

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP Pipelines (Alaska) Inc.	Docket Nos. IS07-75-000
ConocoPhillips Transportation Alaska, Inc.	IS07-56-000
ExxonMobil Pipeline Company	IS07-55-000
Koch Alaska Pipeline Company LLC	IS07-48-000
Unocal Pipeline Company	IS07-41-000

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND, AND
HOLDING PROCEEDING IN ABEYANCE

(Issued December 28, 2006)

1. On or about December 1, 2006, BP Pipelines (Alaska) Inc. (BP), ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips), ExxonMobil Pipeline Company (ExxonMobil), Koch Alaska Pipeline Company LLC (Koch), and Unocal Pipeline Company (Unocal) (collectively, TAPS Carriers) filed tariffs (2007 TAPS Tariffs)¹ with proposed effective dates of January 1, 2007. These filings are the annual filings required by the Commission-approved settlement in *Trans Alaska Pipeline System*² (Settlement). That Settlement prescribed the TAPS Settlement Methodology (TSM) for computing the rates for the transportation of petroleum by pipeline through the Trans Alaska Pipeline System (TAPS). All of the subject filings propose increases to the existing rates.

¹ The 2007 TAPS Tariffs filed on or about December 1, 2006, include the following: BP – FERC No. 33; ConocoPhillips – FERC Nos. 11 and 12; ExxonMobil – FERC No. 277; Koch – FERC No. 8; and Unocal – FERC No. 288. On December 15, 2006, BP withdrew FERC No. 33 previously filed in Docket No. IS07-62-000 and replaced it with FERC No. 34 in Docket No. IS07-75-000.

² 33 FERC ¶ 61,064 (1985); 35 FERC ¶ 61,425 (1986).

2. The State of Alaska (Alaska) and Anadarko Petroleum Corporation, Tesoro Corporation, and Tesoro Alaska Company (Anadarko/Tesoro) protested the 2007 TAPS Tariffs, contending that the increases are unjust, unreasonable, and discriminatory. The protesting parties also contend, *inter alia*, that the rates reflected in the tariffs are inconsistent with the Settlement and that the rates include expenditures caused by the imprudence of the TAPS Carriers.

3. As discussed below, the Commission will accept ConocoPhillips' FERC No. 12 to be effective January 1, 2007,³ and will accept and suspend the remaining tariffs listed in Footnote No. 1, subject to refund, to be effective January 1, 2007, and will hold this proceeding in abeyance pending the outcome of pending proceedings involving the TAPS 2005 and 2006 annual tariff filings and pending further order of the Commission in this proceeding.

Related Proceedings

4. In December 2004, the TAPS Carriers filed their 2005 rate tariffs (2005 Rate Proceeding). Alaska and Anadarko/Tesoro filed protests and complaints against the 2005 TAPS tariffs. The Commission issued an order accepting and suspending the TAPS Carriers' 2005 tariff filings.⁴ The Commission subsequently issued an order on the complaints, consolidating them with the 2005 Rate Proceeding.⁵

5. On July 20, 2005, the TAPS Carriers filed a petition under sections 13(3) and 13(4) of the Interstate Commerce Act (ICA), alleging that the TAPS intrastate rates set by the Regulatory Commission of Alaska (RCA) are unlawfully low and requesting that the Commission invoke its authority under ICA section 13(4) to increase the RCA-established intrastate rates. Anadarko/Tesoro protested the TAPS Carriers' petition. The Commission issued an order establishing a hearing and consolidated that hearing with the 2005 Rate Proceeding.⁶ The consolidated proceedings currently are pending before a Presiding Administrative Law Judge (ALJ) in Docket No. IS05-82-002, *et al.*

³ ConocoPhillips' FERC No. 12 contains tariff Rules and Regulations. The changes in FERC No. 12 are wording changes to the Quality and Intermixing of Petroleum section and the Nomination Policy and Proration Procedures section.

⁴ *BP Pipelines (Alaska) Inc.*, 109 FERC ¶ 61,376 (2004).

⁵ *State of Alaska v. BP Pipelines (Alaska) Inc.*, 110 FERC ¶ 61,129 (2005).

⁶ *BP Pipelines (Alaska) Inc.*, 112 FERC ¶ 61,219 (2005).

