

127 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ExxonMobil Pipeline Company

Docket No. IS09-177-000

ORDER ACCEPTING AND SUSPENDING TARIFF, SUBJECT TO REFUND,
AND ESTABLISHING HEARING PROCEDURES

(Issued April 29, 2009)

1. On March 31, 2009, ExxonMobil Pipeline Company (E-M) filed FERC Tariff No. 331 (2009 Rates or tariff) which proposes to change the rate for transportation of petroleum between Prudhoe Bay, Alaska, and Valdez Marine Terminal, Alaska, over E-M's share of capacity on the Trans Alaska Pipeline System (TAPS)¹ effective May 1, 2009.
2. The State of Alaska (Alaska) and Anadarko Petroleum Corporation (Anadarko) protested the 2009 Rates contending that the increases are unjust, unreasonable, and discriminatory. The protesting parties also contend, *inter alia*, that the rates reflected in the tariff include expenditures caused by the imprudence of the TAPS Carriers. E-M filed a response to the protests.²
3. As discussed below, the Commission will accept and suspend the tariff, subject to refund, to be effective May 1, 2009, establish hearing procedures, and will allow the presiding administrative law judge (ALJ) to determine whether to phase, combine, or hold the issues in this proceeding in abeyance, to best coordinate this matter with the pending proceedings involving the TAPS 2008 tariff filing.

¹ The other owners of undivided interest in TAPS are BP Pipelines (Alaska) Inc. (BP), ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips), Koch Alaska Pipeline Company LLC (Koch), and Unocal Pipeline Company (Unocal), the TAPS Carriers.

² Alaska and Anadarko protests to E-M's March 31, 2009 tariff were both filed on April 16, 2009, one day out of time under the Commission's regulations. *See* 18 C.F.R. § 343.3(a). The Commission accepts the late-filed protests and E-M's response.

The Filing

4. E-M states that E-M's rate currently on file for transportation between these origin and destination points on TAPS is \$4.87 per barrel, which became effective, subject to refund, on January 1, 2008, in Docket No. IS08-65-000.³ The proposed rate is \$4.01 per barrel. However, in Opinion No. 502, *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287 (2008), *order on reh'g and compliance*, 125 FERC ¶ 61,215 (2008), the Commission held that the prior rate was unjust and unreasonable and directed the TAPS Carriers to file rates in accordance with the ratemaking methodology prescribed in Opinion No. 502. On January 28, 2009, the TAPS Carriers filed a compliance rate of \$3.45 per barrel for calendar year 2008, as required by *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,367 (2008). Alaska and Anadarko protested the compliance filing. On April 16, 2009, the Commission issued an order, making certain rulings on the protest issues, accepted the tariff sheet containing the 2008 rate on an interim basis, subject to refund, and established a hearing to determine the 2008 rate.⁴

5. E-M states that it calculated the proposed rate in accordance with the ratemaking methodology prescribed by the Commission in Opinion No. 502.⁵ The protests filed here are similar to the protests filed in the TAPS Carriers' 2008 compliance filing proceeding already set for hearing. Thus both sets of protests raise the following issues: the appropriate depreciation period to reflect the remaining useful life of TAPS; the costs of the TAPS Carriers Strategic Reconfiguration Program (the SR Program), including their impact on rate of return, which includes proxy group and capital structure issue; costs for dismantling, removal and restoration (DR&R); operating expenses; throughput, and the uniform rate.

6. Anadarko requests the Commission to consolidate E-M's filing with the pending TAPS 2008 compliance rate filing hearing. Alaska requests the Commission to consolidate the issues regarding the SR Program and DR&R claims with Alaska's 2007 and 2008 protests of TAPS tariffs on those same grounds and held in abeyance.

7. E-M states in its response that complete consolidation of the two hearings is not appropriate because the 2008 compliance filing was based on actual costs for calendar

³ *Unocal Pipeline Co.*, 127 FERC ¶ 61,039 (2009).

⁴ *BP Pipelines Alaska, Inc.*, 127 FERC ¶ 61,039 (2009) (April 2009 Order).

⁵ E-M states that Opinion No. 502 is subject to review in the U.S. Court of Appeals for the District of Columbia Circuit and it reserve all its rights with respect to this filing in the event that Opinion No. 502 is ultimately modified or vacated as a result of the appeal proceedings.

year 2008, the locked in period, whereas E-M's 2009 rate filing is based on a 2008 base period, adjusted for known and measurable changes in the nine month period ending September 30, 2009. Thus, there are different issues to be determined besides the common issues.

Discussion

8. Protests here raise many of the same issues raised in the 2008 compliance rate proceeding. The April 2009 Order rejected the life of the line as an issue since Opinion No. 502 had ruled on that issue, and the Commission set the other issues for hearing.

9. We adhere to the ruling on the life of the line, and set the other issues in this proceeding for hearing. With respect to issues that overlap between the 2008 rate proceeding and this proceeding, we find that the hearing on the 2009 rate should await the determinations in the 2008 compliance rate proceeding, and the ALJ's rulings in the aforementioned 2008 compliance rate proceeding shall apply here as well.⁶ Accordingly, while we will not formally consolidate the proceeding with the 2008 rate proceeding because there are some non-overlapping issues, we shall allow the ALJ to determine the best procedures for addressing the non-overlapping issues raised, and how those issues should be resolved in light of the findings with respect to the overlapping issues. The April 2009 Order also held that the ALJ will determine the most appropriate way to handle the issues, which include how to treat the SR issues. The same ruling applies here.

Suspension

10. Based upon a review of the filings, the Commission finds that the 2009 Rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept and suspend the tariff to become effective May 1, 2009, 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) E-M's FERC Tariff No. 331 is accepted and suspended to become effective May 1, 2009, subject to refund, and further order of the Commission.

⁶ Under the circumstances presented, it may be advisable that the presiding judge in the 2008 rate proceeding should be designated the presiding judge in this proceeding as well.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly Section 15(7) thereof, and the Commission's Regulations, a public hearing shall be held concerning certain aspects of the 2009 rates.

(C) Pursuant to Section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2008), the Chief Administrative Law Judge shall designate a presiding administrative law judge for the purpose of conducting the hearing.

(D) The presiding judge shall convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.