

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

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| BP Pipelines (Alaska) Inc. |) | Docket No. IS05-82-000 |
| ExxonMobil Pipeline Company |) | Docket No. IS05-72-000 |
| ConocoPhillips Transportation Alaska, Inc. |) | Docket No. IS05-80-000 |
| Unocal Pipeline Company |) | Docket No. IS05-107-000 |
| Koch Alaska Pipeline Company |) | Docket No. IS05-96-000 |

ORDER ACCEPTING AND SUSPENDING TARIFFS, SUBJECT TO REFUND,
AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued December 29, 2004)

1. On December 1, 2004, BP Pipelines (Alaska) Inc. (BP), ExxonMobil Pipeline Company (ExxonMobil), ConocoPhillips Transportation Alaska, Inc. (ConocoPhillips), Unocal Pipeline Company (Unocal), and Koch Alaska Pipeline Company (Koch) (collectively, the TAPS Carriers) filed tariffs¹ (the 2005 TAPS Tariffs), with proposed effective dates of January 1, 2005. These filings are the annual filings required by the Commission-approved settlement (the Settlement) in the *Trans Alaska Pipeline System* case.² 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. The State of Alaska (Alaska), and Anadarko Petroleum Corporation (Anadarko) filed protests to the instant tariff filings and included complaints relating to

¹ The TAPS tariffs as filed on December 1, 2004 include: BP – FERC No. 31; ConocoPhillips – FERC No. 5; ExxonMobil – FERC No. 225; Koch – FERC No. 4; and Unocal – FERC No. 273. On December 10, 2004, Koch withdrew FERC No. 4, previously filed in Docket No. IS05-62-000 and replaced it with FERC No. 5 in Docket No. IS05-96-000. On December 22, 2004, Unocal withdrew FERC No. 273, previously filed in Docket No. IS05-66-000 and replaced it with FERC No. 274 in Docket No. IS05-107-000.

the instant tariff filings, as well as to previous tariff filings by the TAPS Carriers.³ This order addresses only the protests to the proposed 2005 rates. The Commission will address the complaints in the docketed complaint proceedings.

2. As detailed below, we accept and suspend the 2005 TAPS tariffs for one day and permit them to take effect January 1, 2005, subject to refund, and set this matter for hearing. This order benefits customers by ensuring that the rates for transporting petroleum on TAPS are consistent with the Settlement.

I. Background

3. 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.

4. In November 2002, the Regulatory Commission of Alaska (RCA) issued Order No. 151,⁴ 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".⁵ It also ordered refunds for past years, and directed the TAPS Carriers to set lower intrastate rates using a new methodology prescribed by the RCA.⁶

² 33 FERC & 61,064 (1985) and 35 FERC & 61,425 (1986).

³ The complaints have been assigned Docket No. OR05-2-000 (Alaska) and Docket No. OR05-3-000 (Anadarko).

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

⁵ *Id.* at 2.

⁶ RCA decisions are not binding upon the Commission.

II. The Protests

A. Alaska

5. Alaska raises four main objections to the TAPS Carriers' tariffs. Alaska objects that the interstate rates are discriminatorily high when compared with far lower intrastate rates for the same service. Alaska contends that the TAPS Carriers seek to charge interstate shippers for the same service substantially more than the rate they are allowed to charge intrastate shippers by the RCA. Second, it argues that the TAPS Carriers impermissibly include in their rates, certain costs of dismantling and removing TAPS facilities, even though the costs for these activities have already been collected from ratepayers. Next, Alaska asserts that one of the TAPS Carriers, ConocoPhillips, failed to make certain adjustments required by the TSM to reflect Voluntary Rate Reductions that occurred when it charged a rate below the maximum allowable tariff in 2004. Alaska argues that ConocoPhillips should carry this reduction forward to reduce its revenue requirement and the maximum interstate tariff for 2005. Finally, Alaska argues that the TAPS Carriers include in their interstate rates the costs of litigation related to their intrastate rates, and Alaska protests the 2005 TAPS tariffs to the extent that the rates contain such improper costs. Alaska asks the Commission to suspend the 2005 TAPS tariffs subject to refund and investigation, and permit Alaska to become a party to the proceedings.

B. Anadarko

6. Anadarko Petroleum Corporation essentially protests that the TSM does not produce rates that are just and reasonable under the Interstate Commerce Act. It relies on various decisions of the RCA in support of its position. Among other things, Anadarko objects that the TSM results in rates that are not cost-based, and that it permits rates based on subjective projections by the TAPS Carriers. Anadarko also argues that TAPS Carriers appear to expense capital costs as recurring maintenance costs, and that the TAPS rates include unreasonable costs for affiliated transactions. Further, Anadarko believes the TAPS Carriers should reduce their rate base to reflect the use of shippers' dismantlement funds. Finally, Anadarko avers that the rate of return is excessive since the TAPS Carriers calculate it using a 100 percent equity structure.

