

125 FERC ¶ 61,367
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP Pipelines (Alaska) Inc.	Docket Nos. IS07-75-000 and IS08-78-000
ConocoPhillips Transportation Alaska, Inc.	Docket Nos. IS07-56-000 and IS08-62-000
ExxonMobil Pipeline Company	Docket Nos. IS07-55-000 and IS08-65-000
Koch Alaska Pipeline Company LLC	Docket Nos. IS07-48-000 and IS08-64-000
Unocal Pipeline Company	Docket Nos. IS07-41-000 and IS08-53-000

ORDER ON MOTION FOR SUMMARY DISPOSITION
AND DIRECTING TAPS CARRIERS TO SUBMIT COMPLIANCE
FILING ESTABLISHING RATES FOR 2007 AND 2008 CONSISTENT
WITH OPINION NO. 502

(Issued December 29, 2008)

1. This matter involves the interstate rates for the Trans Alaska Pipeline System (TAPS). On or about December 1, 2006, and November 30, 2007, respectively, each of the TAPS Carriers¹ filed interstate rates for 2007 and 2008. These filings are the annual filings required by the Commission-approved settlement in *Trans Alaska Pipeline System*² (Settlement). The Settlement prescribed the TAPS Settlement Methodology (TSM) for computing the rates for the transportation of petroleum through TAPS. The State of Alaska (Alaska) and Anadarko Petroleum Corporation protested the TAPS Carriers' 2007 and 2008 rate filings contending that the rate increases are unjust, unreasonable, and unduly discriminatory. By orders issued December 28, 2006, and December 28, 2007, the Commission accepted and suspended each of the rate filings, making them effective January 1, 2007, and January 1, 2008, respectively, subject to

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

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

refund.³ The Commission also ordered that further proceedings regarding the 2007 and 2008 rates be held in abeyance, subject to the outcome of the pending proceeding involving the 2005 and 2006 rates in Docket No. IS05-82-000 *et al.*, and further order of the Commission.

2. On June 20, 2008, the Commission issued Opinion No. 502, an Opinion and Order on Initial Decision, in Docket No. IS05-82-000 *et al.*⁴ Opinion No. 502 generally affirmed the Initial Decision (ID)⁵ and found that the TAPS Carriers' proposed interstate rates for 2005 and 2006 based upon the TSM are not just and reasonable, determined the components for calculating new rates under Opinion No. 154-B,⁶ and ordered limited refunds. The Commission also directed the TAPS Carriers to submit compliance filings to establish rates for 2005 and 2006.

3. On November 20, 2008, the Commission issued an order generally denying rehearing, but granting rehearing, in part, of Opinion No. 502, by requiring the TAPS Carriers to take further action with respect to the uniform rate issue.⁷ The order also accepted the TAPS Carriers' compliance filing which established rates for 2005 and 2006 applying the Opinion No. 154-B methodology.

4. On July 22, 2008, Anadarko, Tesoro Corporation, and Tesoro Alaska Company (collectively, Anadarko), filed a motion requesting the Commission to summarily dispose of the TAPS Carriers' 2007 and 2008 rate filings. Anadarko requests the Commission reject those filings as legally deficient and contrary to the ratemaking methodology adopted for TAPS in Opinion No. 502. In the alternative, Anadarko asks the Commission to summarily direct the TAPS Carriers to file reduced 2007 and 2008 rates

³ *BP Pipelines (Alaska) Inc.*, 117 FERC ¶ 61,352 (2006), and *Unocal Pipeline Company*, 121 FERC ¶ 61,300 (2007).

⁴ *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287 (2008).

⁵ *BP Pipelines (Alaska) Inc.*, 119 FERC ¶ 63,007 (2007). On May 31, 2007, the ALJ issued an errata to the ID with changes to certain items. *BP Pipelines (Alaska) Inc.*, 119 FERC ¶ 63,008 (2007).

⁶ *Williams Pipe Line Co.*, Opinion No. 154-B, 31 FERC ¶ 61,377 (1985) (Opinion No. 154-B).

⁷ *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,215 (2008) (Order on Rehearing and Compliance).

that conform to the cost-based ratemaking principles established for TAPS in Opinion No. 502, and direct the TAPS Carriers to make appropriate refunds with interest.

