

129 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP Pipelines (Alaska) Inc.	Docket No. IS09-348-001
ConocoPhillips Transportation Alaska Inc.	Docket No. IS09-384-001
ExxonMobil Pipeline Company	Docket No. IS09-391-001
BP Pipelines (Alaska) Inc.	Docket No. IS09-395-001
ExxonMobil Pipeline Company	Docket No. IS09-177-001
Unocal Pipeline Company	Docket No. IS09-176-001 (consolidated)

ORDER ON REHEARING

(Issued December 10, 2009)

1. The State of Alaska (Alaska) and Anadarko Petroleum Corporation (Anadarko) filed requests for rehearing of the Commission's April 29, 2009 order in this proceeding.¹ The April 29 Order, among other things, accepted and suspended, subject to refund, ExxonMobil Pipeline Company's (Exxon) 2009 tariff filing for Exxon's share of capacity on the Trans Alaska Pipeline System (TAPS),² and established hearing procedures. In setting the rates for hearing, the order rejected Anadarko's and Alaska's protests that the remaining useful life of TAPS should be an issue in the hearing. Anadarko and Alaska seek rehearing on the latter ruling and request the Commission find that the useful life of TAPS is a material issue of fact to be considered at the hearing.

¹ *ExxonMobil Pipeline Co.*, 127 FERC ¶ 61,089 (2009) (April 29, Order).

² Exxon is one of the owners of undivided interest in TAPS. The other owners are BP Pipelines (Alaska) Inc. (BP), ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips), Koch Alaska Pipeline Company LLC (Koch), and Unocal Pipeline Company (Unocal). The owners are referred to as the TAPS Carriers.

2. Alaska and Anadarko also seek rehearing of the Commission's June 30, 2009 order.³ The June 30 Order addressed a number of tariff filings by the TAPS Carriers required by Opinion No. 502, *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287 (2008) (Opinion No. 502). In *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,047 (2009) (April 16 Order), the Commission addressed the TAPS Carriers' filings for 2007 and 2008, which had been protested by Alaska and Anadarko. In its April 16 Order, the Commission accepted the 2007 rates, but set the 2008 rates for hearing (the 2008 compliance rate proceeding). The Commission also determined that the end year for TAPS was 2034, which was consistent with the ruling in Opinion No. 502, and accordingly ruled the TAPS' end-life would not be an issue at the hearing. Alaska and Anadarko filed for rehearing on the end-life ruling.⁴ BP, ConocoPhillips and Exxon filed prospective new rates,⁵ which Alaska and Anadarko again protested, raising the same issues raised with respect to the 2008 rates. The June 30 Order set the protested issues for hearing, consolidated all the dockets, but again rejected TAPS' end-life as an issue for the hearing. Alaska and Anadarko seek rehearing on that ruling.

3. The June 30 Order also rejected Alaska's June 15, 2009 protest of Unocal's May 29, 2009 base rate compliance filing that also brought forward an already effective volume incentive rate in FERC No. 304. The Commission stated that Alaska filed the protest more than a month after the Commission issued an order accepting Unocal's March 31, 2009 filing of FERC No. 298 in Docket No. IS09-176-000 that accepted and effectuated, this same volume incentive rate, *Unocal Pipeline Co.*, 127 FERC ¶ 61,088 (2009). Alaska asserts the Commission should have accepted the protest since it was timely filed with respect to Unocal's May 29, 2009 base rate compliance filing, and the Commission should have imposed conditions on FERC No. 304.

³ *BP Pipelines (Alaska) Inc., et al.*, 127 FERC ¶ 61,316 (2009) (June 30 Order).

⁴ On September 2, 2009, the Commission denied rehearing, 128 FERC ¶ 61,219 (2009) (September 2 Order). This order discusses the September 2 Order, *infra*.

⁵ BP FERC No. 36, filed June 11, 2009, ConocoPhillips FERC No. 47 filed June 3, 2009, ExxonMobil FERC No. 356, filed June 8, 2009.

4. Anadarko also seeks clarification with respect to the uniform rate that the Commission will establish in the hearing directed by the June 30 Order.

