering the East Leg just downstream of New Hampton, Iowa. However, continues KM Cochin, East Leg-only shippers are not entitled to expeditious receipt of their product, and those that elect Option 3 are subject to a transit time in the transportation of the East Leg-bound products. On the other hand, continues KM Cochin, those shipping on both legs can have their barrels available expeditiously at a point on the pipeline downstream of the New Hampton terminal where the East Leg begins. KM Cochin adds that, from that point, barrels nominated to East Leg terminals

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[6] KM Cochin states that it is required to keep line fill readily available in case a shipper selects Option 2 of the Line Fill Policy, which requires KM Cochin to provide that shipper's *pro rata* share of line fill. KM Cochin explains that different shippers select Option 2 each year; therefore, it must have different amounts of line fill readily available each year. According to KM Cochin, to accomplish that, it temporarily stores its excess line fill on the East Leg. This stored excess KM Cochin line fill is what comprises KM Cochin's portion of the line fill on the East Leg, and because the amount varies, there is no guarantee that any particular quantity of line fill may be available at any particular time. Thus, continues KM Cochin, while East Leg shippers may, from time to time, be able to avail themselves of the temporary benefits provided by the KM Cochin-owned line fill on the East Leg, such shippers have no entitlement to these benefits, and cannot count on the availability of such benefits.

are sequenced[7] with other barrels nominated to East Leg destinations, as in a batching mode of operation.

22. KM Cochin asserts that the Line Fill Policy allows shippers to make an annual election from among four options, which KM Cochin describes as follows:

- Option 1: Shipper will provide its *pro rata* share of the line fill between the Canada/US border and New Hampton Iowa.

- Option 2: Shipper agrees to increase cumulative tariffed revenue and liftings at KM Cochin terminals and delivery points by 50 percent over the prior calendar year, in which case KM Cochin will furnish at its cost the Shipper's line fill requirement.

- Option 3: Shippers may elect to take deliveries to exclusively East Leg destinations, *i.e.*, beyond New Hampton, Iowa, and have their barrels sequenced down the pipeline, in the order received, on a strictly transit time basis, and will bear no *pro rata* share of the line fill inventory responsibility.

- Option 4: Irrespective of a shipper's initial choice of Options 1, 2, or 3, if pipeline volumes tendered exceed the pipeline capacity, a shipper may over-contribute its share of line fill (in which case, the shipper will receive additional allocated capacity).

23. KM Cochin states that a shipper always will own the line fill that it nominates to BP Canada Energy for injection into the KM Cochin pipeline system. However, KM Cochin explains that, if a shipper needs to withdraw some of its previously-injected line fill to meet customers' needs, it may do so, subject to two conditions: (1) the shipper may withdraw up to only 50 percent of its own line fill propane; and (2) for each withdrawal, the shipper must promise to inject the same amount of propane back into the

[7] KM Cochin states that, in all batched system operations, the pipeline operator has the flexibility to determine the order in which to deliver the products to the various destination points, so this feature is not unique to KM Cochin's East Leg operations. KM Cochin explains that its practice on the East Leg is to allow the batch that is at a point furthest downstream to be delivered first, if KM Cochin is able to deliver, and the shipper is willing to receive. However, KM Cochin cautions that operational and logistical reasons often restrict KM Cochin's ability to deliver these products, such as the unavailability of the destination facilities due to maintenance work, lack of available storage, or the advance scheduling requirements of third party facilities.

pipeline at a later time by making a firm nomination for that same month or paying penalties if it fails to do so. According to KM Cochin, each shipper on the West Leg is given an equal opportunity to take delivery of a reasonable amount (up to 50 percent) of that shipper's line fill during a given delivery period, regardless of the manner in which BP Canada Energy queues the shipper's propane into the pipeline, or whether all shippers at a particular terminal are effectively "locked out" from a facility by a shipper that has not lifted its products from the limited community storage available at that terminal. KM Cochin contends that the policy prevents a shipper from receiving an undue preference, both by distributing the responsibility for line fill more fairly than previously was the case, and by giving the shippers various options for satisfying their line fill obligations.

