

148 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, John R. Norris,  
Tony Clark, and Norman C. Bay.

ConocoPhillips Transportation Alaska, Inc.  
ConocoPhillips Transportation Alaska, Inc.

Docket Nos. IS14-596-000  
IS11-306-000, *et al.*  
(Consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF, SUBJECT TO REFUND,  
CONSOLIDATING PROCEEDINGS, AND HOLDING PROCEEDINGS IN  
ABEYANCE

(Issued August 5, 2014)

1. On July 11, 2014, ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips) filed a tariff record (Tariff),<sup>1</sup> to be effective July 11, 2014, on less than 30 days' notice pursuant to section 341.14 of the Commission's rules and regulations.<sup>2</sup>
2. Anadarko Petroleum Corporation (Anadarko) and the State of Alaska (Alaska) intervened and filed protests and motions to hold proceedings in abeyance. Anadarko and Alaska also moved to consolidate this proceeding with ongoing proceedings in other dockets addressing the rates of other owners of the Trans Alaska Pipeline System (TAPS)<sup>3</sup> in Docket No. IS11-306-000, *et al.*<sup>4</sup> ConocoPhillips filed responses to the protests.

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<sup>1</sup> ConocoPhillips Transportation Alaska, Inc., FERC Oil Tariff, ConocoPhillips Transportation Alaska, Inc. Tariffs, [Rate Filing, CPTAI FERC Rate Change 19 6 0, 1.0.0.](#)

<sup>2</sup> 18 C.F.R. § 341.14 (2014).

<sup>3</sup> The other current TAPS owners are ExxonMobil Pipeline Company and BP Pipelines (Alaska), Inc. (TAPS Carriers). In addition to the TAPS Carriers, Koch Alaska Pipeline Company and Unocal Pipeline Company previously owned interests in TAPS.

<sup>4</sup> Tesoro Alaska Company and BP Pipelines (Alaska) Inc. filed motions to intervene in this proceeding, but did not protest or otherwise comment on the Tariff.

3. As discussed below, pursuant to section 341.14 of the Commission's regulations,<sup>5</sup> the Commission grants waiver of section 6(3) of the Interstate Commerce Act (ICA) to permit the Tariff to become effective on less than 30 days' notice, and will accept and suspend the Tariff, to become effective July 11, 2014, subject to refund. The Commission also will consolidate the ConocoPhillips filing with the already-consolidated proceedings in Docket No. IS11-306-000, *et al.*, which are being held in abeyance pending the outcome of the consolidated proceedings in Docket No. IS09-348-004, *et al.*

### **ConocoPhillips' Filing**

4. ConocoPhillips states that FERC Tariff No. 19.6.0 applies to the interstate transportation of petroleum on TAPS between Prudhoe Bay, Alaska, and Valdez Marine Terminal, Alaska, over ConocoPhillips' share of the TAPS capacity. ConocoPhillips states that its current rate for interstate transportation between these points is \$6.68 per barrel and that FERC No. 19.6.0 is filed to decrease that rate to \$5.88 per barrel. ConocoPhillips maintains that the new rate proposed in FERC No. 19.6.0 is calculated in accordance with the TAPS ratemaking methodology prescribed by the Commission in Opinion No. 502.<sup>6</sup>

5. ConocoPhillips states that it is "a carrier described in § 342.0(b) that seeks to . . . change rates by filing cost, revenue, and throughput data supporting such rates, other than pursuant to a Commission-approved settlement."<sup>7</sup> Therefore, ConocoPhillips states that it has filed the Tariff and supporting documentation required by section 346.2 of the Commission's regulations.<sup>8</sup>

6. Finally, as stated above, in accordance with section 341.14 of the Commission's regulations,<sup>9</sup> ConocoPhillips asks the Commission to grant it a waiver of ICA section 6(3) to permit it to file the Tariff on less than 30 days' notice so that the lower rate can take effect as soon as possible. ConocoPhillips also asks that the Tariff be conditionally accepted, subject to refund, pending the 30-day review period.

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<sup>5</sup> 18 C.F.R. § 341.14 (2014).

<sup>6</sup> *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287 (2008), *orders on reh'g*, 125 FERC ¶ 61,215 (2008), 127 FERC ¶ 61,317 (2009).

<sup>7</sup> 18 C.F.R. § 346.1 (2014).

<sup>8</sup> 18 C.F.R. § 346.2 (2014).

<sup>9</sup> 18 C.F.R. § 341.14 (2014).

### **Interventions, Protests, and ConocoPhillips' Response**

7. Anadarko states that it does not protest the reduction in the rate or the short notice allowing the decrease to go into effect as soon as possible, but it contends that the resulting \$5.88 per barrel rate is unjust and unreasonable because it includes, *inter alia*, unreasonable and imprudently incurred costs for the TAPS Carriers' strategic reconfiguration project, ad valorem tax amounts related to prior periods, and other excessive costs. Anadarko maintains that the filed rate should be set for hearing, but that the hearing should be held in abeyance, subject to the outcome of ongoing proceedings regarding the TAPS Carriers' rates.