5. For the reasons given below, the Commission grants rehearing on the end-life issue, accepts Alaska's protest and acts on FERC No. 304, and clarifies the operation of the uniform rate.

I. TAPS' End-Life Issue

A. Prior Rulings on Issue

6. In Opinion No. 502, the Commission held that the existing rates on TAPS were 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 made the required compliance filing. Alaska and Anadarko protested the compliance filing, and *inter alia*, raised the issue concerning the appropriate depreciation period to reflect the remaining useful life of TAPS. The April 16 Order rejected the remaining useful life of TAPS as an issue since Opinion No. 502 had ruled on that issue, and set the other issues for hearing to determine the 2008 rate (2008 compliance rate proceeding).⁶

7. In its filing in Docket No. IS09-177-000, Exxon stated it calculated the proposed rate in accordance with the ratemaking methodology prescribed by the Commission in Opinion No. 502. Alaska and Anadarko protested the filing, and included TAPS' end life as an issue. The April 29 Order stated the protests raised many of the same issues raised in the 2008 compliance rate proceeding and set Exxon's filing for hearing. However, since the Commission rejected TAPS' end life as an issue in the 2008 compliance rate proceeding in its April 16 Order because of the ruling in Opinion No. 502 on that issue, the April 29 Order concluded "We adhere to the ruling on the life of the line."⁷

8. Alaska and Anadarko sought rehearing of the end-life ruling in the April 16 Order. In their May 15, 2009 requests for rehearing, Anadarko and Alaska asserted the Commission must base the depreciable life of TAPS on the economic life of the reserves to be transported by the pipeline. They both argued that in the

⁶ 127 FERC ¶ 61,047, at P 37 (2009).

⁷ 127 FERC ¶ 61,089 at P 6.

Order No. 502 proceeding, the TAPS Carriers did not conduct a reserve life study for TAPS, nor is such a study in the record in that proceeding.⁸ Rather, they stated, the end-life date of 2034 adopted in Opinion No. 502 was based upon the extended expiration date of the TAPS' Right-of-Way Agreement, which was the maximum 30-year extension allowed by Alaska law when the TAPS Carriers made their extension request.⁹

9. In support of their contention, the protesters asserted that there is ample evidence, technical studies, Alyeska¹⁰ documents, relevant financial reports, statements of the TAPS Carriers' production affiliates, as well as statements of the TAPS Carriers' witnesses in the Opinion No. 502 proceeding to establish the economic life of TAPS extends well beyond 2034.¹¹ They also argued that the supposed corroboration of witnesses in the Opinion No. 502 proceeding merely refers to statements by them that the year 2011 end-life for TAPS adopted in the 1985 TAPS Settlement Agreement underestimated the useful life of the pipeline. In addition, they contended Opinion No. 502 did not consider issues regarding the potential impact of the Strategic Reconfiguration (SR) program on the life of the TAPS line.

⁸ Citing Exhibit A/T 141 at 4.

⁹ *See* AS 38.35.110(a) which allows for multiple renewals of the State issued right-of-way lease that TAPS operated under, but each extension "shall run for a specified term of not greater than 30 years, and shall be renewable for additional periods of up to 30 years each." The current extension of the TAPS lease expires in 2034.

¹⁰ Alyeska is the operating agent for the TAPS Carriers.

¹¹ Anadarko at pp. 12-16 in its rehearing request, cites to the TAPS Carriers' Right-of-Way extension application, testimony of Carrier witness Kalt in the Opinion No. 502 proceeding, the BP Prudhoe Realty Trust report (cited by Alaska in its protest), a study submitted to the Alaska State Assessment Review Board, a Norton-Miller Study on TAPS' production, a study entitled "TAPS Pipeline at Low Flow," and a statement by BP's vice president quoted in the Wall Street Journal.