7. Anadarko states that it is an independent exploration company, and is adversely affected by unreasonably high TAPS rates, and asks the Commission to permit it to intervene. Anadarko also requests the Commission suspend the 2005 rate filings, subject to refund, consolidate the proceedings, and set them for hearing.

III. TAPS Carriers' Responses

A. Responses to Alaska's Protest

8. On December 20, 2004, BP, ExxonMobil, ConocoPhillips, Koch, and Unocal filed their respective, and generally similar, answers to Alaska's protest. All ask the Commission to dismiss Alaska's protest as they are merely implementing the approved TSM, which Alaska agreed to as a party to the TAPS Settlement. They further assert that Alaska, since it is not a shipper on TAPS, is not aggrieved by the intrastate/interstate rate disparities, which parties to the Settlement knew might arise should the state agency adopt a different rate methodology from that prescribed by the TSM. The TAPS Carriers dispute Alaska's characterization of certain activities that Alaska argues are dismantling (DR&R)⁷ costs, which Alaska further alleges the TAPS Carriers are overcollecting. On the related issue of possible double collection of such costs in both intra- and interstate rates, Unocal, Koch, and ConocoPhillips assert that any interstate collection of intrastate dismantling costs was unintentional and *de minimis*, and they will look into the issue in the event this may have occurred inadvertently. ConocoPhillips, in response to Alaska's "voluntary reduction" allegation, states that it did not file a rate lower than the maximum allowable for 2004; rather, it initially filed a rate higher than what later information indicated would be the maximum allowable, and then filed new rates equal to the corrected maximum. Therefore, insists ConocoPhillips, it does not need to reduce its revenue requirements or carry over any reduction into the 2005 rates. Finally, the TAPS Carriers argue that the TSM permits them to include costs incurred in their rate litigation at the RCA in calculating their maximum interstate rates.

B. Responses to Anadarko's Protest

9. On December 21, 2004, BP, ExxonMobil, ConocoPhillips, Koch, and Unocal filed their respective, and generally similar, answers to Anadarko's protest. The TAPS Carriers argue that Anadarko attacks the TSM to which it was not a signatory, and attempts to "cherry pick" which terms of the TSM it would like applied when establishing new rates. To the extent Anadarko relies on the RCA decisions to support its protest to the 2005 TAPS rates, the TAPS Carriers argue that the determination of intrastate rates in no way controls the setting of interstate rates under applicable federal law.

⁷ "Dismantle and remove pipeline and related facilities" (DR&R) costs.

IV. Discussion

10. The issues of this case pertain to application of the TSM to the TAPS 2005 Tariffs. The parties have different understandings of how the terms of the TSM apply when there is an order from the RCA that may be inconsistent with the TSM. At present, however, there is insufficient information to enable the Commission to resolve the dispute. It is therefore in the public interest to grant party status to the intervenors, and establish hearing procedures to examine the issues raised in the protests.

11. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and believes that formal settlement procedures may lead to a resolution of this case. The issues in this case involving the TAPS 2005 Tariffs are complex and numerous and should be resolved by settlement. Therefore, we shall hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.⁹ If a settlement cannot be reached, the instant docket will be set for hearing.

V. Suspension

12. Based upon a review of the filing, the Commission finds that the TAPS 2005 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, 2005, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

⁸ 18 C.F.R. § 385.603 (2004).

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date this order issues. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

The Commission orders:

(A) BP Pipelines (Alaska) Inc. – FERC No. 31; ConocoPhillips Transportation Alaska, Inc. – FERC No. 5; ExxonMobil Pipeline Company – FERC No. 225; Koch Alaska Pipeline Company LLC – FERC No. 5; and Unocal Pipeline Company – FERC No. 274. are accepted for filing and suspended, to become effective January 1, 2005, subject to refund and further order of the Commission.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly section 15(7) thereof, and the Commission's regulations, a hearing is established to address the issues raised by the TAPS Carriers' filings.

(C) Pursuant to the section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2004), the Chief Administrative Law Judge shall designate a presiding administrative law judge for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and to the Commission's Rules of Practice and Procedure. An initial decision, as specified in 18 C.F.R. § 385.708 (2004), shall be issued on or before October 15, 2005.

(D) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(F) Within 30 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement

discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.