

136 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Unocal Pipeline Company	Docket Nos. IS11-546-000
ConocoPhillips Transportation Alaska, Inc	IS11-306-000
Koch Alaska Pipeline Company, L.L.C.	IS11-328-000
BP Pipelines (Alaska) Inc.	IS11-335-000
ExxonMobil Pipeline Company	IS11-336-00
	(Consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF, SUBJECT TO REFUND,
CONSOLIDATING PROCEEDINGS, AND HOLDING IN ABEYANCE

(Issued August 30, 2011)

1. On August 1, 2011, Unocal Pipeline Company (Unocal) filed FERC Tariff No. 318.2.0 to cancel FERC Tariff No. 318.1.0. Unocal states that the instant tariff applies to the interstate transportation of petroleum between Prudhoe Bay, Alaska, and the Valdez Marine Terminal. Unocal explains that the current rate on file for this transportation is \$4.38 per barrel, which the Commission accepted and suspended, subject to refund and the outcome of a hearing.¹ With the FERC Tariff No. 318.2.0 filing, Unocal proposes to increase the rate to \$4.98 per barrel. Unocal maintains that it calculated the new rate in accordance with the ratemaking methodology prescribed by the

¹ *Unocal Pipeline Co.*, 133 FERC ¶ 61,091 (2010).

Commission in Opinion No. 502.² Unocal requests an effective date of September 1, 2011.

2. Unocal states that it is a carrier that “seeks to establish or change rates by filing cost, revenue and throughput data supporting such rates, other than pursuant to a Commission-approved settlement,” as contemplated by section 346.1 of the Commission’s regulations.³ Unocal also states that its filing follows similar rate filings by the other TAPS Carriers.⁴ Unocal adds that the Commission accepted, suspended, and consolidated all of the other filings, subject to refund and the outcome of a hearing, and is holding the consolidated hearing in abeyance.⁵

3. The State of Alaska (Alaska) filed a Protest and Motions to Intervene, Consolidate, and Hold in Abeyance the filing. Anadarko Petroleum Corporation (Anadarko) also filed a Protest, Motion to Intervene, Motion to Hold in Abeyance, Motion to Consolidate, and Request for Other Relief, including summary rejection or an order to show cause regarding ad valorem taxes. Unocal filed a response to these interventions and protests.

4. As discussed below, the Commission accepts and suspends FERC Tariff No. 318.2.0 to be effective September 1, 2011, subject to refund. Additionally, the Commission consolidates FERC Tariff No. 318.2.0 with the ongoing proceedings in Docket Nos. IS11-306, IS11-328-000, IS11-335-000, and IS11-336-000, and will hold the proceedings in abeyance pending the outcome of the consolidated cases in Docket Nos. IS09-348-000, *et al.*, and IS09-348-004, *et al.*

Background

5. Crude oil streams produced from different fields on the Alaska North Slope are commingled into a common stream and shipped to market on TAPS. Five Carriers share

² *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287, *order on reh’g*, 125 FERC ¶ 61,215 (2008), *order on reh’g*, 127 FERC ¶ 61,317 (2009).

³ 18 C.F. R. § 346.1 (2011).

⁴ In addition to Unocal, the TAPS Carriers are BP Pipelines (Alaska) Inc. (BPPA); ExxonMobil Pipeline Company (EMPCo); ConocoPhillips Transportation Alaska, Inc. (CPTAI); and Koch Pipeline Company L.P. (KAPCO). Unocal cites CPTAI’s filing in Docket No. IS11-306-000, KAPCO’s filing in Docket No. IS11-328-000, BPPA’s filing in Docket No. IS11-335-000, and EMPCo’s filing in Docket No. IS11-336-000.

⁵ Unocal cites *BP Pipelines (Alaska) Inc.*, 135 FERC 61,221 (2011).

ownership of the TAPS system, with each owner possessing an undivided joint interest and entitlement to its percentage ownership share of TAPS capacity.

6. Prior to Opinion No. 502, each TAPS Carrier charged individual, non-uniform rates for interstate service. In Opinion No. 502, the Commission directed the TAPS Carriers to charge a uniform rate for interstate transportation service. The Commission explained that it is just and reasonable for the TAPS Carriers to charge one rate because they provide identical interstate transportation service to shippers, regardless of whose capacity is used, and all of the TAPS Carriers have essentially the same cost of service.

