

121 FERC ¶ 61,300
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Unocal Pipeline Company	Docket Nos. IS08-53-000
BP Pipelines (Alaska) Inc.	IS08-78-000
ConocoPhillips Transportation Alaska, Inc.	IS08-62-000
ExxonMobil Pipeline Company	IS08-65-000
Koch Alaska Pipeline Company LLC	IS08-64-000

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND, AND
HOLDING PROCEEDING IN ABEYANCE

(December 28, 2007)

1. On or about November 30, 2007, BP Pipelines (Alaska) Inc. (BP), ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips), ExxonMobil Pipeline Company (ExxonMobil), Koch Alaska Pipeline Company LLC (Koch), and Unocal Pipeline Company (Unocal) (collectively, TAPS Carriers) filed tariffs (2008 TAPS Tariffs)¹ with proposed effective dates of January 1, 2008. These filings are the annual filings required by the Commission-approved settlement in *Trans Alaska Pipeline System*² (Settlement). That Settlement prescribed the TAPS Settlement Methodology (TSM) for computing the rates for the transportation of petroleum by pipeline through the Trans Alaska Pipeline System (TAPS).
2. The State of Alaska (Alaska) and Anadarko Petroleum Corporation (Anadarko) protested the 2008 TAPS Tariffs, contending that the increases are unjust, unreasonable, and discriminatory. The protesting parties also contend, *inter alia*, that the rates reflected in the tariffs are inconsistent with the Settlement and that the rates include expenditures caused by the imprudence of the TAPS Carriers.

¹ The 2008 TAPS Tariffs filed on or about November 30, 2007, include the following: BP – FERC No. 35; ConocoPhillips – FERC Nos. 13; ExxonMobil – FERC No. 303; Koch – FERC No. 10; and Unocal – FERC No. 295.

² 33 FERC ¶ 61,064 (1985); 35 FERC ¶ 61,425 (1986).

3. As discussed below, the Commission will accept and suspend the tariffs listed in Footnote No. 1, subject to refund, to be effective January 1, 2008, and will hold this proceeding in abeyance pending the outcome of pending proceedings involving the TAPS 2005, 2006 and 2007 annual tariff filings and pending further order of the Commission in this proceeding.

Background

4. The Settlement established the TSM and required the TAPS Carriers to calculate their interstate rates in accordance with the TSM. Under the TSM, each TAPS Carrier calculates a single Total Revenue Requirement, which reflects the TAPS Carriers' total cost of providing service, for both interstate and intrastate deliveries. Once a TAPS Carrier calculates its Total Revenue Requirement, the TSM requires the TAPS Carrier to determine the portion of the Total Revenue Requirement that the pipeline uses to calculate rates for interstate transportation.

5. In November 2002, the Regulatory Commission of Alaska (RCA) issued Order No. 151,³ and held that the TAPS Carriers' intrastate rates for past years calculated using the TSM "do not satisfy the AS 42.06 requirement that pipeline rates be just and reasonable."⁴ The RCA also ordered refunds for past years and directed the TAPS Carriers to set lower intrastate rates using a new methodology prescribed by the RCA.⁵

Related Proceedings

6. In December 2004, the TAPS Carriers filed their 2005 rate tariffs (2005 Rate Proceeding). Alaska and Anadarko filed protests and complaints against the 2005 TAPS tariffs. The Commission issued an order accepting and suspending the TAPS Carriers' 2005 tariff filings.⁶ The Commission subsequently issued an order on the complaints, consolidating them with the 2005 Rate Proceeding.⁷

³ RCA Order No. P-97-4-(151) (November 27, 2002).

⁴ *Id.* at 2.

⁵ RCA decisions do not bind this Commission.

⁶ *BP Pipelines (Alaska) Inc.*, 109 FERC ¶ 61,376 (2004).

⁷ *State of Alaska v. BP Pipelines (Alaska) Inc.*, 110 FERC ¶ 61,129 (2005).

7. On July 20, 2005, the TAPS Carriers filed a petition under sections 13(3) and 13(4) of the Interstate Commerce Act (ICA), alleging that the TAPS intrastate rates set by the RCA are unlawfully low and requesting that the Commission invoke its authority under ICA section 13(4) to increase the RCA-established intrastate rates. Anadarko protested the TAPS Carriers' petition. The Commission issued an order establishing a hearing and consolidated that hearing with the 2005 Rate Proceeding in Docket No. IS05-82-002, *et al.*⁸

