

131 FERC ¶ 61,138  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Kuparuk Transportation Company

Docket No. IS10-209-000

ORDER ACCEPTING AND SUSPENDING TARIFFS,  
SUBJECT TO REFUND AND CONDITIONS, AND ESTABLISHING  
A HEARING AND SETTLEMENT PROCEDURES

(Issued May 14, 2010)

1. On April 15, 2010, Kuparuk Transportation Company (Kuparuk) submitted a tariff filing and supporting cost-of-service work papers to increase the rate for all crude oil movements on its pipeline from the Kuparuk River Unit and Milne Point Pipeline origins to the Trans Alaska Pipeline System (TAPS) Pump Station No. 1 destination point. The filing was protested by The State of Alaska (Alaska). As detailed below, the Commission accepts and suspends Kuparuk's FERC Tariff No. 16, to become effective May 16, 2010, subject to refund, and sets this matter for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

**Kuparuk's Filing**

2. The rate increases Kuparuk proposes are set forth in FERC Tariff No. 16, which cancels FERC Tariff No. 13, in accordance with 18 C.F.R. § 342.4(a) (2009), Cost of Service Rates, and in accordance with 18 C.F.R. Part 346 (2009), Oil Pipeline Cost-of-Service Filing Requirements. As required by the Commission's regulations, Kuparuk's filing includes, in addition to its transmittal letter and FERC Tariff No. 16, several pages of cost, revenue, and throughput data supporting the proposed system increases. Under proposed FERC Tariff No. 16, Kuparuk's transportation rates to the TAPS Pump Station No. 1 destination point will increase by approximately 27 percent (from \$0.198 to \$0.251 per barrel) from the Kuparuk River Unit origin, and by approximately 26 percent (from \$0.142 to \$0.179 per barrel) from the Milne Point Pipeline origin.

### **Interventions and Protests**

3. On April 30, 2010, Alaska submitted a motion to intervene and protest on the grounds that the proposed rates in FERC Tariff No. 16 are unjust and unreasonable. Alaska requests the Commission to suspend FERC Tariff No. 16, impose a refund condition on the tariff once it is effective, and grant Alaska party status. Based on its initial analysis of the cost of service justification for FERC Tariff No. 16, Alaska asserts the instant filing raises numerous issues of material fact with respect to Kuparuk's claimed actual costs and proposed rate levels, including, but not limited to, the appropriate (1) depreciation of rate base; (2) economic life of the pipeline; (3) capital structure; (4) proxy group for determining the rate of return on equity; (5) property in service in rate base; (6) litigation expenses; and, (7) throughput levels.

4. Alaska asserts Kuparuk's proposed rates are based upon a net (undepreciated) rate base that fails to accurately and fully reflect depreciation already included in prior rates. Alaska argues that as a result, the net rate base Kuparuk used for calculating its rate is too high.

5. Alaska also contends Kuparuk assumes an improper life of the pipeline. Alaska asserts the economic life of the line used by Kuparuk, which is based on the expiration of the current TAPS Right-of-Way Agreement in 2034, should instead be based on the remaining economic life of the North Slope oil reserves. Alaska states that the TAPS Carriers support this approach and suggest they will operate TAPS far beyond 2034, and perhaps even until 2075.

6. In addition, Alaska argues it is improper for Kuparuk to use a capital structure of 72.84 percent equity and 27.16 percent debt for the test period. Alaska states the Commission has found that capital structures of over 70 percent equity are anomalous for regulated oil pipelines.<sup>1</sup> In addition, Alaska states that in a related intrastate rate proceeding before the Regulatory Commission of Alaska (RCA), Kuparuk's witness selected a proxy group with an average of 45.36 percent equity to determine Kuparuk's forward-looking rates.<sup>2</sup>

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<sup>1</sup> Alaska's April 30, 2010 Protest at 8 (citing *BP Pipelines (Alaska), Inc.*, 123 FERC ¶ 61,287, at 62,872 (2008) (Opinion No. 502).

<sup>2</sup> *Id.* (citing Kuparuk Exhibit BHF-18 in RCA Docket No. TL45-307).

