

128 FERC ¶ 61,219  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

BP Pipelines (Alaska) Inc.	Docket Nos. IS07-75-004 and IS08-78-004
ConocoPhillips Transportation Alaska, Inc.	Docket Nos. IS07-56-004 and IS08-62-004
ExxonMobil Pipeline Company	Docket Nos. IS07-55-003 and IS08-65-003
Koch Alaska Pipeline Company LLC	Docket Nos. IS07-48-004 and IS08-64-003
Unocal Pipeline Company	Docket Nos. IS07-41-004 and IS08-53-004

**ORDER DENYING REHEARING**

(Issued September 2, 2009)

1. The State of Alaska (Alaska) and Anadarko Petroleum Corporation, Tesoro Corporation, and Tesoro Alaska Company (jointly Anadarko) filed requests for rehearing of the Commission's April 16, 2009 order (April 16 Order). That order accepted the Trans Alaska Pipeline System (TAPS) Carriers' 2007 rate filing, and set for hearing the 2008 rate filing.<sup>1</sup> In setting the 2008 rate for hearing, the April 16 Order rejected the protests that the remaining useful life of TAPS should be an issue in the hearing. Anadarko and Alaska seek rehearing on the latter ruling and request that the useful life of TAPS is a material issue of fact to be considered at the hearing. For the reasons discussed below the Commission denies rehearing.

**Background**

2. The April 16 Order ruled on the TAPS Carriers' 2007 and 2008 compliance filing that was required by the Commission's order in *BP Pipelines (Alaska) Inc.*, 125 FERC

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<sup>1</sup> *BP Pipelines (Alaska), Inc.*, 127 FERC ¶ 61,047, at P 1 (2009).

¶ 61,367 (2008) (December 29 Order), *reh'g denied*, 127 FERC ¶ 61,047 (2009). The December 29 Order summarily ruled that the Carriers' existing 2007 and 2008 rates computed in accordance with the TAPS Settlement Methodology were unjust and unreasonable and ordered the Carriers to submit compliance rates in accordance with the methodology adopted by the Commission in Opinion No. 502.<sup>2</sup> Anadarko and Alaska protested the 2007 and 2008 compliance rates, raising traditional cost-of-service issues, and the issue of the remaining useful life of TAPS.

3. As to the useful life of the line, the protests contended that the TAPS Carriers' compliance filing erroneously assumed a depreciable life through 2034, and that the useful life should be an issue at the hearing. Alaska asserted that recent statements of an affiliate of a TAPS Carrier indicated that TAPS has a far greater depreciable life than only to 2034, citing BP Prudhoe Bay Royalty Trust Form 10-K/A for the Fiscal Year Ending December 31, 2007, which stated at 18 "BP Alaska expects continued economic production from the Prudhoe Bay Field at a declining rate through 2075."<sup>3</sup>

4. Anadarko asserted in its protest that the 2034 useful life adopted in Opinion No. 502 "was not based on a reserve study for TAPS. Rather, the 2034 useful life was based on the Carriers' extension of right-of-way agreements until 2034."<sup>4</sup> In fact, Anadarko continued, that the application supporting the extension indicated "that a useful life well beyond 2034 is expected for TAPS...."<sup>5</sup>

5. Since the 2007 compliance rate was below the refund floor the April 16 Order accepted the 2007 rate, ordered refunds down to the refund floor and found no further proceedings were necessary as to the 2007 rate. However, since the 2008 compliance rate was above the refund floor, the order accepted the 2008 rate on an interim basis and set the rate for hearing on all issues, but not the remaining useful life of TAPS. The April 16 Order accepted the 2034 end-life utilized in Opinion No. 502, stating:

In Opinion No. 502, the Commission affirmed the ALJ's finding that the "correct end-life of TAPS is 2034 as corroborated by several witnesses." In their Comments, the State and Anadarko/Tesoro do not contest this finding;

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<sup>2</sup> *BP Pipelines (Alaska) Inc.*, Opinion No. 502, 123 FERC ¶ 61,287 (2008), *order on reh'g*, 125 FERC ¶ 61,215 (2008).

<sup>3</sup> Alaska February 12, 2009 Protest at 8.

<sup>4</sup> Anadarko February 12, 2009 Protest at 19.

<sup>5</sup> *Id.* citing Ex. No. A/T-32 at 4, 6, 7. Exhibit references are those in the Opinion No. 502 proceeding.

they merely reference statements that the economic production of the pipeline could continue beyond 2034. Thus, the comments provide no basis for changing a finding, which was based on record evidence and made only a year ago in Opinion No. 502, that the useful life of the line is 2034.<sup>6</sup>