10. On September 2, 2009, the Commission denied the rehearing requests stating that Alaska and Anadarko “have not shown why the prior finding in Opinion No. 502 on TAPS’ remaining useful life should not apply in TAPS’ 2008 compliance rate proceeding...”¹² This rehearing order rejected Anadarko and Alaska’s primary argument that since there was no reserve study in the Opinion No. 502 proceeding there was no evidentiary basis to support the 2034 end-life finding. Continuing, the order concluded that although a reserve study may not have been introduced in the Opinion No. 502 proceeding, all sides did introduce evidence on the issue of the end-life of TAPS.

11. This rehearing order recognized that circumstances may change that would provide a basis for challenging the year 2034 as the end of TAPS’ useful life. However, the order further concludes, that the protesters failed to provide the necessary new evidence to show that circumstances have indeed changed since the Opinion No. 502 proceeding.

B. The Requests for Rehearing of the June 30 Order

12. In their requests for rehearing, Alaska and Anadarko again argue that Opinion No. 502’s end-life ruling was not based on a reserves study, and that in adopting the Order No. 502 ruling for the prospective rates, the Commission ignored new evidence that supports revisiting the issue of the end-life of TAPS. Thus, while they refer to matters submitted in the prior requests for rehearing, they emphasize material from recent proceedings before the Alaska State Assessment Review Board (Assessment Board). Those proceedings were for the purpose of establishing the 2008 and 2009 tax assessments for TAPS.

13. They also stress the significance of SR program whose purpose in the TAPS Carriers own words is to “extend [the] economic life of TAPS and North Slope oil fields.”¹³ They assert that through the SR program, the TAPS Carriers propose to add hundreds of millions of dollars in capital costs to rate base, which, if allowed, will result in substantial rate increases. They point out that the Opinion No. 502 proceedings specifically excluded consideration of the impact of SR on any element of TAPS rates, since all SR-related issues were severed from that

¹² *BP Pipelines Alaska, Inc.*, 128 FERC ¶ 61,219 at P 18 (2009).

¹³ *Pipeline Reconfiguration Project and Module Facts* (July 25, 2005).

hearing and deferred for future consideration.¹⁴ They argue that since the current proceedings will consider the hundreds of millions of dollars that TAPS Carriers spend on the SR program, which will be included in the base rate, it is vital that these proceedings evaluate the useful life of TAPS in light of the SR program.

14. Anadarko stresses that the end-life of TAPS was an issue fully litigated before the Assessment Board. The TAPS Carriers and certain Alaska municipalities disputed the valuation of TAPS. The parties presented extensive evidence and expert opinions regarding the TAPS end-life issue, including studies of Alaska North Slope oil reserves and other factors affecting the remaining economic life of TAPS.

15. Anadarko cites to the Assessment Board's June 4, 2009 Certificate of Determination, where the Assessment Board reviewed the determination of the state Tax Division and found that "the Division properly maintained the economic life of the TAPS at 2042."¹⁵ In addition, the Assessment Board recommended that the Tax Division "thoroughly review the economic end life of TAPS every year," because:

[i]t will *likely be proper to extend the estimated economic end life of the TAPS past 2042* in future assessments as additional oil reserves on the North Slope become economically extractable or the estimated minimum mechanical throughput of the TAPS is reduced below 200,000 barrels per day.¹⁶

16. Moreover, Anadarko points out that in the Assessment Board proceeding, the TAPS Carriers did not contest adoption of a 2042 end-life for TAPS.

17. Anadarko concludes that the significance of the Assessment Board proceeding is highlighted by recent filings where the TAPS Carriers proposed

¹⁴ *BP Pipelines (Alaska) Inc.*, 116 FERC ¶ 63,056 at P 3 (2006) (Order of the Chief Judge Severing Proceeding for Hearing and Decision).

¹⁵ Docket No. OAH No. 09-SARB-Tax, Attached as Exhibit A to Anadarko's Request for Rehearing.

¹⁶ *Id.* at 24.

increased prospective rates to account for the Assessment Board's ruling increasing the state property tax assessment on TAPS—the very same decision that adopted a 2042 TAPS' end-life.¹⁷

Discussion

18. We find that protestors have submitted new evidence which establishes that circumstances have sufficiently changed that the issue of the TAPS' end-life should be permitted in the hearing on the prospective TAPS rates.

