

127 FERC ¶ 61,316
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP Pipelines (Alaska) Inc.	Docket No. IS09-348-000
ConocoPhillips Transportation Alaska Inc.	Docket No. IS09-384-000

ExxonMobil Pipeline Company	Docket No. IS09-391-000
BP Pipelines (Alaska) Inc.	Docket No. IS09-395-000

ExxonMobil Pipeline Company	Docket No. IS09-177-000
Unocal Pipeline Company	Docket No. IS09-176-000 (consolidated)

**ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND,
CONSOLIDATING PROCEEDINGS FOR HEARING AND SETTLEMENT
JUDGE PROCEDURES, AND HOLDING PROCEDURES IN ABEYANCE**

(Issued June 30, 2009)

1. On May 29, 2009, BP Pipelines (Alaska) Inc. (BP) filed FERC Tariff No. 38 proposing to change the interstate rate for transportation of crude oil on BP's share of the capacity of the Trans Alaska Pipeline System (TAPS). As discussed below, the Commission will accept and suspend BP's tariff, subject to refund, to become effective July 1, 2009, as proposed, establish hearing and settlement judge procedures, and consolidate this proceeding with the proceedings in Docket Nos. IS09-177-000 and IS09-176-000. The hearing and settlement judge procedures will be held in abeyance pending the outcome of the proceeding in Docket No. IS07-75-000, *et al.*

2. On June 3, 2009, ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips) filed FERC Tariff No. 17 proposing to change the interstate rate for transportation of crude oil on ConocoPhillips' share of TAPS capacity. As discussed below, the Commission will accept and suspend ConocoPhillips' tariff, subject to refund, to become effective July 4, 2009, as proposed, establish hearing and settlement judge procedures, and consolidate these proceedings with the proceedings in Docket Nos. IS09-177-000 and IS09-176-000. The hearing and settlement judge procedures will be held in abeyance pending the outcome of the proceeding in Docket No. IS07-75-000, *et al.*

3. On June 8, 2009, ExxonMobil Pipeline Company (ExxonMobil) filed FERC Tariff No. 351 proposing to change the interstate rate for transportation of crude oil on ExxonMobil's share of TAPS capacity. As discussed below, the Commission will accept and suspend ExxonMobil's tariff, subject to refund, to become effective July 9, 2009, as proposed, and consolidate these proceedings with the proceedings in Docket Nos. IS09-177-000 and IS09-176-000. The hearing and settlement judge procedures will be held in abeyance pending the outcome of the proceeding in Docket No. IS07-75-000, *et al.*

4. On June 11, 2009, BP filed FERC Tariff No. 39 proposing to change the interstate rate for transportation of crude oil on BP's share of TAPS capacity, and cancels BP's FERC Tariff No. 38. As discussed below, the Commission will accept and suspend BP's tariff, subject to refund, to become effective August 1, 2009, as proposed, establish hearing and settlement judge procedures, and consolidate this proceeding with the proceedings in Docket Nos. IS09-177-000 and IS09-176-000. The hearing and settlement judge procedures will be held in abeyance pending the outcome of the proceeding in Docket No. IS07-75-000, *et al.*

I. 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. The Carriers¹ own TAPS, with each possessing an undivided joint interest and entitlement to its percentage ownership share of the pipeline's capacity. The Alyeska Pipeline Service Company, the Carriers' agent, operates TAPS.

6. In 1985, the owners of TAPS entered into a settlement agreement (the TAPS Settlement) establishing the TAPS Settlement Methodology (TSM), which was used to calculate the maximum interstate and intrastate rates for TAPS each year beginning January 1, 1986.² The Commission severed parties challenging the

¹ The Carriers consist of BP, ConocoPhillips, ExxonMobil, Koch Alaska Pipeline Company, LLC (Koch), and Unocal Pipeline Company (Unocal).