24. KM Cochin argues that its tariff is clear that the Line Fill Policy is intended to carry over to succeeding Contract Years. For example, KM Cochin points out that Item 20 of its FERC Tariff No. 26 provides that, on an annual basis, shippers must select the line fill options they wish to use for the specified year as detailed in the Line Fill Policy dated April 1, 2008. KM Cochin further maintains Paragraph 3 of the policy provides for each shipper to choose its option annually, and that Paragraph 4(i) of the policy provides that, in successive Contract Years, unless a shipper provides KM Cochin with written notice requesting a different option choice during the annual election period, that shipper's choice for the prior Contract Year will be deemed to be that shipper's choice in the coming Contract Year.

25. KM Cochin argues that BP ignores the express provisions of FERC Tariff No. 26 and the Line Fill Policy and instead takes three references to "Contract Year" out of context. Additionally, KM Cochin argues that BP fails to recognize that the letter asking shippers to elect their annual option states that, on an annual basis, each shipper will choose from at least two options. KM Cochin further states that BP ignores the sentences in the announcement that begins with the phrase "[d]uring the first quarter of every year," and concludes with the restatement of Paragraph 4(i) of the Line Fill Policy regarding the continuation of the shipper's choice in successive years without written notice of a change.

26. KM Cochin also challenges BP's argument that the reference in the letter agreement memorializing the shipper's choice of options for the 2008-2009 Contract Year suggests that the Line Fill Policy will expire after the 2008-2009 Contract Year. KM Cochin asserts that it is providing the shipper with the option of automatically continuing under the same option for the succeeding Contract Year or providing written notice to KM Cochin of a change in options, as provided in Paragraph 4(i) of the Line Fill Policy.

27. KM Cochin argues that its Line Fill Policy is consistent with Commission precedent. KM Cochin states that BP incorrectly relies on *Kinder Morgan* and *Mid-America* to support its complaint. KM Cochin contends that the cases are distinguishable. According to KM Cochin, in those cases, shippers protested new line fill tariff provisions that were proposed by the carriers, and the Commission accepted and suspended the proposed tariff provisions for further consideration.[8] In contrast, states KM Cochin, its Line Fill Policy is incorporated into its currently-effective FERC Tariff No. 26, which became effective without opposition in April 2008 and remains in effect. KM Cochin argues that BP has the burden of proof in this complaint case, which it has failed to meet.

28. KM Cochin argues that it is unable to impose or enforce product injection scheduling requirements on its shippers to address the inventory problem because BP Canada Energy insists that it has absolute control over such scheduling. KM Cochin asserts that this control of the injection of product and the determination of the sequential order of all shippers' injections into the KM Cochin pipeline places BP Canada Energy in control of the volumes at the KM Cochin terminals, allows BP Canada Energy to know the identities of the owners of those volumes, and allows BP Canada Energy to determine when and where a particular shipper's volumes can be delivered into the market. As a result, states KM Cochin, BP Canada Energy has effective control of the propane market served by the KM Cochin pipeline; therefore, the only way KM Cochin can address the need to maintain a sufficient inventory level in its pipeline is through a fair and transparent line fill policy, which allows shippers to lift up to 50 percent of their line fill, irrespective of BP Canada Energy's determinations as to the sequence and identity of shipments injected into the KM Cochin pipeline.

29. KM Cochin disagrees that the manner in which it determines a shipper's line fill requirement is unjust, unreasonable, and discriminatory. While it acknowledges the differences in line fill requirement options, KM Cochin emphasizes that the ICA does not prohibit a common carrier oil pipeline from treating differently-situated shippers differently unless such difference in treatment is unjust, unreasonable, or unduly discriminatory. KM Cochin asserts that, contrary to BP's allegations, the segmentation of the KM Cochin system is based on valid differences in transportation conditions; therefore, West Leg and East Leg shippers are not similarly situated.