8. In December 2005, the TAPS Carriers filed their 2006 rate tariffs (2006 Rate Proceeding). Alaska and Anadarko again protested the filings and included complaints with the protests. They asked the Commission to suspend the 2006 TAPS tariffs, subject to refund, investigation, and hearing. Alaska questioned the TAPS Carriers' prudence in managing the Strategic Reconfiguration Program (SR). Anadarko asked the Commission to consolidate the hearing with the ongoing proceedings involving the 2005 Rate Proceeding and to establish just and reasonable TAPS rates. The Commission issued an order accepting and suspending the 2006 rate tariffs, subject to refund and further order of the Commission. The Commission also consolidated the 2006 Rate Proceeding with the ongoing proceedings involving the 2005 Rate Proceeding and related complaints.⁹ In a subsequent order, the Commission set the complaints for hearing and consolidated them with the ongoing consolidated proceedings related to the 2005 and 2006 Rate Proceeding.¹⁰

9. In December 2006, the TAPS Carriers filed their 2007 rate tariffs (2007 TAPS Tariffs). Alaska and Anadarko protested the 2007 TAPS Tariffs, contending that the increases are unjust and unreasonable, and discriminatory. Alaska contended that the 2007 TAPS Tariffs violate the ICA provisions that prohibit unjust discrimination and undue disadvantage in rates. Specifically, Alaska maintained that the TAPS Carriers seek to charge interstate shippers more than twice as much as they charge intrastate shippers for transportation that is subject to the jurisdiction of the RCA. Alaska further asserted that the 2007 TAPS Tariffs are inconsistent with the terms of the Settlement and include expenditures caused by the TAPS Carriers' imprudence in planning, approval, and management of the SR program. Alaska referred to its protests in the 2005 and 2006 Rate Proceedings on the same issues of unjust discrimination and undue preference, and that it also protested the 2006 TAPS tariffs on the issue of mismanagement of the SR

⁸ *BP Pipelines (Alaska) Inc.*, 112 FERC ¶ 61,219 (2005).

⁹ *BP Pipelines (Alaska) Inc.*, 113 FERC ¶ 61,332 (2005).

¹⁰ *State of Alaska v. BP Pipelines (Alaska) Inc.*, 114 FERC ¶ 61,174 (2006).

program. Alaska asked the Commission to suspend the 2007 TAPS Tariffs for one day and make them effective subject to refund, and that the Commission hold in abeyance the investigation into the alleged unjust discrimination and undue preference, as well as the SR issue, pending a final determination by the Commission with respect to the 2005 and 2006 Rate Proceedings.

10. The TAPS Carriers filed responses to the protests requesting the Commission to dismiss the protests, but if the Commission did not dismiss the protests, that the matter be held in abeyance pending the outcome of the consolidated proceedings relating to the 2005 and 2006 Rate Proceedings.

11. On December 28, 2006, the Commission issued an order¹¹ stating that the issues raised in response to the 2007 TAPS Tariff filings also pertain to the application of the TSM that was at issue in the pending consolidated proceedings, as the parties have different understandings of how the terms of the TSM apply when there are orders from the RCA that may be inconsistent with the TSM. However, since the consolidated proceedings were at a stage that would make it inefficient to consolidate the 2007 TAPS Tariffs with those proceedings, the Commission, in Docket No. IS07-75-000, *et al.*, accepted and suspended the 2007 TAPS Tariffs, subject to refund, to become effective January 1, 2007, and held in abeyance the proceeding involving the 2007 TAPS Tariffs, subject to the outcome of the consolidated proceedings in Docket No. IS05-82-002, *et al.*, and subject to further order of the Commission.

12. On May 17, 2007, the Presiding Judge issued an initial decision in the consolidated proceeding, in Docket No. IS05-82-000, *et al.*, which rejected the 2005 and 2006 TAPS Tariffs, and directed the TAPS Carriers to make a compliance filing establishing the rate in conformance with his initial decision.¹² That decision is currently pending before the Commission on exceptions.

Protests and Answers

A. Alaska's Protest

13. Alaska contends that the 2008 TAPS Tariffs violate the ICA provisions that prohibit unjust discrimination and undue or unreasonable prejudice or disadvantage in rates. Alaska maintains that the TAPS Carriers seek to charge interstate rates which are inconsistent with the terms of the TAPS Settlement and include expenditures caused by

¹¹ *BP Pipelines (Alaska), Inc., et al.*, 117 FERC ¶ 61,352 (2006).

¹² *BP Pipelines (Alaska) Inc.*, 119 FERC ¶ 63,007 (2007).

the TAPS Carriers' imprudence in planning, approval, and management of the SR program. Specifically, Alaska states the rates improperly include dismantling, removal and restoration (DR&R) costs that should have been charged against DR&R funds already collected from ratepayers. Alaska points out that it filed protests in the 2005 and 2006 Rate Proceedings on the same issues of unjust discrimination and undue preference, and it also protested the 2006 and 2007 TAPS tariffs on the issue of mismanagement of the SR program. Alaska asks the Commission to suspend the 2008 TAPS Tariffs for one day and make them effective subject to refund. Alaska further asks that the Commission hold in abeyance the investigation into the alleged unjust discrimination and undue preference, as well as the SR and DR&R issues, pending a final determination by the Commission with respect to the ongoing rate proceedings.