19. First, protestors cite to the recently filed increase in the base rate from that in the Opinion No. 502 proceeding issues, due in part to the SR Program. Thus, the test period rate bases used by the TAPS Carriers recent filings are all approximately \$1.12 billion, nearly double the rate base underlying the 2006 rate accepted by Opinion No. 502, which was approximately \$577 million. These increases result in a large part from significant additions associated with the SR program.¹⁸

20. Second, the recent Assessment Board proceedings litigated the TAPS end-life issue where all parties introduced economic evidence. In that proceeding, the Assessment Board found the end-life of TAPS should be 2042, which the TAPS Carriers did not challenge. Anadarko cites the following testimony at that proceeding:

¹⁷ See BP FERC No. 39, filed June 11, 2009, Transmittal Letter at 1; ConocoPhillips FERC No. 17, filed June 3, 2009, Transmittal Letter at 1 and ExxonMobil FERC No. 351, filed June 8, 2009, Transmittal Letter at 1.

¹⁸ Anadarko states the 2006 rate approved in Opinion No. 502 reflects a rate base of \$576.86 million, the 2007 compliance rate accepted by the April 16 Order reflects an average rate base of \$719.022 million, and the 2008 compliance rate set for hearing, includes an average rate base of \$889.945 million. BP's 2009 rate uses a test period net rate base of \$1,122,700,000, *see* BP FERC No. 39 at Statement E1 (IS09-395); ConocoPhillips uses a test period net rate base of \$1,121,400,000, *see* ConocoPhillips FERC No. 17 at Statement E1 (IS09-384); and Exxon's 2009 rate includes a test period net rate base of \$1,121,400,000, *see* ExxonMobil FERC No. 351 at Statement E1 (IS09-391). Anadarko Rehearing request n.63.

MR. VAN SANT: Mr. Greeley, I just have a couple [of] questions here. ... You said that the Department and the Owners agree on the end-life of 2042. Is that correct?

THE WITNESS (Mr. Greeley): That's correct.

MR. VAN SANT: So there's no question on that, as far as the Owners and the Department both?

THE WITNESS: Yes, Sir.¹⁹

Witness Greeley further testified:

THE WITNESS: The Owners approached the Department and said that they were willing to live with the SARB's determination last year regarding two layers of the forecast and the 2042 end of life.

The analysis the Department did using the two layers, the SARB—the Department adopted the SARB's guidance on the two-layer application. And that analysis coincidentally ended up at 2042. That's where it shook out again this year.²⁰

21. The TAPS Carriers do not dispute the new material submitted by the protestors. This evidence constitutes a change in circumstances that is a basis for permitting TAPS' end-life to be an issue in the hearing setting TAPS' prospective rates.²¹ Accordingly, we grant rehearing, and will allow TAPS' end-life as an issue in the hearing.²²

¹⁹ Assessment Board Hearing, May 19, 2009 at 140. Mr. Greeley was a witness for the state.

²⁰ *Id.* at 156.

²¹ This ruling applies to all the proceedings involving prospective rates. Accordingly, we also grant rehearing on the April 29 Order.

²² The June 30 Order directed that the hearing and settlement judge

(continued...)

II. Unocal's Incentive Rate Filing

A. Alaska's Rehearing Request

22. On March 31, 2009, Unocal, in Docket No. IS09-176-000, filed FERC No. 298, its volume incentive rate, which Alaska protested on April 15, 2009. The Commission, by order issued April 28, 2009, accepted the tariff subject to refund and the outcome of the TAPS 2008 compliance rate proceeding.²³

23. On May 29, 2009, Unocal filed FERC No. 304 which included a "Base Rate," and a volume incentive rate. The transmittal letter stated "Additionally the Volume Incentive Rate is brought forward unchanged from Unocal's FERC No. 298, which was effective May 1, 2009 under IS09-176-000." The transmittal letter also stated that the filing withdrew FERC Nos. 300 and 301.

