

139 FERC ¶ 61,065  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

BP Pipelines (Alaska) Inc.	Docket Nos. IS09-348-000
BP Pipelines (Alaska) Inc.	IS09-395-000
BP Pipelines (Alaska) Inc.	IS10-204-000
ConocoPhillips Transportation Alaska, Inc.	IS09-384-000
ConocoPhillips Transportation Alaska, Inc.	IS10-205-000
ConocoPhillips Transportation Alaska, Inc.	IS10-205-001
ExxonMobil Pipeline Company	IS09-391-000
ExxonMobil Pipeline Company	IS09-177-000
ExxonMobil Pipeline Company	IS10-200-000
Unocal Pipeline Company	IS09-176-000
Unocal Pipeline Company	IS10-52-000
Unocal Pipeline Company	OR10-3-000
Koch Alaska Pipeline Company, L.L.C.	IS10-54-000
(Consolidated)	

ORDER DIRECTING CHIEF ADMINISTRATIVE LAW JUDGE TO APPOINT  
SETTLEMENT JUDGE

(Issued April 23, 2012)

1. On March 10, 2011, the Presiding Administrative Law Judge (ALJ) issued an Initial Decision (ID) in these consolidated proceedings addressing issues related to the establishment of interstate transportation rates for the Trans Alaska Pipeline System (TAPS).<sup>1</sup> The ID currently is pending before the Commission on exceptions.<sup>2</sup>

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<sup>1</sup> *BP Pipelines (Alaska) Inc.*, 134 FERC ¶ 63,020 (2011).

<sup>2</sup> This proceeding has been bifurcated, and the other phases of the proceeding are pending before a different Presiding Administrative Law Judge.

2. On February 17, 2012, certain TAPS Carriers<sup>3</sup> filed a motion asking the Commission to direct the Chief Administrative Law Judge (Chief ALJ) to appoint a settlement judge to aid in resolving the pooling issues addressed in the ID.<sup>4</sup> Movants also requested that the Commission suspend the issuance of an order ruling on the ID pending the outcome of the settlement judge proceedings.

3. Movants state that they are the largest owners of TAPS, together owning approximately 95 percent of the system. They further state that the ALJ approved a stipulation resolving the rate of return issue and that he adopted, with one modification (which is pending on exceptions), an agreement among the parties resolving the uniform rate implementation issue. Movants assert that the pooling issues remain highly contested. However, they explain that BP and ConocoPhillips have reached agreement in principle on the pooling issues, and they believe that the appointment of a settlement judge will aid in facilitating discussions with the other parties to resolve these issues. Although ExxonMobil is not a party to the agreement in principle, Movants state that ExxonMobil agrees that a settlement judge could be helpful in resolving the pooling issues prior to Commission action on the ID.

4. On February 21, 2012, Koch Alaska Pipeline Company, L.L.C. (Koch) filed an answer opposing the motion for appointment of a settlement judge. Koch is another owner of TAPS, and it states that the motion appears to contemplate that settlement judge discussions will involve all parties, which Koch maintains is unnecessary. Koch explains that pooling relates only to the allocation of internal costs among the TAPS Carriers and does not affect the reasonableness of the rates charged to shippers. According to Koch, the involvement of non-carriers in confidential commercial discussions could inhibit the meaningful exchange of information and reduce the likelihood that the TAPS Carriers could reach agreement. However, Koch agrees that a reasonable period of suspension of the Commission's consideration of the ID would be appropriate because that would encourage negotiations among the TAPS Carriers. In any event, Koch contends that, if the discussions will be limited to the TAPS Carriers, the request for appointment of a settlement judge is premature at this time before there have been discussions among the TAPS Carriers concerning the pooling issues.

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<sup>3</sup> BP Pipelines (Alaska) Inc. (BP); ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips); and ExxonMobil Pipeline Company (ExxonMobil) (collectively, Movants).

<sup>4</sup> Section 603(c)(1) of the Commission's regulations permits any participant to file a motion requesting appointment of a settlement judge. 18 C.F.R. § 385.603(c)(1) (2011).

5. Earlier in this proceeding, the Commission established settlement judge procedures to address the TAPS Carriers' proposals to change their interstate rates.<sup>5</sup> In the ID, the ALJ stated that settlement judge procedures were unsuccessful.<sup>6</sup> Because the parties were unable to reach agreement on the pooling issues that are the subject of Movants' current motion, those issues were addressed at the hearing and now are pending before the Commission. In the June 30, 2009 order accepting and suspending the TAPS Carriers' rate filings and establishing hearing and settlement judge procedures, the Commission stated as follows:

Settlement procedures are particularly important in this proceeding. . . . [N]ow 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, . . . 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 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.<sup>7</sup>

As was true in 2009, it would be more efficient and would conserve the resources of the parties and the Commission if the TAPS Carriers are able to resolve the pooling issues cited in Movants' February 17, 2012 motion asking the Commission to establish settlement judge procedures.

