

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

State of Alaska Docket No. OR05-2-000

v.

BP Pipelines (Alaska) Inc.
ExxonMobil Pipeline Company
ConocoPhillips Transportation Alaska, Inc.
Unocal Pipeline Company
Koch Alaska Pipeline Company

Anadarko Petroleum Corporation Docket No. OR05-3-000

v.

TAPS Carriers

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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 ON COMPLAINTS
AND ESTABLISHING HEARINGS AND SETTLEMENT PROCEDURES
AND CONSOLIDATING HEARINGS

(Issued February 11, 2005)

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

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.

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 The Settlement prescribed the TAPS Settlement Methodology (TSM) for computing the transportation rates for petroleum through the Trans Alaska Pipeline System (TAPS). All of the filings proposed increases to the existing rates. The State of Alaska (Alaska), and Anadarko Petroleum Corporation (Anadarko) filed protests to the tariff filings. Each protest also included a complaint relating to the tariff filings, and Alaska's complaint also related to previous tariff filings by the TAPS Carriers.

2. On December 20, 2004, the TAPS Carriers filed their respective, and generally similar, answers to Alaska's protest asking the Commission to dismiss Alaska's protest. The TAPS Carriers contend they are merely implementing the approved TSM, which Alaska agreed to as a party to the Settlement. Each stated that they would file a separate answer to Alaska's complaint. On December 21, 2004, the TAPS Carriers filed their respective, and generally similar, answers to Anadarko's protest, and also stated they would answer the complaint in separate answers. They argued that Anadarko attacked the TSM to which it was not a signatory, and cherry picked which terms of the TSM it would like applied when new rates were established. Furthermore, to the extent Anadarko relied upon decisions of the Regulatory Commission of Alaska (RCA) to support its protest to the 2005 TAPS rates, any determinations by the RCA of intrastate rates did not control the establishment of interstate rates under applicable federal law.

3. On December 29, 2004, the Commission issued an order accepting and suspending the 2005 TAPS tariffs, subject to refund, and set the matter for hearing, but held the hearing in abeyance pending the outcome of formal settlement procedures established by the December 29 Order.³ That order determined that the issues presented involved application of the TSM to the TAPS 2005 Tariffs, and 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. Since the same issues are present in the complaint proceedings, we will establish hearings in the complaint proceedings, and direct the parties to observe the same settlement procedures here as well. Accordingly, we grant party status to the intervenors, and establish hearing procedures to examine the issues raised in the complaints, and will consolidate all hearings, including the protest proceedings, before the same settlement judge.

4. This order benefits customers by ensuring that the rates for transporting petroleum on TAPS are consistent with the Settlement and the prescribed TSM.

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

³ 109 FERC ¶ 61,376 (2004).

Notice of Filings and Pleadings

5. On December 17, 2004, the Commission issued notice of Alaska's and Anadarko's complaint with comments, interventions or protests, due on or before January 6, 2005. Motions to intervene in both complaint proceedings were filed by Arctic Slope Regional Corporation, Flint Hills Resource, Alaska, LLC, Williams Alaska Petroleum Corporation and Conoco Phillips Alaska, Inc. Alaska and Anadarko each moved to intervene in the other party's complaint proceedings, and Anadarko moved to consolidate all the proceedings. Each TAPS Carrier filed an answer to Alaska's and Anadarko's complaint. The TAPS Carriers also jointly filed motions to dismiss both complaint proceedings. They assert that the relief requested in the complaints are the same as sought in the protests.

Background

6. The Settlement requires the TAPS Carriers to use the TSM to calculate their interstate rates. Under the TSM, each TAPS Carrier calculates a single Total Revenue Requirement, which reflects the TAPS Carriers' total cost of service, for both interstate and intrastate deliveries. After calculating its Total Revenue Requirement, the TAPS Carrier then determines the portion of the Total Revenue Requirement allocable to interstate transportation.

7. In November 2002, the RCA issued Order No. 151,⁴ and held that 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 establish lower intrastate rates using a new methodology prescribed by the RCA.⁶

The Complaints

8. Alaska protested the 2005 TAPS' tariffs on a number of grounds and asked the Commission to suspend the 2005 TAPS tariffs, subject to refund and investigation. In its complaint, Alaska also seeks relief from the inclusion in TAPS Carriers' 2003 and 2004 interstate tariffs of: (a) non-jurisdictional interstate costs; and (b) dismantling, removal and restoration costs that do not constitute Operating Expenses under the Settlement

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

⁵ *Id.* at 2.

⁶ RCA decisions are not binding upon the Commission.