24. The June 30 Order in P 17 referenced Unocal's filing in Docket No. IS09-176-000. The order then stated in P 24 that, on June 15, 2009, Alaska filed a protest to Unocal's submission of FERC No. 304 on May 29, 2009 "which reflects Unocal's existing rates." The order stated that since the June 15, 2009 protest was more than a month after the Commission accepted Unocal's volume incentive rate, the Commission would reject Alaska's protest as untimely. The June 30 Order did not specifically act on Unocal's May 29 filing.

25. Alaska's rehearing request states that rejecting the protest was error since it timely filed the June 15, 2009 protest to the May 29, 2009 filing. Alaska states its concern is that F.E.R.C. No. 304 cancels FERC No. 298, and since the June 30 Order did not impose any conditions on that tariff there might be confusion whether FERC No. 304 is subject to the same refund conditions imposed on FERC

procedures on TAPS prospective rates be held in abeyance pending the outcome of the TAPS 2008 compliance rate proceeding. On October 27, 2009, the Commission issued an order, 129 FERC ¶ 61,072, granting a motion to lift the abeyance since the parties to that proceeding advised they had reached an agreement in principle to settle all the issues in the 2008 rate compliance proceeding and would submit a settlement with the Commission. The order transferred the prospective rate proceeding to the Chief ALJ to initiate settlement judge procedures.

²³ *Unocal Pipeline Co.*, 127 FERC ¶ 61,088 (2009).

No. 298. Thus, Alaska asserts, the June 30 Order should have accepted that filing in the same way as it did FERC No. 298 by imposing the same refund condition on FERC No. 304 as it did on FERC No. 298.

26. In order to avoid potential confusion, Alaska requests the Commission to accept its June 15, 2009 protest, and accept FERC No. 304 subject to refund and the same refund conditions that the Commission imposed on FERC No. 298.

B. Discussion

27. In the May 29, 2009 transmittal letter to FERC No. 304, Unocal stated that its “Volume Incentive Rate is brought forward unchanged from Unocal’s FERC No. 298... under Docket No. IS09-176-000.” Moreover, Alaska’s protest referenced that docket, so there was some reason to think that FERC No. 304 was a repetition of the previous filing without any significance, and Alaska’s protest, which was similar to its protest to FERC No. 298 could be rejected as well.

28. However, as Alaska noted, while the transmittal letter did not state that FERC No. 298 was being cancelled, FERC No. 304 recites in the upper right hand corner that it “Cancels FERC No. 298.” Since the June 30 Order did not act on FERC No. 304, we recognize Alaska’s concern that the cancellation of FERC No. 298 might extinguish the conditions imposed on Unocal’s volume incentive rate. Accordingly, the Commission grants rehearing, accepts Alaska’s protest of Unocal’s FERC No. 304, and conditions Unocal’s Volume Incentive Rate FERC No. 304 by subjecting the rate to refund and the outcome of final Commission action in the TAPS 2008 compliance rate proceeding, the same conditions imposed on FERC No. 298.

III. Anadarko’s Request for Clarification

29. Anadarko states that in the June 30 Order the Commission referred to the ruling in Opinion No. 502 that “a uniform rate should apply for transportation service on TAPS.” Since the rate increases filed by BP, ConocoPhillips, and Exxon were not uniform, the June 30 Order consolidated these proceedings, as well as Exxon’s filing in Docket No. IS09-177-000, and the volume incentive rate filing under Docket No. IS09-176-000, to establish “one proceeding to determine a just and reasonable uniform rate for TAPS.”²⁴

²⁴ *Id.* P 33.

30. Anadarko notes the June 30 Order also states that “[t]he uniform rate and pooling mechanism established in this proceedings 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.”

31. Anadarko requests the Commission clarify that the uniform rate constitutes a maximum rate for TAPS, but it does not obligate all Carriers to file for and charge the maximum rate. We agree and clarify that the uniform rates will establish the maximum rate, but carriers may charge a lesser rate.

The Commission orders:

(A) Alaska and Anadarko requests for rehearing are granted and TAPS’ end-life may be an issue in the TAPS’ prospective rate proceeding.

(B) Unocal’s Volume Rate Incentive, FERC No. 304 is accepted, subject to refund, and subject to the outcome in TAPS’ 2008 compliance rate proceeding.

By the Commission

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.