

126 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BP Pipelines (Alaska) Inc.	Docket Nos. IS09-114-000 and 001
ConocoPhillips Transportation Alaska, Inc.	IS09-116-000 and 001
ExxonMobil Pipeline Company	IS09-118-000 and 001
Koch Alaska Pipeline Company LLC	IS09-119-000 and 001
Unocal Pipeline Company	IS09-120-000 and 001

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND

(Issued February 25, 2009)

1. On January 26, 2009, the TAPS Carriers¹ filed tariffs (2009 Tariffs)² involving valuation of certain Quality Bank cuts on the Trans Alaska Pipeline System (TAPS). The TAPS Carriers state that the tariffs are issued in part to comply with the Commission's Quality Bank order in the Opinion No. 481 proceeding.³ They state that the filings reflect the required annual revised adjustments to the reference prices for the Light

¹ The TAPS Carriers consist of 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).

² The 2009 Tariffs filed on January 26, 2009, include Supplement No. 6 to the following tariffs: BP – FERC No. 33; ConocoPhillips – FERC No. 11; ExxonMobil – FERC No. 274; Koch – FERC No. 7; and Unocal – FERC No. 285.

³ *Trans Alaska Pipeline System*, 113 FERC ¶ 61,062 (2005) (Opinion No. 481); 114 FERC ¶ 61,323 (2006) (Opinion No. 481-A); 115 FERC ¶ 61,287 (2006) (Opinion No. 481-B), *aff'd sub nom. Petro Star Inc. v. FERC*, No. 06-1166, 2008 U.S. App. LEXIS 5328 (D.C. Cir., Mar. 6, 2008) (*Petro Star*), *cert. denied*, January 12, 2009.

Distillate, Heavy Distillate and Resid components for the year beginning February 1, 2009, calculated in accordance with the prescribed method in the tariffs.⁴ The TAPS Carriers requested special permission, pursuant to section 341.14 of the Commission's Regulations, for the tariffs to be effective on February 1, 2009, which is five days notice.⁵

2. Petro Star, Inc., Flint Hills Resources Alaska, LLC, and jointly Chevron U.S.A. and Union Oil Company of California filed motions for interventions and protests. The protests assert that the filings ignored the Commission's August 8, 2008 order in Docket No. IS06-466 (the Remand Order).⁶ The TAPS Carriers filed a response to Flint Hills' and Chevron's protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁷ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the TAPS Carriers' answer because it has provided information that assisted us in our decision-making process.

3. As discussed below, the Commission will accept and suspend the tariffs listed in Footnote No. 2, to be effective February 1, 2009, subject to refund and the outcome of the proceedings in Docket No. IS06-466-000.

Related Proceedings

4. Among the issues addressed in the Opinion No. 481 proceeding was the processing cost adjustment for three Quality Bank cuts, the Light Distillate, Heavy Distillate and Resid cuts (the processed cuts). On July 3, 2006, the TAPS Carriers filed tariffs to comply with Opinion No. 481. Protests were filed objecting to the "two-step" method that the Quality Bank Administrator (QBA)⁸ used to calculate the processing costs adjustments for the Heavy Distillate and Resid cuts.

⁴ The filings also include an adjustment to the West Coast Naphtha cut. The protests do not address this part of the filing.

⁵ On February 9, 2009, the TAPS Carriers filed Supplement No. 7 to each tariff to correct Supplement No. 6 to add certain language inadvertently omitted from the previous filing. Pursuant to 18 C.F.R. § 341.14, they requested special permission for the correction supplements to be effective on February 9, 2009, which is less than one day's notice.

⁶ *BP Pipelines (Alaska) Inc.*, 124 FERC ¶ 61,153 (2008), *reh'g pending*.

⁷ 18 C.F.R. § 385.213(a)(2) (2008).

⁸ The QBA is an independent expert who administers the Quality Bank.

5. In two orders in Docket No. IS06-466-000,⁹ the Commission accepted the TAPS Carriers' July 3, 2006 tariff sheets, finding that the QBA had properly calculated how to convert the Heavy Distillate and Resid cuts' 1996 processing costs to a year 2000 basis. After appeal of those two orders was filed, this proceeding came before the Commission on voluntary remand from the United States Court of Appeals for the District of Columbia Circuit.¹⁰ The remand was requested to address whether the Commission's orders, which accepted the QBA's two-step method for the Heavy Distillate and Resid cuts, while using the Tariff Forecast method for the Light Distillate cut, violated the consistency standard of *OXY USA, Inc. v. FERC*, 64 F.3d 679 (D.C. Cir. 1995) (*OXY*).

6. On August 8, 2008, the Commission issued the Remand Order which reversed the two orders and directed the TAPS Carriers to make a compliance filing consistent with the Remand Order. For purposes of this order, the Remand Order required that in converting the 1996 processing costs for the Heavy Distillate and Resid cuts to year 2000, the QBA must use the Tariff Forecast method, and not the two-step method. On August 27, 2008, the TAPS Carriers filed a Motion for Clarification of the Remand Order stating they were unclear as to the scope of the Remand Order.

