

155 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

BP Pipelines (Alaska) Inc.	Docket No. IS09-348-011
BP Pipelines (Alaska) Inc.	Docket No. IS09-395-011
BP Pipelines (Alaska) Inc.	Docket No. IS10-204-010
BP Pipelines (Alaska) Inc.	Docket No. IS10-491-000
BP Pipelines (Alaska) Inc.	Docket No. IS10-491-006
ConocoPhillips Transportation Alaska, Inc.	Docket No. IS09-384-010
ConocoPhillips Transportation Alaska, Inc.	Docket No. IS10-205-009
ConocoPhillips Transportation Alaska, Inc.	Docket No. IS10-476-000
ConocoPhillips Transportation Alaska, Inc.	Docket No. IS10-476-006
ExxonMobil Pipeline Company	Docket No. IS09-391-010
ExxonMobil Pipeline Company	Docket No. IS09-177-012
ExxonMobil Pipeline Company	Docket No. IS10-200-009
ExxonMobil Pipeline Company	Docket No. IS10-547-000
ExxonMobil Pipeline Company	Docket No. IS10-547-005
Koch Alaska Pipeline Company, LLC	Docket No. IS10-54-008
Koch Alaska Pipeline Company, LLC	Docket No. IS10-496-000
Koch Alaska Pipeline Company, LLC	Docket No. IS10-496-006
Unocal Pipeline Company	Docket No. IS09-176-011
Unocal Pipeline Company	Docket No. IS07-41-009
Unocal Pipeline Company	Docket No. IS08-53-009
Unocal Pipeline Company	Docket No. IS10-52-008
Unocal Pipeline Company	Docket No. OR10-3-009
Unocal Pipeline Company	Docket No. IS10-490-000
Unocal Pipeline Company	Docket No. IS10-490-005
Unocal Pipeline Company	Docket No. IS11-3-000
Unocal Pipeline Company	Docket No. IS11-3-004

ORDER ON COMPLIANCE AND PROCEEDINGS HELD IN ABEYANCE

(Issued April 21, 2016)

1. On January 15, 2016, the Trans Alaska Pipeline System (TAPS) Carriers¹ submitted a compliance filing pursuant to Opinion No. 544 that addressed a series of 2009 and 2010 rate filings by the Carriers.² As discussed below, the Commission finds that Carriers' compliance filing as modified in their reply comments is consistent with Opinion No. 544. Also, based upon the representations of the parties, the Commission also resolves certain cost-of-capital issues related to 2010 rates that had previously been held in abeyance.³ Within 30 days, the Carriers shall issue refunds reflecting the difference between the 2009 and 2010 rates previously charged and the 2009 and 2010 rates established in the compliance filing as modified by the Carriers' reply comments.

I. Background

2. These proceedings involve various challenges to the Carriers' 2009 and 2010 rates. The proceedings were divided into Phase I and Phase II. Phase I addressed implementation of the Commission's pooling and uniform rate requirements and the appropriate cost of capital for 2009. Phase I concluded when the Commission approved a contested settlement.⁴ Phase II addressed other cost of service issues, including the prudence of the ad valorem tax costs, litigation costs, and oil spill related costs. In Opinion No. 544, the Commission addressed Phase II. Among other findings, Opinion

¹ At the time of the 2009 and 2010 rate filings issue in this proceeding, the TAPS Carriers consisted 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) (collectively, Carriers). Koch and Unocal provided final notice of their withdrawal from TAPS effective as of August 1, 2012. Koch has completed its exit, and Unocal is in the process, subject to applicable governmental approvals, of completing the transfer of its TAPS interests to the remaining Carriers.

² *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015).

³ These include Docket Nos. IS10-476-000, IS10-490-000, IS10-491-000, IS10-496-000, IS10-547-000, and IS11-3-000.

⁴ *BP Pipelines (Alaska) Inc.*, 144 FERC ¶ 61,025 (2013), *aff'd*, *Tesoro Alaska Co. v. FERC*, 778 F.3d 1034 (2015).

No. 544 determined that the TAPS Strategic Reconfiguration Project (SR Project)⁵ was imprudent, allowed the Carriers to recover a surcharge for certain litigation costs, denied Carriers' recovery of certain ad valorem tax costs, and established the level for oil spill costs recoverable by the Carriers. Opinion No. 544 directed the Carriers to make a compliance filing consistent with these holdings.⁶

3. The Carriers submitted the compliance filing on January 15, 2016. On February 5, 2016, Anadarko Petroleum Corporation (Anadarko) and the State of Alaska (Alaska) filed comments. On February 26, 2016, the Carriers filed reply comments. On February 25, 2016 and March 3, 2016, Anadarko filed supplemental comments. Although Opinion No. 544 only permitted initial comments and reply comments, we accept these supplemental comments because they have informed the Commission of issues that the parties have agreed to resolve in these proceedings.