### **Requests for Rehearing**

6. Anadarko and the Alaska assert that the depreciable life of the TAPS' pipeline must be based on the economic life of the reserves to be transported by the pipeline. Thus, they argue, the remaining life of TAPS is the remaining recoverable North Slope crude oil reserves, but the Commission's April 16 Order summarily disposed of the life-of-line issue based upon an end date unconnected to this measure. They both assert that in the Order No. 502 proceeding, the TAPS Carriers did not conduct a reserve life study for TAPS, nor is such a study in the record in that proceeding.<sup>7</sup> Rather they state the end-life date of 2034 adopted in the April 16 Order was based upon the extended expiration date of the TAPS' Right-of-Way Agreement, which was the maximum 30-year extension allowed by Alaska law when the extension request was made.<sup>8</sup>

7. They also argue that the supposed corroboration of witness cited in the April 16 Order merely refers to statements by witness that the year 2011 end-life for TAPS adopted in the 1985 TAPS Settlement Agreement underestimated the useful life of the pipeline. They contend that all the witnesses stated was that the record evidence clearly demonstrated it is appropriate to use a TAPS useful life extending to at least through 2034, but this did not mean the end life was 2034. They argue the testimony merely supported changing the existing 2011 end-life for TAPS to at least the year 2034, but did not rule out extending it beyond 2034.

8. In addition, they contend Opinion No. 502 did not consider issues regarding the potential impact of the Carriers' Strategic Reconfiguration (SR) program on the life of the TAPS line. They state the SR program, which involves the investment of hundreds of

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<sup>6</sup> 127 FERC ¶ 61,047 at P 37.

<sup>7</sup> Citing Exhibit A/T 141 at 4.

<sup>8</sup> See AS 38.35.110(a) which allows for multiple renewals of the State issued right-of-way lease that TAPS operated under, but each extension "shall run for a specified term of not greater than 30 years, and shall be renewable for additional periods of up to 30 years each." The current extension of the TAPS lease expires in 2034.

million of dollars, was intended to extend the “economic life of TAPS and North Slope oil field.”<sup>9</sup>

9. Anadarko asserts there is ample evidence, technical studies, Alyeska<sup>10</sup> documents, relevant financial reports, statements of the TAPS Carriers’ production affiliates, as well as statements of the Carriers’ witnesses in the Opinion No. 502 proceeding to establish that the economic life of TAPS extends well beyond 2034.<sup>11</sup> Thus, Anadarko contend the life of TAPS is clearly a disputed issue of material fact, and should be one of the issues set for hearing.

10. Both Alaska and Anadarko argue the ruling in Opinion No. 502 on the remaining useful life of TAPS does not bar litigating this issue in this rate proceeding because *res judicata* principles do not apply to rate elements based on facts and circumstances subject to change. They cite to *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1290 (D.C. Cir. 2000) (*Tesoro*) involving the TAPS’ Quality Bank, where the court stated “where a party presents ‘new evidence [that] warrants the change,’ the regulatory agency has the power and duty ‘to institute new proceedings.’” They assert that the Commission recognizes the same principle that “*res judicata* does not bar re-litigation of issues in cases based on new facts or arguments.” *United Illuminating Co.*, 119 FERC ¶ 61,182, at P 91 (2007). Thus, they conclude, just as the Commission in the April 16 Order set for hearing rate elements that were previously determined in Opinion No. 502, the Commission should not foreclose investigating, in the current rate proceeding, the remaining useful life of TAPS.<sup>12</sup>

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<sup>9</sup> Alaska Rehearing Request at 7.

<sup>10</sup> Alyeska is the operating agent for the TAPS Carriers.

<sup>11</sup> Anadarko at pp. 12-16 in its rehearing request, cites to the Carriers’ Right-of-Way extension application, testimony of Carrier witness Kalt in the Opinion No. 502 proceeding, the BP Prudhoe Realty Trust report (cited by Alaska in its protest), a study submitted to the Alaska Assessment review Board, a Norton-Miller Study on TAPS’ production, a study entitled “TAPS Pipeline at Low Flow,” and a statement by BP’s vice president quoted in the Wall Street Journal.

<sup>12</sup> Anadarko points out that TAPS’ life of line will be an issue in hearings before the Regulatory Commission of Alaska setting intrastate rates on TAPS. We do not consider this a relevant factor in our determination.

## Discussion

11. The Commission will deny rehearing since Alaska and Anadarko failed to show a basis why the Commission should reopen the prior finding of the litigated issue of the end-life of TAPS at this time. It is true that a finding on a rate input in a rate proceeding does not foreclose investigating that issue in a subsequent proceeding if the circumstances relevant to the input have changed. However, that situation is not present here.