7. On September 8, 2008, ConocoPhillips Alaska, Inc. (Conoco) and ExxonMobil Corporation (ExxonMobil) filed requests for rehearing and reinstatement of the Compliance Order which had accepted the TAPS Carriers' July 3, 2006 tariff filing. On September 8, 2008, the TAPS Carriers filed the compliance filing directed by the Remand Order. The Commission has not acted on the Requests for Rehearing, nor on the Motion for Clarification, nor on the September 8, 2008 Compliance Filing.

The Protests and the TAPS Carriers' Answer

8. The Protests assert that the January 26 filing violated the Commission's Remand Order because the filing continues to use the two-step calculations for determining the processing cost adjustments for the Heavy Distillate and Resid cuts that the Commission specifically rejected in the Remand Order. Protesters state that the TAPS Carriers' September 8, 2008 Compliance Filing had recalculated the 2008 processing cost adjustments for Heavy Distillate and Resid cuts in accordance with the Remand Order by using the Tariff Forecast method.

⁹ *BP Pipelines (Alaska) Inc.*, 116 FERC ¶ 61,208 (2006) (Compliance Order), *order on reh'g*, 118 FERC ¶ 61,056 (2007) (Rehearing Order), *appeal pending sub nom. Flint Hills Resources Alaska, LLC v. FERC*, D.C. Cir. Nos. 06-1361, *et al.*

¹⁰ *Flint Hills*, D.C. Cir. No. 06-1361 (Jan. 22. 2008).

9. However, Protesters assert, in the January 26 Filing, the TAPS Carriers ignored the calculation in the September 8, 2008 filing but instead reverted to using the two-step method.

10. Protesters Chevron and Petro Star request the Commission suspend the instant tariffs, subject to refund, and require the TAPS Carriers to file new tariffs, recalculated consistent with the Remand Order. Petro Star argues that since the Commission has clearly established the governing precedent in the Remand order, and the tariffs filed January 26, 2009, are in clear violation of that order, the Commission should suspend the January 26 filing from taking effect for the full seven-month period authorized by the ICA § 15(7).

11. Flint Hills asserts that since the January 26 filing is inconsistent and in violation of the Remand Order, the Commission should reject the January 26 filing as not in compliance with the Remand Order, and require that the TAPS Carriers make a new filing that is consistent with the Remand Order. Flint Hills also requests that as part of the new filing, the TAPS Carriers should be directed to issue corrected invoices for all relevant time periods, including those covered by the January 26 filing.

12. The TAPS Carriers admit that the January 26 filing does not follow the methodology used to calculate the processing cost adjustments in the September 8, 2008 compliance filing. The TAPS Carriers assert that until the pending matters in the Remand Proceeding are determined they were not certain how to calculate the processing cost adjustments for the processed cuts.

13. The TAPS Carriers state that the January 26 filing follows the calculations in the July 3, 2006 Compliance Filing that the Commission accepted in the Docket No. IS06-466 proceeding. The TAPS Carriers state that they did so because their motion for clarification which sought guidance on certain questions relating to the processing cost adjustment calculation is still pending. Moreover, they state that calculation of the Heavy Distillate cut's processing cost adjustment after June 1, 2006 was subject to another proceeding in Docket No. OR06-10-000. There the Commission issued Opinion No. 500 determining that issue,¹¹ and directed the TAPS Carriers to make a compliance filing establishing the processing cost adjustment for the West Coast Heavy Distillate cut. The TAPS Carriers state they made that compliance filing on April 2, 2008, and the Commission accepted that compliance filing on December 2, 2008.¹²

¹¹ *BP Pipelines (Alaska) Inc.*, 122 FERC ¶ 61,236 (2008).

¹² *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,256 (2008).

14. The TAPS Carriers state in January 2009 when they were obligated to make the annual tariff filing revising the processing cost adjustments for the processed cuts they had not yet received guidance from the Commission on the periods for which the recalculation of the processing cost adjustments was to be done. Nor had the Commission provided any guidance regarding the effect of the order in Docket No. OR06-10 on the calculation of the processing cost adjustments for the Heavy Distillate cut.

15. Given these uncertainties, the TAPS Carriers state they chose to continue using the previous method for calculating the processing cost adjustments for the Heavy Distillate and Resid cuts pending receipt of further guidance from the Commission.

Discussion

16. As noted above, there are the pending Requests for Rehearing of the Remand Order. In addition, the TAPS Carriers' motion for clarification is also pending. Thus, the instant proceeding depends upon the final order in the Remand proceeding in Docket No. IS06-466-000, which will determine which method should be used for calculating the processing cost adjustments for the processed cuts. Accordingly, the Commission will accept and suspend the January 26 filing, subject to refund and further order of the Commission in Docket No. IS06-466-000.

Suspension

17. Based upon a review of the filings, the Commission finds that the 2009 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 February 1, 2009, subject to refund and subject to the other conditions stated above and in the Ordering Paragraphs below.

The Commission orders:

(A) BP's FERC No. 33, ConocoPhillips' FERC No. 11, ExxonMobil's FERC No. 274, Koch's FERC No. 7, and Unocal's FERC No. 285, as supplemented, are accepted for filing and suspended, to become effective February 1, 2009, subject to refund and further order of the Commission.

(B) This proceeding is subject to the outcome of Docket No. IS06-466-000.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.