6. In December 2005, the TAPS Carriers filed their 2006 rate tariffs (2006 Rate Proceeding). Alaska and Anadarko/Tesoro again protested the filings and included complaints with the protests. They asked the Commission to suspend the 2006 TAPS tariffs, subject to refund, investigation, and hearing. Alaska questioned the TAPS Carriers' prudence in managing the Strategic Reconfiguration Program (SR). Anadarko/Tesoro asked the Commission to consolidate the hearing with the ongoing proceedings involving the 2005 Rate Proceeding and to establish just and reasonable TAPS rates. The Commission issued an order accepting and suspending the 2006 rate tariffs, subject to refund and further order of the Commission. The Commission also consolidated the 2006 Rate Proceeding with the ongoing proceedings involving the 2005 Rate Proceeding and related complaints.⁷ In a subsequent order, the Commission set the complaints for hearing and consolidated them with the ongoing consolidated proceedings related to the 2005 and 2006 Rate Proceeding.⁸

Background

7. The Settlement established the TSM and required the TAPS Carriers to calculate their interstate rates in accordance with the TSM. Under the TSM, each TAPS Carrier calculates a single Total Revenue Requirement, which reflects the TAPS Carriers' total cost of providing service, for both interstate and intrastate deliveries. Once a TAPS Carrier calculates its Total Revenue Requirement, the TSM requires the TAPS Carrier to determine the portion of the Total Revenue Requirement that the pipeline uses to calculate rates for interstate transportation.

8. In November 2002, the RCA issued Order No. 151,⁹ and held that the TAPS Carriers' intrastate rates for past years calculated using the TSM "do not satisfy the AS 42.06 requirement that pipeline rates be just and reasonable."¹⁰ The RCA also ordered refunds for past years and directed the TAPS Carriers to set lower intrastate rates using a new methodology prescribed by the RCA.¹¹

⁷ *BP Pipelines (Alaska) Inc.*, 113 FERC ¶ 61,332 (2005).

⁸ *State of Alaska v. BP Pipelines (Alaska) Inc.*, 114 FERC ¶ 61,174 (2006).

⁹ RCA Order No. P-97-4-(151) (November 27, 2002).

¹⁰ *Id.* at 2.

¹¹ RCA decisions do not bind this Commission.

Protests and Answers**A. Alaska's Protest and the TAPS Carriers' Answer**

9. Alaska contends that the 2007 TAPS Tariffs violate the ICA provisions that prohibit unjust discrimination and undue disadvantage in rates. Specifically, Alaska maintains that the TAPS Carriers seek to charge interstate shippers more than twice as much as they charge intrastate shippers for transportation that is subject to the jurisdiction of the RCA. Alaska further asserts that the 2007 TAPS Tariffs are inconsistent with the terms of the Settlement and include expenditures caused by the TAPS Carriers' imprudence in planning, approval, and management of the Strategic Reconfiguration (SR) program. Alaska points out that it filed protests in the 2005 and 2006 Rate Proceedings on the same issues of unjust discrimination and undue preference, and it also protested the 2006 TAPS tariffs on the issue of mismanagement of the SR program. Alaska asks the Commission to suspend the 2007 TAPS Tariffs for one day and make them effective subject to refund. Alaska further asks that the Commission hold in abeyance the investigation into the alleged unjust discrimination and undue preference, as well as the SR issue, pending a final determination by the Commission with respect to the 2005 and 2006 Rate Proceedings.

10. The TAPS Carriers respond that Alaska's discrimination claim is barred by the Settlement, is wrong as a matter of law, and should be dismissed summarily. The TAPS Carriers maintain that the terms of the Settlement include a comprehensive methodology for calculating TAPS ceiling rates that the parties agreed would achieve TAPS tariffs that are just and reasonable, as well as non-discriminatory, within the meaning of the ICA. The TAPS Carriers further maintain that ICA sections 2 and 3(1) are inapplicable when the interstate rates have not been shown to be unjust and unreasonable and the difference between interstate and intrastate rates is caused by an order of a state regulatory agency that prescribes lower intrastate rates for corresponding movements. The TAPS Carriers contend that only ICA section 13(4) would permit an investigation of Alaska's claims, but that Alaska does not seek relief under this section. Moreover, the TAPS Carriers argue that the remedy Alaska seeks -- lower interstate rates -- is not available under federal law. If the Commission does not reject Alaska's claims, the TAPS Carriers ask the Commission to hold these claims in abeyance as they relate to the 2007 TAPS Tariffs pending the outcome of the consolidated proceedings relating to the 2005 and 2006 Rate Proceedings.