[8] KM Cochin cites *Mid-America Pipeline Co*., 96 FERC ¶ 61,368, at 62,390 (2001); *Kinder Morgan Operating L.P. "A,"* 97 FERC ¶ 61,132, at 61,608 (2001).

30. KM Cochin contends that BP offers no evidence or support for its assertion that Option 2 discriminates against it vis-à-vis other shippers. KM Cochin also maintains that BP is not required to choose Option 1, that Option 2 is equally available to all shippers on the West Leg, including BP, and that all have the same opportunity to choose among the options to meet their line fill obligations.

31. KM Cochin states that its Line Fill Policy does not impose any charge on shippers, and KM Cochin receives no benefit as a result of implementing the policy. KM Cochin also argues that its Line Fill Policy does not allow some shippers to withdraw volumes to the detriment of other shippers, but instead allows a shipper to overdraw only against its own inventory, which it then must replace. KM Cochin further challenges BP's claim that shippers are not required to replenish their overdraws until the end of the month, explaining that, while a shipper is not required to replenish its overdraw completely until the end of the month, as a practical matter, overdraws are replenished throughout the month as shippers' products are injected into the KM Cochin pipeline. KM Cochin emphasizes that it must give shippers until the end of the month to replenish their overdraws because the shippers and KM Cochin have no control over when BP Canada Energy decides to inject a particular shipper's volumes into the KM Cochin pipeline.

32. KM Cochin also rejects BP's speculation that there may not be enough inventories in the system to serve other shippers. While BP cites certain days when it claims to have satisfied its line fill obligation, but deliveries were not available, KM Cochin maintains that BP's temporary inability to take delivery of its products had nothing to do with the Line Fill Policy. KM Cochin emphasizes that it does not schedule when particular shippers lift products out of the terminals and that, in BP's case, BP fails to mention communications indicating when its product would be available for delivery at the terminal.

33. KM Cochin states that its management of deliveries on a monthly, instead of a daily, basis is not discriminatory. Further, states KM Cochin, BP has not identified any provision of KM Cochin's tariff that requires daily scheduling or any other requirement in KM Cochin's tariff with which KM Cochin does not comply. KM Cochin further emphasizes that BP provides no evidence whatsoever that its operating practices under the terms of its tariff result in undue discrimination against any shipper.

34. KM Cochin also dismisses as unsupported the claims that its Line Fill Policy lacks transparency and includes unlawful penalties. KM Cochin states that the penalty provision is absolutely necessary to ensure the integrity of KM Cochin's system and to prevent conduct that could be detrimental to other shippers on KM Cochin's pipeline. KM Cochin cites the ability of Option 1 shippers to overdraw up to 50 percent of their line fill inventory each calendar month by tendering their anticipated movements for the upcoming month as firm binding nominations. KM Cochin asserts that this option affords those shippers the flexibility to take advantage of the market and reduces the amount of working capital that otherwise would be required for shippers to respond in

such a manner. However, KM Cochin emphasizes that the trade-off for this ability is that such shippers must make binding nominations for that month or pay a non-compliance penalty for failure to abide by the binding nomination. KM Cochin argues that, without these conditions, the overdrawing shipper would receive an undue advantage at the expense of KM Cochin and other shippers. KM Cochin maintains that the Commission previously has accepted penalty provisions that "deter conduct that could be detrimental to [the pipeline] and other shippers."[9]

BP's Response to KM Cochin's Answer

35. BP asserts that KM Cochin's answer raises new issues and makes numerous statements that are factually inaccurate or misleading, including comments about BP Canada Energy. BP contends that it is not BP Canada Energy that controls the storage, nominations, scheduling, injections, and flow rate of propane bound for the KM Cochin system, but instead it is a joint venture including BP Canada Energy that performs each of these functions. BP further states that KM Cochin also seeks to create a false impression with its statements that BP is the only shipper that has complained about the Line Fill Policy and that it fails to mention that BP ships half of the volumes on the pipeline.