² The terms of the TAPS Settlement provided it would run until the end of 2011, but also permitted early termination as of 2008 if a party requested renegotiation of its terms and no new agreement was reached. The State of Alaska (Alaska) invoked this early termination provision resulting in the expiration of the TAPS Settlement on December 31, 2008.

settlement and accepted the TAPS Settlement as an uncontested settlement subject to the fair and reasonable standard.³

A. 2005 and 2006 TAPS Rates

7. Pursuant to the TAPS Settlement, the Carriers filed their individual interstate rates with the Commission annually. No party protested any of these annual rate filings until the Carriers filed their 2005 and 2006 rates. Prior to 2005, the Regulatory Commission of Alaska (RCA) determined that the TSM no longer resulted in just and reasonable *intrastate* rates and ordered the Carriers to follow a different rate-making methodology which would substantially lower the intrastate rates. As a result, several parties filed protests and complaints alleging the Carriers' interstate rates for 2005 and 2006 calculated pursuant to the TSM were also unjust and unreasonable. The Commission accepted and suspended the 2005 and 2006 rates, subject to refund, and consolidated the proceedings, and set them for hearing.

8. On May 17, 2007, the Administrative Law Judge (ALJ) issued an Initial Decision finding that the TSM no longer resulted in just and reasonable interstate rates and rejecting the Carriers' 2005 and 2006 filed rates.⁴ In place of the TSM, the ALJ held that the Carriers' should calculate the rates for 2005 and 2006 in accordance with the rate-making methodology in Opinion No. 154-B.⁵ Prior to Opinion No. 502, each of the Carriers charged individual rates for interstate transportation service on TAPS and these rates varied significantly between them. The ALJ found that the variations in the individual rates were not caused by differences in cost of service because all of the TAPS Carriers basically have the

³ *Trans Alaska Pipeline System*, 33 FERC ¶ 61,064, *reh'g denied*, 33 FERC ¶ 61,392 (1985). The Commission subsequently found no party aggrieved by its approval of the settlement and terminated the proceeding. The Court of Appeals affirmed the Commission's ruling in *Arctic Slope Regional Corp. v. FERC*, 832 F.2d 158 (D.C. Cir. 1987).

⁴ *BP Pipelines (Alaska) Inc.*, 119 FERC ¶ 63,007 (2007) (Initial Decision).

⁵ *Williams Pipe Line Co.*, 31 FERC ¶ 61,377 (1985) (setting forth the generic principles for determining just and reasonable rates on oil pipelines and adopting a cost-based methodology for establishing those rates) (Opinion No. 154-B).

same cost of service.⁶ The ALJ found that instead of each Carrier charging individual rates for transportation service, the Carriers should charge a uniform rate, effective January 1, 2005. The ALJ reasoned that because the Carriers provide the same transportation service on TAPS and their cost of service is virtually identical, it is unjust and unreasonable for the Carriers to charge individual rates and a uniform rate is necessary.

9. On June 20, 2008, the Commission issued Opinion No. 502 affirming the ALJ on all issues.⁷ While the Commission affirmed that the Carriers should charge a uniform rate, the Commission recognized parties' concerns that some Carriers may under-recover their costs under a uniform rate because the Carriers' costs are allocated according to ownership percentage, while their revenues are allocated on the basis of throughput or usage. Thus, if a Carrier's throughput is not equal to its ownership percentage, that Carrier may over- or under-recover its costs. The Commission stated that a pooling mechanism, such as the one found in section II-2(f)(ii) of the TAPS Settlement, could address this problem.

10. The Carriers sought rehearing of Opinion No. 502, and BP, individually, requested rehearing on the pooling issue. By an order issued on November 20, 2008, the Commission denied the Carriers' request for rehearing, affirmed that there must be a uniform rate on TAPS, and clarified that a pooling mechanism is necessary to ensure certain Carriers do not over- or under-recover their costs under a uniform rate.⁸ The Commission found with expiration of the TAPS Settlement and its pooling mechanism,⁹ the Carriers must implement a new pooling mechanism and include it in their Operating Agreement. The Commission determined that pooling was necessary and incident to establishing the just and reasonable rate. The Commission also accepted the Carriers' compliance filing for the 2005 and 2006 rates which were lower than the filed rates and below the refund floor (i.e. the last clean rates, which were the 2004 TAPS rates).

⁶ Initial Decision at P 251.

⁷ *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287 (2008) (Opinion No. 502).

⁸ *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,215 (2008) (November 20 Order).