8. Anadarko documents the procedural history of the litigation involving the TAPS Carriers' and previous joint owners' 2009 – 2013 rates. It points out that the 2009 – 2010 rates were litigated in two phases in Docket No. IS09-348-004, *et al.*, and are at an advanced stage. Further, states Anadarko, the carriers' rate filings in Docket No. IS11-306-000, *et al.*, from 2011 – 2013, were consolidated, set for hearing, and held in abeyance, subject to the outcome of the hearings regarding the 2009 – 2010 rates. Given the advanced stage of the proceedings regarding the 2009 – 2010 rates, Anadarko contends that proceedings concerning the instant Tariff should be consolidated with the 2011 – 2013 rates in Docket No. IS11-306-000, *et al.*, which are held in abeyance pending the outcome of the prior pending proceedings in Docket No. IS09-348-004, *et al.*, as well as with ExxonMobil Pipeline Company's 2014 TAPS tariff filing in Docket No. IS14-575-000, which was approved by the Commission in an order issued July 31, 2014.<sup>10</sup>

9. Based on its initial review, Anadarko states that the Tariff presents many if not all of the issues being addressed in the other proceedings pending in varying stages before the Commission and the courts. In particular, Anadarko cites ConocoPhillips' treatment of ad valorem tax payments relating to prior tax years, contending that it is inconsistent with the Presiding Administrative Law Judge's ruling that including such payments for the 2006 tax year in the 2010 rates violated the filed rate doctrine and the rule against retroactive ratemaking because they were not paid within the test period and that embedding them in the rates would render future rates less representative of actual costs of service.<sup>11</sup> Further, argues Anadarko, even if such payments were recoverable, they should be removed from the 2014 rates because ConocoPhillips (and the other carriers)

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<sup>10</sup> *ExxonMobil Pipeline Co.*, 148 FERC ¶ 61,078 (2014). *See also* Protest, Motion to Intervene, Motion to Hold in Abeyance, and Motion to Consolidate of Anadarko Petroleum Corporation July 28, 2014, at 3-4.

<sup>11</sup> Anadarko cites *BP Pipelines (Alaska) Inc.*, 146 FERC ¶ 63,019, at PP 1619-1654 (2014).

have already significantly over-recovered these tax amounts in prior rates. Finally, states Anadarko, ConocoPhillips has made no attempt to show that its proposed amortization recovery method is just and reasonable.

10. Alaska also requests that the Tariff be investigated, suspended, held in abeyance, and made subject to refund. Likewise, Alaska states that many of the issues raised by the Tariff are the same issues raised by previous rate filings that have been consolidated and held in abeyance in Docket No. IS11-306,000 *et al.*, and IS09-348-004, *et al.*, which are in various stages of litigation.

11. ConocoPhillips responds that the protesters raise the same arguments that have been advanced in prior protests of earlier ConocoPhillips' tariffs. ConocoPhillips specifically challenges the protests relating to the TAPS owners' Strategic Reconfiguration Program; as well as its treatment of *ad valorem* tax payments; dismantling, removal, and restoration costs; and the operating expenses included in the Tariff. ConocoPhillips also states that it is not opposed to the requests to consolidate this proceeding with Docket No. IS11-306-000, *et al.*, and hold it in abeyance pending resolution of the proceedings in Docket No. IS09-348, *et al.* ConocoPhillips requests that the Commission accept the Tariff to be effective July 11, 2014, subject to refund.

### **Commission Analysis**

12. The Commission will accept and suspend FERC Tariff No. 19.6.0 to become effective on July 11, 2014, on less than 30 days' notice, subject to refund and other conditions. The Commission also will hold any investigation of the Tariff in abeyance and will consolidate investigation of the Tariff with the existing ongoing proceedings involving the TAPS Carriers' and previous owners' rates.

13. ConocoPhillips' Tariff and the protests of Anadarko and Alaska raise many of the same issues being addressed in Docket Nos. IS09-348-004, *et al.*, and being held in abeyance in Docket Nos. IS11-306-000, *et al.* Further, the Tariff and the protests raise a number of issues that cannot be resolved on the basis of the existing record. Accordingly, it is reasonable to consolidate the Tariff with the consolidated proceedings in Docket Nos. IS11-306-000, *et al.*, and allow the proceedings on the Tariff to be held in abeyance pending resolution of the ongoing proceedings in Docket No. IS09-348-004, *et al.* Addressing the common issues in the TAPS Carriers' rate filings in this fashion ensures that a single proceeding will determine a just and reasonable uniform rate for TAPS.

The Commission orders:

(A) ConocoPhillips' FERC Tariff No. 19.6.0 is accepted and suspended to become effective July 11, 2014, on less than 30 days' notice, subject to refund and further investigation, with that investigation held in abeyance pending further order of the Commission.

(B) The proceedings concerning FERC Tariff No. 19.6.0 are consolidated with the already-consolidated proceedings in Docket No. IS11-306-000, *et al.*, which are themselves being held in abeyance pending resolution of the ongoing proceedings in Docket No. IS09-348-004, *et al.*

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.