36. Similarly, BP contends that KM Cochin's claims about its treatment of shippers on the East Leg segment of the pipeline are misleading. According to BP, while KM Cochin admits that it treats shippers on the East Leg in a discriminatory fashion, it nonetheless claims that such discrimination is not undue or unjust because the majority of shippers only ship to destinations on the West Leg segment.

37. Finally, BP argues that KM Cochin's claim that it needs a Line Fill Policy to prevent shippers from locking up West Leg terminals by stockpiling, but not lifting their propane, wholly ignores KM Cochin's tariff provisions that allow it to prevent such shipper behavior. BP states that Items 13 and 14 of KM Cochin's FERC Tariff No. 26 empower the pipeline to require a shipper to accept and remove its shipment from the pipeline's delivery facilities with reasonable diligence and dispatch and to hold the shipper liable from any disruption caused by its failure to do so.

[9] KM Cochin cites *Colonial Pipeline Co*., 98 FERC ¶ 61,082, at 61,249 (2002). *See also Platte Pipe Line Co*., 82 FERC ¶ 61,087 (1998); *Nexen Mktg U.S.A. Inc. v. Enbridge Pipelines (ND) LLC*, 126 FERC ¶ 61,073 (2009).

KM Cochin's Answer

38. KM Cochin disagrees with the claim that it has confused the entity responsible for the storage, nominations, scheduling, injections, and flow rate of propane bound for the KM Cochin system. KM Cochin points out that an affiliate of BP owns a 47.5 percent interest in the Fort Saskatchewan Facility. Citing what it describes as "well-established principles," KM Cochin states that the Commission's Standards of Conduct for Transmission Providers provide that a voting interest of 10 percent or more creates a rebuttable presumption of control.[10] KM Cochin adds that BP provides no information about any other owners of the facility or their roles in its operation.

39. KM Cochin next states that BP's statements regarding East Leg-only shippers are incomplete and not relevant to whether East Leg and West Leg shippers are similarly situated. KM Cochin states that, as explained in its Answer to the Complaint, all East Leg shippers have the same opportunity to take advantage of the benefits offered under the different options.

Discussion

40. The Commission finds that the parties' statements reveal differing interpretations of KM Cochin's tariff, its Line Fill Policy, and whether the Line Fill Policy remains in effect. Additionally, the parties disagree as to whether the Line Fill Policy as applied is unjust, unreasonable, or unduly discriminatory. The pleadings are insufficient to resolve these issues. Accordingly, the Commission will establish hearing procedures to examine and determine all of the issues raised by the complaint and responsive filings. Ascertaining evidence of the parties' intent concerning the duration and extent of the existing Line Fill Policy at the time of the acquisition of facilities by KM Cochin and at the time the Line Fill Policy was initiated appears as one such issue. Other issues include, but are not limited to, the relevance of BP's affiliate's interest in the Fort Saskatchewan Facility, the relevance of ICA section 4(1), and ultimately, whether the Line Fill Options as currently structured force BP to elect an option that imposes on BP

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[10] KM Cochin states that, under 18 C.F.R. Part 358, the test for affiliate relations is "control." 18 C.F.R. § 358.3(a)(1) (2009). According to KM Cochin, the term "control" includes "the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control." 18 C.F.R. § 358.3(a)(3) (2009). KM Cochin states that it is not asserting here that the Standards of Conduct for Transmission Providers applies directly in this case; however, KM Cochin argues that it does provide a persuasive analogy for the case at hand.

an unreasonable or unduly discriminatorily share of line-fill responsibility on the KM Cochin pipeline system.

<u>The Commission orders</u>:

(A) Pursuant to the authority contained in the ICA, particularly section 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by BP's complaint in this proceeding.

(B) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge, for that purpose pursuant to 18 C.F.R. § 375.302 (2009), shall convene a prehearing conference in this proceeding to be held within 20 days of the date of issuance of this order in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held to clarify the positions of the participants and for the ALJ to establish any procedural dates for the hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.