⁹ The pooling mechanism in the TAPS Settlement expired on December 31, 2008, as a result of Alaska's exercise of its right to renegotiate.

Accordingly, the Commission ordered the Carriers to issue refunds limited to the amount above the refund floor.

11. Three of the Carriers (Indicated TAPS Carriers¹⁰) requested rehearing of the Commission's decision in the November 20 Order to order a pooling mechanism. In the Pooling Rehearing Order, issued contemporaneously with this order, the Commission affirms its decision to require the Carriers to implement a new pooling mechanism.¹¹ The Commission explains that it did not order the Carriers to implement a pooling mechanism under section 5(1) of the Interstate Commerce Act (ICA), but that it did so pursuant to its ancillary authority in establishing just and reasonable rates on TAPS. The Commission also directed the Carriers to include the pooling mechanism in their tariff, rather than in their Operating Agreement.

B. 2007 and 2008 TAPS Rates

12. Prior to the issuance of Opinion No. 502, each of the Carriers submitted their individual annual interstate rate filings for 2007 and 2008 pursuant to the TAPS Settlement. Parties filed protests to these rates raising issues similar to the issues raised in the TAPS 2005 and 2006 rate proceeding. The Commission accepted and suspended the Carriers' 2007 and 2008 rate filings, but held the proceedings on those rates in abeyance subject to the outcome of the 2005 and 2006 rate proceeding.¹²

13. On December 29, 2008, after the issuance of Opinion No. 502, the Commission summarily disposed of the Carriers' 2007 and 2008 interstate rate filings.¹³ Because the Carriers had calculated these filings pursuant to the TSM, the Commission directed the Carriers to make a compliance filing recalculating the rates in accordance with the methodology set forth in Opinion No. 502.

¹⁰ The Indicated TAPS Carriers are ConocoPhillips, ExxonMobil, and Unocal.

¹¹ *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,317 (2009) (Pooling Rehearing Order).

¹² *BP Pipelines (Alaska) Inc.*, 117 FERC ¶ 61,352 (2006); *Unocal Pipeline Company*, 121 FERC ¶ 61,300 (2007).

¹³ *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,367 (2008).

14. On January 28, 2009, the Carriers submitted a compliance filing establishing uniform rates for 2007 and 2008 in accordance with Opinion No. 502. A number of parties filed protests and comments on the compliance filing. On April 16, 2009, the Commission issued an order accepting the 2007 uniform rate.¹⁴ The Commission stated that because the 2007 uniform rate fell below the refund floor (i.e. the last clean rates, which were the 2004 TAPS rates), no further proceedings regarding the 2007 rates were necessary and ordered refunds limited to the difference between the 2007 TSM rate and the 2004 rate. However, the proposed 2008 uniform rate was higher than the refund floor and had been protested. As a result, the Commission accepted, on an interim basis, the tariff containing the 2008 rate, subject to refund, ordered preliminary refunds for 2008 for the difference between the 2008 TSM rate and the 2008 compliance filing rate, and established hearing and settlement judge procedures.

15. Settlement judge procedures are currently ongoing in Docket No. IS07-75-000, *et al.*¹⁵ In the meantime, the Commission ordered the Carriers to charge, as an interim rate, the 2008 compliance filing rate of \$3.45 per barrel.¹⁶

II. Prospective TAPS Rates

A. ExxonMobil's Rate Filing in Docket No. IS09-177-000

16. On March 31, 2009, ExxonMobil filed a new interstate transportation rate for its share of TAPS capacity in Docket No. IS09-177-000. ExxonMobil stated that it calculated its rate of \$4.01 per barrel pursuant to the rate-making methodology established in Opinion No. 502. The other Carriers did not protest ExxonMobil's rate, though it was protested by Alaska and Anadarko Petroleum Corporation (Anadarko). On April 29, 2009, the Commission accepted and suspended ExxonMobil's filing, effective May 1, 2009, subject to refund, and

¹⁴ *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61, 047 (2009) (April 16 Order).

¹⁵ *See BP Pipelines (Alaska) Inc.*, Docket No. IS07-75-000, *et al.* (May 22, 2009) (unpublished order of Chief Judge).