5. For the reasons set forth below, the Commission directs the TAPS Carriers, within 30 days of the date this order issues, to make a compliance filing establishing interstate rates on TAPS for 2007 and 2008 under the cost-based ratemaking principles established for TAPS in Opinion No. 502.

I. Anadarko's Motion

6. Anadarko states it is undisputed that the TAPS Carriers' 2007 and 2008 rates were calculated using the same TSM rate methodology that the Commission rejected in Opinion No. 502. Moreover, all parties agree that the Commission's finding regarding the TSM applies with equal force to the 2007 and 2008 rates, that there is no need to relitigate these issues with respect to the TAPS Carriers' 2007 and 2008 rate filings, and that the TAPS Carriers should promptly conform the 2007 and 2008 rate filings to the principles of Opinion No. 502. Under these circumstances, Anadarko asserts the Commission should summarily act upon the pending filings.⁸

7. Anadarko argues the Commission should reject the 2007 and 2008 rate filings and order refunds of amounts collected above the pre-existing clean rate, which Anadarko asserts will be the 2006 TAPS rate as established in accordance with Opinion No. 502. If the Commission does not reject the TAPS Carriers' 2007 and 2008 rate filings, Anadarko contends the Commission should direct the TAPS Carriers to file, within 30 days, reduced 2007 and 2008 rates based on the cost-based ratemaking principles adopted for TAPS in Opinion No. 502. Anadarko asserts the Commission should accept and suspend the reduced 2007 and 2008 rates, subject to further refund, and subject to further protest by interested parties.

8. Anadarko asserts, however, that the Commission should also require the TAPS Carriers to immediately refund, with interest, all amounts collected above the level of the new 2007 and 2008 rates. Anadarko argues the Commission should not permit the TAPS

⁸ Rule 217(b), 18 C.F.R. § 385.217(b), sets forth the standard for summary disposition in proceedings before the Commission:

If the decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding.

Carriers to continue collecting rates that are two and a half times the just and reasonable level, based on a rate methodology conclusively rejected as unjust and unreasonable in Opinion No. 502.

II. Protests and Comments

9. The TAPS Carriers and Flint Hills Resources Alaska, LLC (Flint Hills) protested the motion, Commission Staff filed comments in support of the motion, and Alaska took no position on the matter. Williams Alaska Petroleum Inc. (Williams) moved for late intervention under Commission Rule 385.214, and filed a protest to the motion.⁹ Anadarko filed an answer to the TAPS Carriers' and Flint Hills' protests.¹⁰

10. Commission Staff supports Anadarko's alternative request to direct the TAPS Carriers to make a compliance filing to immediately conform the 2007 and 2008 rate filings to the cost-based ratemaking principles established for TAPS in Opinion No. 502, and direct the TAPS Carriers to make appropriate refunds.

11. Both Anadarko and Commission Staff urge the Commission to clarify that the Commission will deem future TAPS Carriers' TSM filings as informational filings and that the Commission will not effectuate them as filed rates.¹¹

12. The TAPS Carriers state they generally agree that they need to make new 2007 and 2008 rate filings in conformance with Opinion No. 502. The TAPS Carriers contend that since the actual data for 2007 is now known, the TAPS Carriers would propose to use actual data for the 2007 period. The TAPS Carriers state they would then calculate the rates for 2008 based on a 2007 calendar year base period, adjusted for test period changes.

⁹ Alaska, Anadarko, Commission Staff, and the TAPS Carriers filed in opposition to Williams' motion to intervene. Williams filed a response to the filings opposing its intervention.

¹⁰ While the Commission's rules generally prohibit answers to answers, 18 C.F.R. § 385.213(a)(2), the Commission will accept the answers because they provided information that assisted us in our decision-making process.

¹¹ The Settlement requires the TAPS Carriers to file new TSM maximum ceiling rates no later than December 1 of each year. Thus, even if the Settlement terminates at the end of 2008, as appears likely since Alaska sent the requisite termination notice, the TAPS Carriers are obligated to make rate filings by December 1, 2008, for year 2009.