12. The end-life of TAPS was an issue that was litigated in the Opinion No. 502 proceeding. Issue No. III.D. in that proceeding was “What is the appropriate depreciation expense,” and “the parties agree that depreciation expense is calculated using the net property balance and a reasonable estimate of the remaining useful life of TAPS.”<sup>13</sup> Thus TAPS’ end-life was clearly an issue to be litigated, and the ALJ found “The correct end-life of TAPS is 2034 as corroborated by several witnesses.”<sup>14</sup>

13. The useful life represents what is expected to be the economic life of TAPS. The economic life of TAPS is an essential factor in calculating the depreciation charge to use in the rate calculation under the Opinion No. 502 methodology. As explained in a document cited by Alaska involving the calculation of depreciation charges on TAPS “the economic life of a pipeline is dependent upon a number of factors including expected production. To calculate the charge ... Appendix A utilizes a 30-year remaining lifespan with a truncation date of 2034 to reflect the economic life of TAPS (emphasis added).”<sup>15</sup> The document continued:

there is considerable uncertainty when attempting to forecast economic or physical lives for periods beyond 30 years. The forecast is sensitive to changes in crude price, technological innovation, environmental regulations, and North Slope field performance. In addition, the term of the recently renewed TAPS federal and state right-of-way grants expires in 2034. For these reasons, a truncation period of 30 years was used for the TAPS asset.<sup>16</sup>

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<sup>13</sup> 119 FERC ¶ 63,007, at P 133 (2007).

<sup>14</sup> *Id.*

<sup>15</sup> Alaska Rehearing Request n. 11, citing Depreciation Study for ConocoPhillips Transportation Alaska, at 4, Docket No. D006-7-000 (filed Mar. 5, 2009).

<sup>16</sup> *Id.*

14. We disagree with Anadarko and Alaska's primary argument that since there was no reserve study in the Opinion No. 502 proceeding there was no evidentiary basis to support the 2034 end-life finding. While a reserve study may not have been introduced in the Opinion No. 502 proceeding, all sides did introduce evidence on the issue of the useful life of TAPS. A TAPS Carriers witness testified "it is my understanding that complainants have sponsored a useful life through 2033."<sup>17</sup> Another TAPS Carrier witness then explained "the economic life of TAPS is directly linked to the availability of crude oil on the North Slope, and the ability of producers to produce that oil economically. Estimates of oil reserves on the North Slope indicate that there are sufficient reserves to operate TAPS until 2034."<sup>18</sup> Anadarko's witness at the Opinion No. 502 proceeding, Barry Sullivan, conceded that "The carriers' witness Spanos presented a new depreciation study which (1) correctly uses a useful life for ... TAPS extending through 2034...."<sup>19</sup>

15. Whether or not a "reserve study" was included in the record in the Opinion No. 502 proceeding, it is beyond dispute that the economic life of TAPS was at issue in that proceeding, and there was a finding that 2034 should be the end-year for TAPS' economic life. At the Opinion No. 502 proceeding, Anadarko and Alaska, or any other party could have introduced a reserve study, but none did, but other relevant evidence was introduced, as indicated *supra*. In their protests here, neither Anadarko nor Alaska included any reserve study, but merely statements of what TAPS production might be beyond 2034. Such statements are not evidentiary facts because the statements may be made by that party to advance some purpose. The additional matters cited in the rehearing requests do not overcome this deficiency since they are subject to the same qualification. Requesters also refer to the SR program which they claim could have an impact on future production. This of course, is highly speculative since the SR program is also designed to correct existing problems on TAPS. Moreover, in its rehearing request Alaska states "The State [Alaska] believes that the SR project costs were improperly incurred and should not be included in the TAPS Carriers' rate."<sup>20</sup>

16. Cases cited by requestors to support relitigating the issue are not on point and presented different facts than those before us here. In *Tesoro*, involving the TAPS Quality Bank, a party challenged the existing calculation of some of the Quality Bank cuts. The party submitted evidence to show that the Commission should reconsider the

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<sup>17</sup>Testimony of John A. Spanos for TAPS Carriers, Ex. ATC-154 at 4.

<sup>18</sup> Testimony of Joseph P. Kalt for TAPS Carriers, Ex. ATC- 4 at 46.

<sup>19</sup> Ex. No. A/T-141 at 2.

<sup>20</sup> Rehearing Request at n. 18.

earlier resolution of the calculation now being challenged. The Court held that the party, “offered evidence that is new in relation to what was before the Commission in its earlier determination and sufficiently compelling to require reconsideration of the earlier resolution.”<sup>21</sup> Requestors did not present that type of evidence in their protests, nor in the material referred to in their rehearing requests. As the Court stated in *Norwood v. FERC*, “*Res judicata* does not merely prevent re-litigation of issues actually decided but also the presentation of new grounds that could and should have been raised when the same transaction was the subject of earlier, different attacks.”<sup>22</sup>

17. Whether circumstances may change in the future that would provide a basis for challenging the year 2034 as the end of TAPS’ useful life is speculative at this time. Nothing has been shown that there has been such a change since the Opinion No. 502 proceeding. Moreover, that there might be some oil reserves on the North Slope after 2034 does not establish that it would be economical to produce such reserves in sufficient quantities to continue TAPS’ operation.

18. Since requestors have not shown why the prior finding in Opinion No. 502 on TAPS’ remaining useful life should not apply in TAPS’ 2008 compliance rate proceeding, we will deny rehearing.

The Commission orders:

The requests for rehearing are denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>21</sup> 234 F.3d at 1288.

<sup>22</sup> 476 F.3d 18 at 25 (1<sup>st</sup> Cir. 2007).