¹⁶ BP, Koch, ConocoPhillips, and Unocal all made filings to implement the interim rate established in the April 16 Order. ExxonMobil did not make such a filing because, on March 29, 2009, prior to the issuance of the April 16 Order, ExxonMobil filed to increase its TAPS interstate rates in Docket No. IS09-177-000.

established hearing procedures.¹⁷ The ALJ is holding the hearing in abeyance pending the outcome of the hearing on the 2008 TAPS rates in Docket No. IS07-75-001, *et al.*¹⁸

B. Unocal's Volume Incentive Rate Filing in Docket IS09-176-000

17. On the same day ExxonMobil made its rate filing, Unocal proposed to establish a volume incentive rate for oil transportation on its share of TAPS capacity in Docket No. IS09-176-000. Unocal filed the volume incentive rate to compete with the other Carriers and encourage greater use of Unocal's share of the TAPS capacity. Unocal proposed a reduced rate of \$3.25 per barrel to any interstate shippers who transport volumes averaging 5,000 barrels per day or more in a calendar month. Unocal stated it was not proposing to change its existing maximum rate (i.e. the interim rate of \$3.45 established in the April 16 Order), which would remain applicable to shippers that do not satisfy the minimum volume threshold for the incentive rate. On April 28, 2009, the Commission accepted Unocal's filing, effective May 1, 2009, subject to refund and conditions.¹⁹ Specifically, the Commission conditioned its acceptance of Unocal's volume incentive rate on the outcome of the TAPS 2008 compliance rate proceeding in Docket No. IS07-75-000 and explained that if the final maximum rate determined there is less than Unocal's volume incentive rate, the refund condition will apply.

C. BP's Rate Filing in Docket No. IS09-348-000

18. On May 29, 2009, BP filed FERC Tariff No. 38, proposing to increase its interstate transportation rate to \$4.01 per barrel, effective July 1, 2009. BP states that it calculated this rate in compliance with the ratemaking methodology prescribed by the Commission in Opinion No. 502. BP further asserts its filing is consistent with the Commission's ruling that the Carriers should charge a uniform rate for service on TAPS. BP explains that it used the same base period (calendar year 2008) and test period (January 1, 2009 through September 30, 2009) that ExxonMobil used in its filing. BP states that given the Commission's ruling

¹⁷ See *ExxonMobil Pipeline Co.*, 127 FERC ¶ 61,089 (2009), *reh'g pending*.

¹⁸ See *ExxonMobil Pipeline Co.*, Docket No. IS09-177-000 (May 14, 2009) (unpublished order of Chief Judge).

¹⁹ See *Unocal Pipeline Co.*, 127 FERC ¶ 61,088 (2009).

requiring a uniform rate on TAPS, and ExxonMobil's rate filing less than two months ago, BP adopted ExxonMobil's test period adjustments rather than making independent adjustments as of the time it filed, as contemplated by the Commission's regulations.²⁰ BP explains that in connection with this filing, BP filed a petition requesting waiver of the requirement that BP adjust base period costs for changes that "are known and measurable with reasonable accuracy at the time of filing."²¹

D. ConocoPhillips' Rate Filing in Docket No. IS09-384-000

19. On June 3, 2009, ConocoPhillips filed FERC Tariff No. 17, proposing to increase ConocoPhillips interstate transportation rate to \$4.10, effective July 4, 2009. ConocoPhillips states that it calculated this rate in accordance with the ratemaking methodology prescribed by the Commission in Opinion No. 502. ConocoPhillips further asserts the rate reflects the May 29, 2009 ruling by the Alaska State Assessment Review Board increasing the state property tax assessment on TAPS.

E. ExxonMobil's Rate Filing in Docket No. IS09-391-000

20. On June 8, 2009, ExxonMobil filed FERC Tariff No. 351, proposing to increase its interstate transportation rate to \$4.10 per barrel, effective July 9, 2009. ExxonMobil states that it calculated this rate in accordance with the ratemaking methodology prescribed by the Commission in Opinion No. 502. ExxonMobil explains it submitted this filing to account for the May 29, 2009 ruling by the Alaska State Assessment Review Board increasing the state property tax assessment on TAPS.