7. Alaska also contends the rate of return Kugaruk used for calculating its revenue requirement is based upon an improperly composed proxy group. Alaska objects to the inclusion of Enterprise Products Partners LP. Alaska states that in Opinion No. 486-B, the Commission specifically excluded Enterprise Products Partners from the proxy group, in part because of the commodity risk of its natural gas liquids transmission business.<sup>3</sup> Alaska states that Kugaruk derives its revenues from the tariffs charged for transportation services, and thus has risks that are different from, and lower than, those of Enterprise Product Partners.

8. In addition, Alaska asserts the Commission should adjust the return on equity for Kugaruk's proposed proxy group to reflect differences between the income tax treatment of distributions for master limited partnerships (MLP) and corporate holdings. Alaska states that although Kugaruk is a corporation, the oil pipeline proxy group proposed by Kugaruk consists almost entirely of MLPs. Alaska believes the use of MLPs is improper because Kugaruk is not entitled to the higher after-tax rate of return on MLP unit holdings, but only to the after-tax rate of return required by corporate shareholders. Alaska asserts the Commission should adjust Kugaruk's proposed return on equity to eliminate the effect of the higher tax on MLP unit holdings.

9. Alaska also avers Kugaruk improperly included in its rate base property not in service. Alaska states that in the intrastate rate proceeding before the RCA, Kugaruk acknowledged it included \$31 million in rate base for capital additions that are not in service. Alaska asserts the rate base amounts submitted in this filing are identical to those in the RCA proceeding. In addition, Alaska states Kugaruk included \$233,333 (\$700,000 amortized over 3 years) in litigation costs in the test period cost of service. Alaska argues it is improper for Kugaruk to include these costs because they are not yet known and measureable, as required by Commission policy.<sup>4</sup>

10. Finally, Alaska states that Kugaruk's filing uses improper throughput estimates. Alaska asserts Kugaruk estimated throughput for the test year to be 90,926,975 barrels, which is significantly less than that projected by the State Department of Revenue. Alaska states that in the RCA intrastate rate proceeding, Kugaruk's witness testified that he reduced the Department of Revenue's throughput projections, but provided no basis

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<sup>3</sup> *Id.* at 10 (citing *Kern River Gas Transmission Co.*, 126 FERC ¶ 61,034, at P 78 (2009) (Opinion No. 486-B)).

<sup>4</sup> *Id.* (citing 18 C.F.R. § 342.2(a)(1)(ii) (2009)).

for those reductions other than saying that they were based on unidentified historical trends.

11. On May 5, 2010, Kuparuk submitted a response to Alaska's protest. Kuparuk states the various arguments raised by Alaska with respect to Kuparuk's filing are without merit. Kuparuk maintains its rates are just and reasonable and are fully consistent with the Interstate Commerce Act and the Commission's regulations and precedent.

### **Discussion**

12. The Commission finds that Kuparuk has made an adequate initial showing that its filing meets the requirements of a cost of service filing, under 18 C.F.R. § 346.1 of the Commission's regulations based on the cost information provided in its filing. The issues in this case pertain to the data and rate design methodology that Kuparuk uses to determine its proposed rates and the resolution of these factual disputes will have a rate impact on shippers using Kuparuk's pipeline. However, there is insufficient data at this time to resolve these disputes. Therefore, the Commission will establish hearing procedures to examine all the issues raised by the filing.

13. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case relate to the support for Kuparuk's cost of service rate increase proposal and the new tariff rates may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter.<sup>5</sup> To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>6</sup> If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.<sup>7</sup>

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<sup>5</sup> See 18 C.F.R. § 343.5 (2009).

<sup>6</sup> 18 C.F.R. § 385.603 (2009).

<sup>7</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at [www.ferc.gov/legal/oalj/bio/judges.htm](http://www.ferc.gov/legal/oalj/bio/judges.htm).

**Suspension**

14. Based upon a review of the filing, the Commission finds that Kugaruk's tariff filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act, the Commission will accept FERC Tariff No. 16 for filing and suspend it, to be effective May 16, 2010, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

**The Commission orders:**

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Kugaruk's FERC Tariff No. 16 is accepted for filing and suspended, to become effective May 16, 2010, subject to refund and to further order of the Commission.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by Kugaruk's filing.

(C) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(E) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days

thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.