7. Following issuance of Opinion No. 502, the TAPS Carriers filed tariffs in compliance with that order. Alaska and Anadarko protested those filings. On June 30, 2009, the Commission issued an order in Docket No. IS09-348-000, *et al.*, addressing the TAPS Carriers' individual tariff filings.⁶ The order stated that, while the Commission established in Opinion No. 502 that a uniform transportation rate should apply to service on TAPS, the individual rates filed by the TAPS Carriers varied and covered different periods of time. To implement its directive that the TAPS Carriers must charge a uniform rate, the Commission consolidated the rate filings with the pending TAPS' rate proceedings because of the commonality of issues. The June 30, 2009 Order stated that the consolidation ensures that a single proceeding will determine a just and reasonable uniform rate for TAPS.

8. By order dated January 13, 2010, the Chief Administrative Law Judge (Chief ALJ) severed the issues raised in the various tariff filings and established two phases, the Non-Strategic Reconfiguration (Non-SR Phase) (Docket No. IS09-348-000), and the Strategic Reconfiguration (SR Phase) (Docket No. IS09-348-004). On March 10, 2011, a Presiding Administrative Law Judge issued an Initial Decision (ID) in the Non-SR Phase (Docket No. IS09-348-000, *et al.*).⁷ The ID is pending review by the Commission. The SR Phase (Docket No. IS09-348-004, *et al.*) is pending before a different Presiding Administrative Law Judge pursuant to a separate schedule.

Interventions, Protests, and Unocal's Response

A. Alaska

9. Alaska protests the proposed tariff, arguing that it is unjust and unreasonable because the rate contained in the tariff (1) impermissibly includes imprudent and

⁶ *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316 (2009) (June 30, 2009 Order).

⁷ *BP Pipelines (Alaska) Inc.*, 134 FERC ¶ 63,020 (2011).

unlawful expenditures relating to the Strategic Reconfiguration Program (SR Program); (2) may impermissibly include costs relating to the dismantling and removal of TAPS facilities from the right-of-way; (3) assumes a life of the line that is significantly shorter than the actual life of the line; (4) fails to adjust the equity return to account for differences in the tax treatment of income derived by the MLP unit-holders versus income derived by corporate shareholders; and (5) may not accurately calculate appropriate operating costs and test period adjustments to those costs.

10. In part, Alaska asks the Commission to hold investigation of the subject tariff in abeyance pending resolution of the consolidated rate proceedings currently pending in Docket Nos. IS09-348-000, *et al.*, and IS09-348-004, *et al.* Alaska cites the March 10, 2011 ID issued in one phase of that case,⁸ and asserts that attempting to merge new filings into those proceedings would be problematic. Further, Alaska contends that the consolidated proceedings in those dockets may resolve many or all of the issues raised in connection with the instant filing. In fact, continues Alaska, the Commission previously has held in abeyance a number of similar filings. Alaska maintains that this filing contains issues similar or identical to those already pending in CAPTAI, Docket No. IS11-306-000; KAPCO, Docket No. IS11-328-000; and EMPCo, Docket No. IS11-336-000, all of which the Commission consolidated and is holding in abeyance.

11. Alaska argues that the instant filing raises the following issues:

- a. Whether Unocal's FERC Tariff No. 318.2.0 impermissibly includes imprudent and unlawful expenditures relating to the SR Program.
- b. Whether the subject tariff impermissibly includes costs relating to the dismantling and removal of TAPS facilities from the right-of-way that, under the Commission's ratemaking principles, should have been charged against the Development, Removal, and Restoration (DR&R) funds already collected from ratepayers.
- c. Whether the subject tariff assumes an improper life of the line.
- d. Whether the subject tariff utilizes a rate of return on equity that is too high because it fails to adjust the equity return to account for differences in the tax treatment of income derived by the MLP unit-holders versus income derived by corporate shareholders.

⁸ *Id.*

- e. Whether the subject tariff reflects improper and excessive operating expenses and test period adjustments to those costs.

