

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

BP Pipelines (Alaska) Inc.

ConocoPhillips Transportation Alaska, Inc.

ExxonMobil Pipeline Company

Koch Alaska Pipeline Company

Unocal Pipeline Company

Docket No. OR06-10-000

ORDER GRANTING MOTION ON REPLACEMENT PRICE

(Issued March 5, 2007)

1. On December 5, 2006, Flint Hills Resources Alaska, LLC (Flint Hills) filed a motion to require the TAPS Quality Bank Administrator (QBA), an independent expert who administers the Quality Bank, to issue revised Quality Bank invoices for the months June, July and August 2006, consistent with the September 26, 2006, Order (September 26 Order)<sup>1</sup> in this proceeding. For the reasons set forth below, we grant the motion.

**Background**

2. On July 28, 2006, the Trans Alaska Pipeline System Carriers (TAPS Carriers) filed a notice of Radical Alteration in Basis for West Coast Heavy Distillate Price Quotation and Recommended Replacement Price (Replacement Notice). The TAPS Quality Bank provides for adjustment between shippers of Alaska North Slope (ANS)

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<sup>1</sup> *BP Pipelines (Alaska), Inc., et al.*, 116 FERC ¶ 61,291 (2006).

crude oil depending on the quality of the crude oil.<sup>2</sup> The Quality Bank uses the distillation methodology for valuing the injected ANS crude oil whereby streams are distilled into specified components or cuts. The QBA then values each of those cuts using the applicable monthly proxy price. The Replacement Notice proposed to change the proxy price used to value the West Coast Heavy Distillate cut because the current proxy price was no longer being reported by Platts, the index publisher.

3. The QBA used the existing index price of Platt's LS (EPA) Diesel, which assumes a sulfur content of 500 parts per million (ppm) to value the West Coast Heavy Distillate cut. Since ANS petroleum has a sulfur content of 5,000 ppm, the QBA adjusted the proxy price by deducting 6.4302 cents per gallon from the index price to account for the processing costs needed to reduce the sulfur from 5,000 ppm to 500 ppm. Effective June 1, 2006, Platts changed the diesel reference price to an ultra low sulfur diesel containing no more than 8 ppm of sulfur.

4. Following the procedure in each TAPS Carriers' tariff, the TAPS Carriers notified the Commission that the QBA recommended a new replacement price, Los Angeles (LA) Pipeline ULS (EPA) Diesel, together with the proposed processing cost adjustment of minus 10.4549 cents per gallon. Under the tariff, shippers could file comments within 30 days, and if comments were filed, the Commission had to act within 60 days or the QBA's recommendation became effective.

5. A number of parties filed comments protesting the QBA's proposed change. The Commission issued its September 26 Order which established hearing procedures to examine the issues raised, primarily what refining costs are involved in the more severe processing required to meet the new sulfur specifications. The September 26 Order accepted the QBA's recommendation that the index proxy price to value the West Coast Heavy Distillate cut, pending the final order, will be the monthly average of Platt's quotation for Pipeline, LA ULS (EPA) Diesel minus the 10.4549 cents per gallon processing adjustment. The Commission conditioned this valuation by declaring it subject to refund, pending issuance of its final order.

6. The September 26 Order rejected the QBA's recommendation that for the period commencing June 1, 2006, until the Commission acted on the proposed replacement

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<sup>2</sup> The Quality Bank has been the subject of extensive litigation culminating in Federal Energy Regulatory Commission Opinion Nos. 481, 481-A and 481-B. *Trans Alaska Pipeline System*, Opinion No. 481, 113 FERC ¶ 61,062 (2005), *modified*, Opinion No. 481-A, 114 FERC ¶ 61,323 (2006), *aff'd and clarified*, Opinion No. 481-B, 115 FERC ¶ 61,287 (2006).

price, the previously effective proxy price for the West Coast Heavy Distillate cut, which was \$96.63 per barrel (the Frozen Valuation), would be used for valuing that cut. The order found no need for this interim valuation, and accepted the proposed replacement price, effective June 1, 2006, subject to refund.

### **Flint Hills' Motion**

7. On December 5, 2006, Flint Hills filed a motion that the Commission direct the TAPS QBA to issue revised TAPS quality bank invoices for June, July and August 2006, within 30 days of the order. Flint Hills states that the QBA used the existing Frozen Valuation price in the monthly invoices for June, July and August 2006. Quality Bank invoices for September 2006, and all subsequent months, have used the interim valuation in the September 26 Order for the West Coast Heavy Distillate cut. Flint Hills states that in November 2006, it requested the QBA to issue revised invoices for June, July and August 2006, and that the QBA responded that he would only revise the subject invoices after the Commission issued a final order on the appropriate valuation to use, retroactive to June 1, 2006. In response to another request by Flint Hills to the QBA and to TAPS Carriers' counsel in December 2006, Flint Hills was advised to seek relief from the Commission, which resulted in Flint Hills filing the instant motion.

8. Flint Hills states that the impact on Flint Hills, from the difference in the QBA's use of the Frozen Valuation rather than the ordered valuation for the three months in question, is in excess of \$3,000,000.00, because the Frozen Valuation price is higher than the interim valuation price.