(“DR&R costs”). With respect to DR&R costs, the complaint asserts that the TAPS Carriers improperly included at least some DR&R costs as operating expenses in their 2003 and 2004 TAPS interstate tariffs as well as in the proposed 2005 interstate tariffs, which Alaska argues violates the Settlement.

9. Anadarko’s filing did not differentiate between its protest and complaint. As described in the December 29 Order, Anadarko objected that the TSM does not produce rates that are just and reasonable under the Interstate Commerce Act (ICA), and referred to various decisions of the RCA in support of its position. Among other things, Anadarko objected 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 argued 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 contended that the TAPS Carriers should reduce their rate base to reflect their use of shippers’ dismantlement funds. Finally, Anadarko asserted that the rate of return is excessive since the TAPS Carriers calculate it using a 100 percent equity structure.

TAPS Carriers’ Answers

A. Answers to Alaska’s Complaint

10. The TAPS Carriers filed, in many respects, very similar answers to Alaska’s complaint. Each answer asserted that the Commission should limit the hearing on Alaska’s complaint to the two issues specifically raised in Alaska’s complaint. They are the inclusion in the TAPS Carriers’ 2003 and 2004 interstate tariffs of: (a) non-jurisdictional interstate costs; and (b) the dismantling, removal and restoration costs that do not constitute operating expenses under the Settlement. In response to these allegations, the TAPS Carriers argue that they properly included the costs they incurred when calculating TAPS rates. They also deny including costs relating solely to intrastate transportation in calculating interstate rates. In short, they claim that all the interstate rates were set in conformity with the Commission-approved TSM.

B. Answers to Anadarko’s Complaint

11. Similarly, the TAPS Carriers also filed similar answers to Anadarko’s complaint, but certain carriers raise matters unique to them. For example, Koch notes that it is not affiliated with a major oil company engaged in production in Alaska, so the Anadarko allegation regarding affiliated transactions do not apply to it.

12. The answers deny there is any merit to the grounds relied upon by Anadarko in asserting that the TAPS 2005 rate tariffs are unjust and unreasonable. Specifically, they contend that Anadarko's claim that the RCA decisions, which limits the interstate rate to a level below the proposed TAPS 2005 rate level tariff, is applicable to the TAPS Carriers' interstate rate filings is misplaced because those decisions are on appeal before the Alaska court. Moreover, the RCA decisions would not be binding upon the Commission. They point out that the RCA applies its own procedures, its own standards of proof, and its own ratemaking methodology. They assert that the Commission must reach its own conclusions under applicable federal law, and they cite *Central Power & Light Co.*, 98 FERC ¶ 61,069, at 61,184 n.24 (2002) (“[I]t is clear that the Commission [] [is] not bound by actions of a state commission when setting rates.”), and *Cities of Bethany v. FERC*, 727 F.2d 1131, 1137 (D.C. Cir. 1984) (“Nothing in the Public Utility Regulatory Policies Act ... requires FERC to adopt the views of state rate-setting commissions when the Commission evaluates the reasonableness of rates that a utility may charge to wholesale customers.”).

13. The TAPS Carriers also argue that Anadarko does not explain the basis for its claim that the rates are unjust and unreasonable under Commission ratemaking principles. Instead, they contend, Anadarko attacks certain aspects of the TSM. The TSM is a methodology agreed to by Alaska and the TAPS Carriers that imposes a ceiling on the rates the TAPS Carriers may charge. Since the rates have been established in accordance with the TSM, which the Commission approved, Anadarko cannot change the TSM to achieve a different rate.

Discussion

14. The issues in these complaint procedures are similar to the issues in the protest proceedings. They 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 are orders from the RCA that may be inconsistent with the TSM. As was true in the protest proceedings, there is insufficient information to enable the Commission to resolve the dispute. It is therefore in the public interest to establish hearing procedures to examine the issues raised in the complaints.

15. 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, and prior TAPS Carrier rate filings 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.

16. On January 10, 2005, Judge Bruce L. Birchman was appointed Settlement Judge in the protest proceedings to convene a settlement conference, explore the possibility of settlement, discuss the differences between the parties, and in general conduct the settlement negotiations. Accordingly, the settlement procedures established by this order are referred to Judge Birchman, and all the hearings will be consolidated with the hearings in the protest proceedings.

The Commission orders:

(A) Pursuant to the authority of the Interstate Commerce Act, particularly section 13(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by the TAPS Carriers' filings, and the hearing is consolidated with the hearings in the protest proceedings in Docket Nos. IS05-82-000, *et al.*

(B) Pursuant to the section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2004), Judge Bruce L. Birchman is designated the settlement judge pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004). To the extent consistent with this order, Judge Birchman shall have all the powers and duties enumerated in Rule 603.

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

(D) 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.