II. Discussion

A. Litigation Costs

4. In its comments, Anadarko objects that Opinion No. 544 limited the Carriers' litigation surcharge to those costs associated with Phase II.⁷ Anadarko asserts that the Carriers' litigation surcharge improperly included litigation costs from Phase I of this proceeding and Anadarko states that the Phase I litigation costs should be treated as operating costs in the base/adjustment periods in which they were incurred. Although not challenging the compliance filing because the overall effect upon the Carriers' rates is small, Alaska also noted concerns regarding the inclusion of Phase I costs in the litigation surcharge.

5. In reply comments, the Carriers assert that their compliance filing was consistent with the intent of Opinion No. 544. However, the Carriers also add that "the TAPS Carriers do not object to Anadarko's proposal that the costs related to Phase I of the 2009-2010 rate proceeding be recovered as regular operating expenses during the rate

⁵ The SR Project involved replacing the four TAPS pump stations with new pumps driven by variable-speed electric motors as opposed to the existing gas and diesel turbines. The SR Project also replaced the existing control systems in order to automate the pump stations.

⁶ Opinion No. 544, 153 FERC ¶ 61,233 at ordering para. (C).

⁷ Anadarko Comments at 3 (citing Opinion No. 544, 153 FERC ¶ 61,233 at P 137).

periods they were incurred.”⁸ The Carriers also included rates and the surcharge reflecting removal of the Phase I litigation costs from the surcharge and the incorporation of Phase I litigation costs into the base rates for the applicable 2009 and 2010 rate periods.

6. Given that the Carriers do not object to the removal of Phase I litigation costs from the surcharge and to limit further disputes in this proceeding, the Commission accepts the modification presented in the Carriers’ reply comments removing Phase I costs from the litigation surcharge and placing those costs in the applicable base rates.⁹

B. Other Objections to the Compliance Filing

7. Alaska objects to the 2008 nominal rate of return on equity used by the Carriers in calculating Allowance for Funds Used During Construction (AFUDC). Alaska also raises concerns about certain costs remaining within the Carriers’ 2010 rate base.¹⁰ However, because these issues do not materially affect the 2009 and 2010 rates, Alaska states the Commission need not address these issues in this compliance filing. Alaska states that its comments are merely intended to preserve its right to challenge such costs in subsequent rate periods.¹¹ Because Alaska does not object to the rates established in the Carriers’ compliance filing, the Commission will not address these issues here.

C. 2010 Cost of Capital Issues Held in Abeyance

8. The Carriers submitted certain 2010 rate filings¹² after the filing of testimony in the Phase I hearing proceedings. Accordingly the Commission held in abeyance the cost

⁸ Carriers Reply Comments at 3-4.

⁹ As revised, the Carriers 2009 rates remain unchanged at \$3.48 per barrel; the 2010 rates increase from \$3.52 per barrel to \$3.54 per barrel. Carriers Reply Comments at 4. The litigation surcharge is reduced from \$0.0536 per barrel to \$0.0463 per barrel. *Id.*

¹⁰ Anadarko raised a similar concern related to \$51,122 included in the Carriers’ 2010 rate base. However, following the Carriers reply, Anadarko subsequently informed the Commission that it was withdrawing this objection. Anadarko Second Supplemental Comments at 2.

¹¹ Alaska Comment at 3.

¹² These include Docket Nos. IS10-476-000, IS10-490-000, IS10-491-000, IS10-496-000, IS10-547-000, and IS11-3-000.

of capital issues in those 2010 rate filings pending the outcome of Phase I proceedings. In contrast, because the Phase II proceedings had not advanced to the filing of testimony, the Phase II hearing proceedings addressed the remaining issues in the 2010 rate filings.¹³

9. Now that the Commission has concluded both Phase I and Phase II of this proceeding, the Commission must address the cost of capital issues in the 2010 rate filings previously held in abeyance. The parties have informed the Commission that the Carriers' compliance filing resolves the cost of capital issues associated with the 2010 rate filings, and, thus, that these proceedings should be closed.¹⁴ Consistent with those representations, the Commission will close the proceedings related to the cost of capital issues in the 2010 rate filings.

The Commission orders:

(A) The Commission finds that Carriers' compliance filing as modified in their reply comments is consistent with Opinion No. 544.

(B) Within 30 days, the Carriers shall issue refunds reflecting the difference between the 2009 and 2010 rates previously charged and the 2009 and 2010 rates established in the compliance filing as revised by the Carriers' reply comments.

¹³ *ConocoPhillips Transp. Alaska, Inc.*, e.g., 132 FERC ¶ 61,084 (2010).

¹⁴ On February 25, 2016, Anadarko filed supplemental comments representing that the 2010 rate filing proceedings may be closed because the contested issues have been resolved. Anadarko represents that it has contacted the other parties and is authorized to state no party opposes closing the proceedings in the above-captioned dockets. No party has filed comments with the Commission opposing Anadarko's request.

(C) Within 60 days, the Carriers shall file a refund reports related to the 2009 and 2010 rates with the Commission.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.