F. BP's Rate Filing in Docket No. IS09-395-000

21. On June 11, 2009, BP filed FERC Tariff No. 39, proposing to increase its interstate transportation rate to \$4.10 per barrel, effective August 1, 2009. BP states that it calculated this rate in accordance with the ratemaking methodology prescribed by the Commission in Opinion No. 502. BP explains it also tendered this filing to account for the May 29, 2009 ruling by the Alaska State Assessment Review Board increasing the state property tax assessment on TAPS. In

²⁰ 18 C.F.R. § 346.2(a)(1)(ii) (2008).

²¹ *Id.*

connection with its filing, BP filed a petition requesting waiver of section 346.2(a)(1)(ii) of the Commission's regulations to permit adoption of the \$4.10 rate filed by ConocoPhillips and ExxonMobil.²²

III. Protests

22. Alaska filed protests to BP's rate filing in both Docket Nos. IS09-348-000, and IS09-395-000, ConocoPhillips' rate filing in Docket No. IS09-384-000, and ExxonMobil's rate filing in Docket No. IS09-391-000. Anadarko filed protests to BP's rate filings in both Docket Nos. IS09-348-000 and IS09-395-000, ConocoPhillips' rate filing in Docket No. IS09-384-000, and ExxonMobil's rate filing in Docket No. IS09-391-000. The parties argue that BP, ConocoPhillips, and ExxonMobil's rates have not been shown to be just and reasonable and urge the Commission to suspend the rates, subject to refund, and set them for hearing. In addition, the parties contend that because of the commonality of the issues presented in BP's rate filings in Docket Nos. IS09-348-000 and IS09-395-000, ConocoPhillips' rate filing in Docket No. IS09-384-000, and ExxonMobil's rate filings in Docket Nos. IS09-177-000 and IS09-391-000, the Commission should consolidate these proceedings. The parties further request the Commission to hold these consolidating proceedings in abeyance pending the outcome of the 2008 TAPS compliance filing rate proceeding in Docket No. IS07-75-000, *et al.* currently set for hearing and settlement procedures.

23. BP and ConocoPhillips filed answers to the protests filed by Alaska and Anadarko in Docket Nos. IS09-348-000 and IS09-384-000, respectively. BP and ConocoPhillips agree with Alaska and Anadarko that their rate filings should be consolidated with the other dockets relating to the TAPS uniform rate for 2009. BP also agrees with Alaska and Anadarko that the Commission should hold any further proceedings in this docket in abeyance pending the outcome of the proceeding on the TAPS 2008 compliance filing rate in Docket No. IS07-75-000, *et al.* ConocoPhillips does not object to holding the proceedings in this docket in abeyance pending the outcome of the settlement procedures in the TAPS 2008 compliance filing proceeding. However, ConocoPhillips states that depending on the outcome of the settlement discussions, it may be appropriate at some point to

²² In each rate filing, the Carriers noted that petitions for review of Opinion No. 502 and the series of orders following it are pending before the U.S. Court of Appeals for the D.C. Circuit. The Carriers reserve their rights in the event the court vacates or modifies these orders.

consolidate the 2008 compliance filing proceeding with any proceedings involving TAPS rates filed in 2009, since they will likely involve many of the same issues.

24. Alaska filed a protest to Unocal's volume incentive rate filing on June 15, 2009, more than a month after the Commission issued an order accepting the filing.²³ The Commission rejects Alaska's protest because it was not filed in a timely manner.²⁴

IV. Discussion

25. The Commission accepts and suspends tariffs submitted by BP, ConocoPhillips, and Exxon Mobil, subject to refund, to become effective on the dates requested, establishes hearing and settlement judge procedures, and consolidates these proceedings with the ongoing proceedings in Docket Nos. IS09-177-000 and IS09-176-000. The Commission holds the hearing and settlement judge procedures in abeyance pending the outcome of the proceeding in Docket No. IS07-75-000, *et al.*