6. Because the negotiations contemplated by Movants and Koch involve the pooling of costs among the TAPS Carriers rather than the justness and reasonableness of the rates charged to the shippers, it is unnecessary to involve other participants in the negotiations. Moreover, no other participants have filed in opposition to the Movants' proposal for

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<sup>5</sup> *E.g.*, *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316, at P 30 (2009). The Commission also pointed out that settlement judge procedures were ongoing in a related proceeding, so it held in abeyance the settlement judge procedures established in this order pending the outcome of the earlier proceeding. *Id.* P 31.

<sup>6</sup> *BP Pipelines (Alaska) Inc.*, 134 FERC ¶ 63,020, at PP 1-4 (2011)

<sup>7</sup> *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316, at P 30 (2009) (footnotes omitted).

settlement discussions, nor have other participants sought to participate in the proposed negotiations.<sup>8</sup>

7. However, neither the motion to appoint a settlement judge nor Koch's answer offers any indication of Unocal Pipeline Company's (Unocal) position with respect to the appointment of a settlement judge. Therefore, to ensure that all of the TAPS Carriers participate in the settlement negotiations, the Commission will require Unocal to enter into good faith negotiations with the other TAPS Carriers to settle the pooling issues, as provided in section 343.5 of the Commission's regulations.<sup>9</sup>

8. Settlement judge procedures are flexible enough to allow the TAPS Carriers to participate in off-the-record negotiations among themselves if they prefer to do so. However, they must report the status of their negotiations to the settlement judge on terms determined by the settlement judge. The settlement judge, in turn, must report to the Chief ALJ and the Commission at the intervals established below. The Commission's action here does not prevent other participants from raising their concerns about these issues at a later stage of the proceeding if the TAPS Carriers file a proposed settlement. Moreover, if these issues are not resolved by the negotiations, the other participants previously have had the opportunity to file exceptions to the ID and opposition to the exceptions, and the Commission will address their arguments in an order on exceptions to the ID.

9. Accordingly, the Commission will take no action on the ID during settlement negotiations so long as the settlement judge reports to the Commission that negotiations are making reasonable progress. However, should the settlement judge determine that additional negotiations are not likely to be fruitful, the Commission will act on the exceptions to the ID.

10. To aid the TAPS Carriers in their settlement efforts, the Commission will direct the Chief ALJ to appoint a settlement judge pursuant to section 385.603(d) of the Commission's regulations.<sup>10</sup> If the TAPS Carriers desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise,

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<sup>8</sup> 18 C.F.R. § 385.603(i) (2011) provides as follows: "*Non-reviewability.* Any decision concerning the appointment of a settlement judge or the termination of any settlement negotiations is not subject to review by, appeal to, or rehearing by the presiding officer, Chief Administrative Law Judge, or the Commission."

<sup>9</sup> 18 C.F.R. § 343.5 (2011). This section also provides that "[f]ailure to participate in such negotiations in good faith is a ground for decision against the party so failing to participate on any issue that is the subject of negotiations by other parties."

<sup>10</sup> 18 C.F.R. § 385.603(d) (2011).

the Chief ALJ will select a judge for this purpose.<sup>11</sup> The settlement judge must report to the Chief ALJ and to the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief ALJ may provide the TAPS Carriers with additional time to continue their settlement discussions.

The Commission orders:

(A) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief ALJ is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief ALJ designates the settlement judge. If the TAPS Carriers decide to request a specific judge, they must make their request to the Chief ALJ within five (5) days of the date of this order.

(B) Within 30 days of the appointment of the settlement judge, the settlement judge must file a report with the Commission and the Chief ALJ on the status of the settlement discussions. Based on this report, the Chief ALJ may provide the TAPS Carriers with additional time to continue their settlement discussions, if appropriate. If settlement discussions continue, the settlement judge must file a report at least every 30 days thereafter, informing the Commission and the Chief ALJ of the TAPS Carriers' progress toward settlement.

(C) As discussed in the body of this order, Unocal is directed to enter into good faith negotiations with the other TAPS Carriers to resolve the pooling issues.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>11</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief ALJ by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).