13. However, the TAPS Carriers take issue with Anadarko's proposal to summarily reject the prior 2007 and 2008 filings, and Anadarko's assertion that the refund floor for 2007 and 2008 is the 2006 compliance filing rate determined under Opinion No. 502. TAPS Carriers assert that refunds are calculated as the difference between the filed rate and the pre-existing lawful rate (i.e., the last clean rate) in effect at the time the rate increase was filed. Here, the TAPS Carriers assert, when they filed the 2007 and 2008 rates the pre-existing lawful rate was the pre-existing TAPS Carriers' 2004 rates which rates had not been protested.¹²

14. Flint Hills asserts that while the as-filed rates are clearly unjust and unreasonable, that does not resolve what rates should apply in 2007 and 2008. Flint Hills argues the TAPS Carriers must be afforded the opportunity to establish that there might be changed circumstances or different data inputs, so that the test period data used to generate the TAPS Carriers' 2005 and 2006 rates produces just and reasonable rates for the 2007-2008 period. Thus, Flint Hills states all parties must have an opportunity to present evidence and comment on the application of that methodology to the 2007 and 2008 test periods.

15. With respect to the refund floor, Flint Hills takes a position similar to the TAPS Carriers and asserts that the 2004 rates establish the refund floor for the 2007 and 2008 rates.

16. In its response to the TAPS Carriers' and Flint Hills' answers, Anadarko states there is a consensus that the TAPS Carriers should file new 2007 and 2008 rates consistent with the methodology required by Opinion No. 502, but there is an issue as to the refund floor for those rates. Anadarko proposes that until the refund floor is determined, the Commission should reduce the rates on an interim basis.

III. Commission Determination

A. Procedural Matters

17. We deny Williams' motion for late intervention. Pursuant to Rule 214(d) the decisional authority "may consider whether the movant had good cause for failing to file the motion within the time prescribed." Here, Williams failed to demonstrate why it did not intervene in a timely manner.

¹² TAPS Carriers noted that they requested rehearing on the imposition of a uniform rate for all carriers. The Commission denied rehearing on this issue and affirmed that the TAPS Carriers must charge a uniform rate.

18. In addition, there is no merit to the reason Williams gives for why the Commission should grant it late intervention. Williams concedes that it is no longer a shipper on TAPS and is not affected by the rates at issue. However, Williams asserts the Commission should grant its request for late intervention because it was a shipper from 1978 to 2004 when the TAPS Carriers collected virtually all of the Dismantlement, Removal and Restoration (DR&R) costs from shippers when it was assumed that the useful life of the pipeline would terminate in 2011. The useful life now extends to 2034. Williams contends that it seeks intervention because no party in this proceeding is advocating the principle of intergenerational equity, which Williams argues the Commission should apply here by returning to the shippers who paid all of the DR&R expenses, half of the DR&R funds previously collected from them, and collecting that amount from shippers in the later period. Williams states that otherwise the shippers' DR&R payments in the earlier period will subsidize shippers in the later period. Williams raised the issue of intergenerational equity in its request for rehearing of Opinion No. 502 and the Commission addressed and denied Williams' request in the Order on Rehearing.¹³ For all of these reasons, we deny Williams motion to intervene.

B. Discussion

19. We find that summary disposition of the TAPS Carriers' filed 2007 and 2008 rates is appropriate since it is uncontested that there is no need to relitigate the issues determined in Opinion No. 502 setting the rates for 2005 and 2006 that are equally applicable here in setting the rates for 2007 and 2008. However, we deny Anadarko's motion that the TAPS Carriers immediately reduce the 2007 and 2008 rates to the rates established in the 2005 and 2006 proceeding. To do so would deny the TAPS Carriers an opportunity to set just and reasonable rates for 2007 and 2008 based on circumstances relevant to those periods. Accordingly, we will grant the alternative request and direct the TAPS Carriers to submit compliance filings calculating 2007 and 2008 rates in conformity with the ratemaking methodology established in Opinion No. 502. Once the TAPS Carriers make these filings, parties will have an opportunity to file comments on all issues, including the refund floor, and the Commission can then establish the rates for 2007 and 2008, and order the appropriate refunds.

The Commission orders:

(A) The TAPS Carriers shall, within 30 days of the date this order issues, submit filings establishing the rates for 2007 and 2008 in conformity with the ratemaking methodology established in Opinion No. 502.

¹³See *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,215, at P 24-30 (2008).

(B) Parties shall file comments within 15 days of the TAPS Carriers' filing.

(C) Williams' motion to intervene is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.