9. Flint Hills asserts that the QBA's refusal to correct the invoices is in direct contravention of the September 26 Order which rejected using the Frozen Valuation for valuing the West Coast Heavy Distillate cut until the Commission acted on the Replacement Notice. Flint Hills also contends that while the final order in this proceeding could correct the above-described impact on it by ordering refunds, there is some question whether such refunds will be possible under the existing statutory framework. Flint Hills refers to section 4412(c)(2), Quality Bank Adjustments, of the Motor Carrier Safety Reauthorization Act of 2005, Pub. L. No. 109-59, effective August 10, 2005, 119 Stat 1144, which provides that "Not later than 15 months after the date on which a claim is filed under paragraph (1), the Federal Energy Regulatory Commission shall issue a final order with respect to the claim."

10. Flint Hills states it is possible that there may not be a final order in this proceeding prior to this deadline, so the Commission could not direct the TAPS Carriers to remit refunds for the subject invoices, and Flint Hills will have suffered damages with no possible relief.

**Answers to Motion**

11. BP Exploration (Alaska) Inc. and BP Oil Supply Company (BP), Petro Star, Inc. and Indicated TAPS Carriers<sup>3</sup> filed an answer to Flint Hills' motion.

12. Petro Star supports Flint Hills' motion. Petro Star states, similar to Flint Hills' position, that the overcharges it has paid from use of the Frozen Valuation in these three months is in excess of \$2,000,000.00, and has similar concerns about the statutory deadline for Commission refund action.

13. BP does not oppose the motion. However, it is also concerned about the statutory action deadline. Thus, it states that if the Commission grants the motion, the Commission must make clear that all the revised invoices issued pursuant to the final order in this proceeding will be based on the valuation effective as of June 1, 2006.

14. Indicated Carriers oppose the motion. Indicated Carriers state that the QBA already issued the Quality Bank invoices for June, July and August 2006 when the Commission issued the September 26 Order. Thus, the Quality Bank adjustments for those months were calculated using the May 2006 value for the Heavy Distillate component, as provided in the Quality Bank tariffs at that time.

15. Indicated Carriers state that it would be highly inefficient to require a recalculation of the Quality Bank adjustments for these three months since the invoices may be subject to a second recalculation when the Commission issues the final order on the merits. Flint Hills will not be harmed, they contend, and will be fully protected by the inclusion of interest in any recalculated adjustments among the shippers. Indicated Carriers contend that there is no merit in Flint Hills' argument concerning the deadline for Commission action to order relief since the procedural schedule governing the hearing will meet the statutory deadline.

16. Finally, in ruling on Flint Hills' motion, Indicated Carriers assert the Commission should reconsider what method the QBA should use to calculate the Quality Bank adjustments for the West Coast Heavy Distillate cut from June 1, 2006, to September 26, 2006, the date of the Commission's order accepting the QBA's proposal, subject to refund.

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<sup>3</sup> The Indicated TAPS Carriers are BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., Exxon/Mobil Pipeline Company, and Unocal Pipeline Company.

17. Indicated Carriers argue that the Quality Bank Tariff expressly provides in section III.G.7.b that when a replacement product price is necessary, the component value for the last month for which a product price is available for that component, in this case May 2006, should be used until a replacement product price is approved. Indicated Carriers cite the following provision in the tariff:

For the period for time that quotation of a product price is discontinued or the specifications or other basis for a quotation is radically altered and the time that the Commissions approve the use of a replacement product price, the Quality Bank Administrator shall use as the unit value of the component in question the unit price for the last month for which a product price was available for such component.

Here, they argue, for the period until the Commission acted, the QBA used the valuation for May 2006, which was the unit price for the last month for which a product price was available for such component. Indicated Carriers contend that to require the QBA to use a different price for the three months would constitute illegal “retroactive ratemaking.”

### **Discussion**

18. We will grant Flint Hill’s motion. The September 26 Order directed use of the interim valuation effective June 1, 2006. Moreover, the QBA used the interim valuation for calculating the invoices starting September 2006. We see no reason why the QBA should use a different valuation for the same cut for the three months in question since the valuation for the entire period is subject to refund.<sup>4</sup>

19. We reject Indicated Carriers’ request to reconsider the effective date. Indicated Carriers’ request is impermissible because they failed to seek rehearing of the September 26 Order which specifically rejected the QBA’s recommendation to use the Frozen Valuation, and because they raise issues that are outside the scope of this proceeding. Moreover, even if we were to address the merits of their arguments, we would dismiss them. Since Indicated Carriers agree that the new valuation applies to the Quality Bank invoices for the period commencing September 1, 2006, we fail to see how applying that same value for the three prior months presents a retroactive ratemaking issue if all the invoices are subject to refund. Moreover, the tariff provision cited by them

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<sup>4</sup> We see no need to address the statutory deadline issue. The parties can address this at the hearing since it applies to the entire period until a final order issues, not merely the three months in question.

does not prevent the Commission from ordering a different effective date for the interim valuation until there is a final order. The quoted provision merely directs what the QBA should use until the Commission acts on his recommendation.

The Commission orders:

Flint Hills' motion is granted, and the QBA is directed to issue, within 30 days, revised TAPS Quality Bank invoices for the months of June, July and August 2006, using the interim valuation for the West Coast Heavy Distillate cut.

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.