B. Anadarko's Protest

14. Anadarko contends that the proposed 2008 TAPS Tariffs are unjust and unreasonable and are calculated pursuant to the Settlement methodology that the initial decision in the 2005 and 2006 TAPS Rate Proceeding found produces inherently unjust and unreasonable rates for TAPS. Anadarko asks the Commission to hold in abeyance any proceedings concerning the 2008 TAPS Tariffs pending the outcome of the ongoing proceedings addressing the earlier TAPS tariff filings.

C. Response of TAPS Carriers

15. The TAPS Carriers respond that Alaska's discrimination claim is barred by the Settlement, is wrong as a matter of law, and should be dismissed summarily. The TAPS Carriers maintain that the terms of the Settlement include a comprehensive methodology for calculating TAPS ceiling rates that the parties agreed would achieve TAPS tariffs that are just and reasonable, as well as non-discriminatory, within the meaning of the ICA. The TAPS Carriers further maintain that ICA sections 2 and 3(1) are inapplicable when the interstate rates have not been shown to be unjust and unreasonable and the difference between interstate and intrastate rates is caused by an order of a state regulatory agency that prescribes lower intrastate rates for corresponding movements. The TAPS Carriers contend that only ICA section 13(4) would permit an investigation of Alaska's claims, but that Alaska does not seek relief under this section. Moreover, the TAPS Carriers argue that the remedy Alaska seeks -- lower interstate rates -- is not available under federal law, and that lowering such rates would be inconsistent with the Commission's policy favoring settlements.

16. The TAPS Carriers contend that allegations of imprudence relating to the SR program are unsupported and without merit. The TAPS Carriers assert that merely because adjustments to this very large program have been made does not mean that the costs incurred were imprudent or that the program has been mismanaged in other

respects. Regarding the inclusion of DR&R costs in the 2008 TAPS Tariffs, the TAPS Carriers claim that Alaska's allegations are based on unsupported assumptions as to what does, and what does not, constitute DR&R expenses. The TAPS Carriers ask the Commission to reject both the SR and DR&R cost allegations of Alaska, or to consolidate Alaska's protest relating to this issue with the ongoing proceedings.

17. The TAPS Carriers also state that Anadarko's protest is without merit and should be dismissed, and contains arguments not raised on exceptions to the initial decision in the consolidated proceeding. The TAPS Carriers ask that if the Commission does not reject Alaska's or Anadarko's claims, the Commission should hold these claims in abeyance as they relate to the protest of the 2007 TAPS Tariffs pending the outcome of the consolidated proceedings in Docket No. IS05-82-002, *et al.*

D. Commission Analysis

18. The issues raised in response to the 2008 TAPS Tariff filings pertain to the application of the TSM that currently is at issue in the pending consolidated 2005 and 2006 Rate Proceeding (Docket No. IS05-82-002, *et al.*), and in the 2007 TAPS Tariffs (Docket No. IS07-75-000, *et al.*). The parties have different understandings of how the terms of the TSM apply when there are orders from the RCA that may be inconsistent with the TSM.

19. The Commission again finds that the consolidated proceedings are at a stage that would make it inefficient to consolidate the 2008 TAPS Tariffs with those proceedings. Accordingly, consistent with the order on the 2007 TAPS Tariffs, the Commission will accept and suspend the 2008 TAPS Tariffs, subject to refund, to become effective January 1, 2008. The Commission will hold in abeyance this proceeding involving the 2008 TAPS Tariffs, subject to the outcome of the consolidated proceedings in Docket No. IS05-82-002, *et al.*, and subject to further order of the Commission. This will ensure that this TAPS rate filing and the previous TAPS rate filings are resolved in an efficient and consistent manner. The parties support this procedure for resolving all of the pending procedures.

Suspension

20. Based upon a review of the filings, the Commission finds that the 2008 TAPS Tariffs have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.

The Commission orders:

(A) BP's FERC No. 35, ConocoPhillips' FERC No. 13, ExxonMobil's FERC No. 303, Koch's FERC No. 10, and Unocal's FERC No. 295 are accepted for filing and suspended, to become effective January 1, 2008, subject to refund and further order of the Commission.

(B) This proceeding is consolidated with the protests of the 2007 TAPS Tariffs and will be held in abeyance pending the outcome of the consolidated proceedings in Docket No. IS05-82-002, *et al.*

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.