26. The Commission finds that BP, ConocoPhillips, and ExxonMobil have made adequate initial showings that their filings meet the requirements of a cost-of-service filing under section 346.1 of the Commission's regulations.²⁵ However, these tariff filings raise a number of issues of material fact that cannot be resolved on the record before us and are more appropriately addressed through hearing and settlement procedures. Therefore, the Commission will establish hearing procedures to examine the varying data submitted by the Carriers and to determine, based on the ratemaking methodology set forth in Opinion No. 502, one rate for transportation service on TAPS. The hearing will address all issues raised by the protestors, with the exception of the issue of useful life of the line. Opinion No. 502 extended the useful life of the line from 2011 to 2034 and the

²³ Alaska submitted the same protest in Docket Nos. IS07-41-005 and IS08-53-005. The protest was in response to Unocal's submission of FERC Tariff No. 304 on May 29, 2009, which reflects Unocal's existing rates.

²⁴ See 18 C.F.R. § 343.3 (2008). Unocal filed an answer to Alaska's protest, which is now moot because the Commission rejected Alaska's protest as untimely.

²⁵ 18 C.F.R. § 346.1 (2008).

Commission in the April 16 Order adhered to that finding,²⁶ and we adopt that determination in this proceeding as well.

27. In Opinion No. 502, the Commission determined that the Carriers must charge a uniform rate for transportation service on TAPS. The Commission explained that it is just and reasonable for the Carriers to charge one rate because they all provide identical interstate transportation service to shippers, regardless of whose capacity is used, and they all have basically the same cost of service.²⁷

28. While the Commission established a clear policy in Opinion No. 502 that a uniform rate should apply for transportation service on TAPS, as explained above, several of the Carriers have individually filed their own rates. In these filings, each of the Carriers states that they calculated their rate in accordance with the ratemaking methodology in Opinion No. 502. However, the individual rates filed by the Carriers vary, cover different periods of time, and are not uniform. Accordingly, the Commission finds that to implement the directive in Opinion No. 502 that the Carriers charge a uniform rate, we will consolidate these rate filings with the proceedings in Docket Nos. IS09-177-000 and IS09-176-000. These proceedings involve the same issues and consolidating them ensures that there will be one proceeding to determine a just and reasonable uniform rate for TAPS.²⁸ In addition, the Commission will grant the petitions filed by BP requesting waiver of section 346.2(a)(1)(ii) of the Commission's regulations²⁹ because doing so furthers achieving a uniform rate.

29. The Commission expects a pooling mechanism to be included in the determination of this consolidated proceeding. In the November 20 Order, the Commission found that because of the December 31, 2008 expiration of the pooling arrangement in the TAPS Settlement, the Carriers must implement a new pooling arrangement.³⁰ The Commission explained that ordering pooling was

²⁶ April 16 Order at P 37.

²⁷ Opinion No. 502 at P 242.

²⁸ The Commission is consolidating Unocal's volume incentive filing with the other rate filings to examine how it should treat discount rates under a uniform transportation rate.

²⁹ 18 C.F.R. § 346.2(a)(1)(ii) (2008).

³⁰ November 20 Order at P 64.

necessary and incident to its decision to establish a uniform rate.³¹ In the Pooling Rehearing Order, the Commission clarified that the TAPS pooling mechanism should reallocate the Carriers' costs based on throughput, so that the allocation of costs matches the allocation of revenues on TAPS.³² The Commission also clarified that the Carriers must include the pooling mechanism in their tariff.³³ In accordance with these orders, the hearing on the consolidated proceedings at issue here should establish both a uniform rate and a pooling mechanism for transportation service on TAPS.

30. The Commission has 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.³⁴ Settlement procedures are particularly important in this proceeding. While most oil pipelines increase their rates pursuant to the indexing methodology in the Commission's regulations, TAPS is exempt from these regulations under the Energy Policy Act of 1992.³⁵ However, now that the TAPS Settlement is no longer in effect, the Carriers have no method for increasing their rates from year-to-year, except by making a rate filing with the Commission. This means that when a Carrier seeks to increase the uniform rate on TAPS, it must file its proposal with the Commission and, as demonstrated here, all of the Carriers will be obligated to participate in the proceeding to protect their interests. Given the time and resources these rate proceedings usually require, it

³¹ *Id.*

³² Pooling Rehearing Order at P 39.