B. Anadarko

12. Anadarko asserts that the Commission should suspend Unocal's proposed rate increase, subject to refund, and set it for hearing. Further, states Anadarko, the filing contains excessive ad valorem taxes, including a non-recurring prior period adjustment for 2006 Unocal already has collected in prior rates, which is unrelated to the pipeline's current tax valuation. Anadarko contends that the Commission should summarily reject these tax amounts (\$153,959,00), which add more than 70 cents per Dth to the proposed rates. Alternatively, continues Anadarko, the Commission should order the TAPS Carriers to show cause why those 2006 tax amounts should not be summarily removed.

13. Moreover, states Anadarko, the subject tariff raises numerous issues in common with the TAPS Carriers' rate increases filed in 2009 and 2010 that were set for hearing in Docket No. IS09-348-000, *et al.*⁹ Citing the Chief ALJ's severance of the SR Phase and Non-SR Phase, Anadarko asks the Commission to hold Unocal's current filing in abeyance pending the outcome of both phases of the proceedings in Docket No. IS09-348-000, *et al.* Anadarko also states that it reserves the right to file a request for summary disposition of any issue that may warrant summary treatment in the Unocal tariff. Finally, given the commonality of issues raised by the Unocal tariff and the other TAPS Carriers' 2011 filings for substantial rate increases, Anadarko maintains that the Commission should consolidate Unocal's filing with those other proceedings, and it moves to hold this proceeding in abeyance pending the outcome of both phases of the Docket No. IS09-348 proceeding, as the Commission has done with the other TAPS Carriers' similar filings.

C. Unocal's Response

14. Unocal asks the Commission to accept and suspend its FERC Tariff No. 318.2.0 to become effective September 1, 2001, subject to refund and the outcome of currently-pending and consolidated TAPS rates proceedings. Unocal further states that it does not object to the requests of Alaska and Anadarko that the Commission hold the consolidated proceedings in abeyance pending the outcome of the proceedings in Docket No. IS09-348-000, *et al.*, because of the commonality of the issues including: (1) the costs of the SR Program, including the impact on rate base; (2) the appropriate depreciation period to reflect the remaining useful life of TAPS; (3) rate of return (including proxy group and

⁹ Anadarko cites *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316, *order on reh'g*, 129 FERC ¶ 61,211 (2009).

capital structure issues); (4) costs for DR &R; (5) operating expenses; and (6) throughput and uniform rate.

15. Unocal provides detailed responses on each of these issues. However, because Unocal does not oppose the requests of Alaska and Anadarko that the Commission consolidate the instant filing with the similar rate filings of the other TAPS Carriers and hold them in abeyance, pending the outcome of the proceedings in Docket No. IS09-348-000, *et al.*, and IS09-348-004, the Commission will not address those detailed responses in this order.

Commission Analysis

16. The Commission finds that Unocal made an adequate initial showing and that its filing meets the requirements of a cost-of-service filing under section 346.1 of the Commission's regulations. However, Unocal's tariff raises a number of issues of material fact that cannot be resolved on the record currently before the Commission and are addressed more appropriately through hearing procedures.

17. Accordingly, the Commission will accept and suspend Unocal's FERC Tariff No. 318.2.000 to become effective September 1, 2011, subject to refund, and will set the filing for hearing. In addition, the Commission will consolidate Unocal's filing with the pending rate filings of the other TAPS Carriers in Docket Nos. IS11-306-000, IS11-328-000, IS11-335-000, and IS11-336-000 and will hold the consolidated filings in abeyance pending the outcome of the ongoing proceedings in Docket Nos. IS09-348-000, *et al.*, and IS09-348-004, *et al.* The proceedings in these two dockets involve issues numerous issues in common with the consolidated tariff filings by the TAPS Carriers.

The Commission orders:

(A) Unocal's FERC Tariff No. 318.2.0 is accepted and suspended to be effective September 1, 2011, subject to refund and further order of the Commission.

(B) Unocal's filing is consolidated with CPTAI's filing in Docket No. IS11-306-000, KAPCO's filing in Docket No. IS11-328-000, BPPA's filing in Docket No. IS11-335-000, and EMPCo's filing in Docket No. IS11-336-000. The consolidated

dockets are held in abeyance pending the outcome of the proceedings in Docket Nos. IS09-348-000, *et al.*, and IS09-348-004, *et al.*

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.