11. The TAPS Carriers contend that allegations of imprudence relating to the SR program are unsupported and without merit. According to the TAPS Carriers, merely because adjustments to this very large program have been made, that does not mean that the costs incurred were imprudent or that the program has been mismanaged in other respects. The TAPS Carriers ask the Commission to reject these claims as well, or to

consolidate Alaska's protest relating to this issue with the proceedings addressing its previous similar claims pending the outcome of a prehearing conference scheduled for March 14, 2007.

B. Anadarko/Tesoro's Protest and TAPS Carriers' Answer

12. Anadarko/Tesoro request that interested parties be granted access to non-public information filed in support of the 2007 TAPS Tariffs, subject to appropriate confidentiality protections. They contend that the proposed 2007 TAPS Tariffs are unjust and unreasonable and are calculated pursuant to the Settlement methodology that has been shown in the 2005 and 2006 TAPS tariff proceedings to produce inherently unjust and unreasonable rates for TAPS. Anadarko/Tesoro ask the Commission to hold in abeyance any proceedings concerning the 2007 TAPS Tariffs pending the outcome of the ongoing proceedings addressing the earlier TAPS tariff filings.

13. The TAPS Carriers respond that Anadarko/Tesoro's protest should be dismissed because they have failed to raise any specific issue warranting suspension and investigation of the 2007 TAPS Tariffs. In particular, the TAPS Carriers assert that Anadarko/Tesoro have failed to analyze the justness and reasonableness of the tariffs under the Commission's established ratemaking methodology for oil pipelines, instead attacking the methodology established in the Settlement, even though the Commission has authorized only that methodology for establishing rates. However, to the extent the Commission does not dismiss the protest, the TAPS Carriers do not oppose holding in abeyance any proceedings concerning the 2007 TAPS Tariffs pending the outcome of the consolidated proceedings including the 2005 and 2006 Rate Proceedings. Finally, the TAPS Carriers submit that the Commission should not allow access to the non-public material unless and until the 2007 TAPS Tariffs are made subject to an investigation and hearing.

C. Commission Analysis

14. The issues raised in response to the 2007 TAPS Tariff filings pertain to the application of the TSM that currently is at issue in the pending consolidated proceedings including the 2005 and 2006 Rate Proceedings (Docket No. IS05-82-002, *et al.*). The parties have different understandings of how the terms of the TSM apply when there are orders from the RCA that may be inconsistent with the TSM. However, the Commission finds that the consolidated proceedings are at a stage that would make it inefficient to consolidate the 2007 TAPS Tariffs with those proceedings. Accordingly, the Commission will accept and suspend the 2007 TAPS Tariffs, subject to refund, to

become effective January 1, 2007.¹² The Commission will hold in abeyance this proceeding involving the 2007 TAPS Tariffs, subject to the outcome of the consolidated proceedings in Docket No. IS05-82-002, *et al.*, and subject to further order of the Commission. This will ensure that this TAPS rate filing and the two previous TAPS rate filings are resolved in an efficient and consistent manner. The parties do not object to this procedure for resolving all of the pending proceedings.

Suspension

15. Based upon a review of the filings, the Commission finds that the 2007 TAPS Tariffs 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 tariffs, to become effective January 1, 2007, subject to refund and subject to the other conditions stated above and in the ordering paragraphs below.

The Commission orders:

(A) ConocoPhillips' FERC No. 12 is accepted for filing to become effective January 1, 2007.

(B) BP's FERC No. 34, ConocoPhillips' FERC No. 11, ExxonMobil's FERC No. 277, Koch's FERC No. 8, and Unocal's FERC No. 288 are accepted for filing and suspended, to become effective January 1, 2007, subject to refund and further order of the Commission.

(C) This proceeding will be held in abeyance pending the outcome of the consolidated proceedings in Docket No. IS05-82-002, *et al.*

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹² As stated above, the Commission will accept ConocoPhillips' FERC No. 12 to be effective January 1, 2007.