³³ *Id.* P 38.

³⁴ *See* 18 C.F.R. § 343.5 (2008).

³⁵ *See* 18 C.F.R. § 342.0 (b) (2008). Section 1084(2)(B) of the Energy Policy Act of 1992 provides:

(B) EXCEPTION.—The term “oil pipeline” does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 *et seq.*) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

would be much more efficient for the Carriers to enter into a settlement agreement establishing not only the uniform rate for this year, but also how the uniform rate on TAPS will increase from year-to-year. To encourage parties to enter into such an agreement, the Commission will establish formal settlement judge procedures in this matter.³⁶

31. As mentioned above, hearing and settlement judge procedures are currently ongoing in the TAPS 2008 compliance filing proceeding in Docket No. IS07-75-000, *et al.*³⁷ To ensure that similar issues raised in both proceedings are litigated only once, we will hold the hearing and settlement judge procedures in this consolidated proceeding in abeyance pending the outcome of the 2008 TAPS compliance filing rate proceeding. This is consistent with the decision of the Chief Judge in Docket No. IS09-177-000, ExxonMobil's first rate filing for 2009, to hold the hearing in that proceeding in abeyance pending the outcome of the 2008 TAPS compliance filing rate proceeding.³⁸

32. Based upon a review of the filing, the Commission finds that the tariff filings by BP, ConocoPhillips, and ExxonMobil have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. BP, ConocoPhillips, and ExxonMobil seek to implement different rates for different periods of time, which is inconsistent with the Commission's ruling in Opinion No. 502 that there should be one rate for transportation service on TAPS. Accordingly, pursuant to section 15(7) of the ICA, the Commission will accept BP's Tariff No. 38, BP's Tariff No. 39, ConocoPhillips' Tariff No. 17, and ExxonMobil's Tariff No. 351 for filing and suspend them, to become effective on the dates requested, subject to refund and subject to the conditions set forth in the body of this order and in the Ordering Paragraphs below.

³⁶ See 18 C.F.R. § 385.603 (2008).

³⁷ See *BP Pipelines (Alaska) Inc.*, Docket No. IS07-75-000, *et al.*, (May 22, 2009) (unpublished order of Chief Judge continuing settlement judge procedures).

³⁸ See *ExxonMobil Pipeline Co.*, Docket No. IS09-177-000 (May 14, 2009) (unpublished order of Chief Judge holding proceeding in abeyance and canceling prehearing conference).

33. Because the Commission has accepted and suspended each of the Carriers' individual rate filings, subject to refund, each Carrier may continue to charge the rate it filed until the just and reasonable uniform rate for TAPS is determined through settlement or hearing procedures. The uniform rate and pooling mechanism established in this proceeding will apply to all Carriers, so any Carrier that has not yet intervened or filed its own rate, may want to do so to ensure its interests are represented.

The Commission Orders:

(A) BP's Tariff No. 38 is hereby accepted and suspended, to be effective July 1, 2009, subject to refund and further order of this Commission.

(B) ConocoPhillips' Tariff No. 17 is hereby accepted and suspended, to be effective July 4, 2009, subject to refund and further order of this Commission.

(C) ExxonMobil's Tariff No. 351 is hereby accepted and suspended, to be effective July 9, 2009, subject to refund and further order of this Commission.

(D) BP's Tariff No. 39 is hereby accepted and suspended, to be effective August 1, 2009, subject to refund and further order of this Commission.

(E) The proceedings in Docket Nos. IS09-348-000, IS09-384-000, IS09-391-000, and IS09-395-000 are consolidated with the ongoing proceedings in Docket Nos. IS09-177-000 and IS09-176-000.

(F) Pursuant to the authority in sections 15(1) and 15(7) of the ICA and the Commission's Regulations, a hearing shall be held concerning the rate filings in the above-captioned proceedings.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 603 (2008), formal settlement judge procedures are established in the above-captioned proceedings.

(H) The hearing and settlement judge procedures established in Ordering Paragraphs (F) and (G) are hereby held in abeyance pending the outcome of the proceedings in Docket No. IS07-75-000, *et al.*, as described in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.