Report of The Committee On Oil Pipeline Regulation

Nineteen eighty-two was an important year in the federal regulation of the oil pipeline industry. The Federal Energy Regulatory Commission ("FERC" or "Commission") established new rate standards for the industry. The 1941 Oil Pipe Line Consent Decree was vacated. And hearings in Congress considered proposed legislation to deregulate the industry.

This report considers these and other developments in the following order: (1) the FERC's landmark *Williams Pipe Line Company* decision; (2) the Trans-Alaska Pipeline System case; (3) other oil pipeline cases; (4) FERC rulemaking orders; and (5) proposed legislation.

I. Williams Pipe Line Company

On November 30, 1982, in opinion No. 154, Docket No. OR79-1, the FERC issued its long-awaited decision in the *Williams* case. The opinion, "the longest and the most elaborate" ever issued by the Commission according to an accompanying press release, is of major significance to the oil pipeline industry. It establishes standards for determining the justness and reasonableness of oil pipeline rates. It also mandates a light-handed form of regulation for oil pipelines quite different from that accorded other entities under FERC jurisdiction. The major findings of the opinion are highlighted below, prefaced by a description of the circumstances surrounding its release.

A. *FERC Ordered by Court to Issue Decision*

In a complaint under the All-Writs Act filed in July 1982, shippers in the case successfully argued to the U.S. District Court for the District of Columbia that the FERC had unreasonably delayed its decision in violation of both the Interstate Commerce Act and the Administrative Procedure Act. By order of August 23, 1982 (supplemented with Findings of Fact and Conclusions of Law on September 14, 1982) in Civil Action No. 82-2065, the District Court (Richey, J.) ordered the Commission to issue its decision in the case within sixty days. The U.S. Court of Appeals for the District of Columbia Circuit later stayed the effectiveness of that order for an additional month after directing the agency to submit a schedule as to completion of its opinion.

B. *The Decision*

1. Purpose of Regulation and Structure of the Industry

The Commission considers both the original intent of oil pipeline regulation and the current characteristics of the industry in establishing its regulatory standards. The Commission finds that regulation was intended to protect independent producers and shippers of oil against discrimination, and that, in contrast to public utility regulation, it was never intended to protect ultimate consumers. As to the industry today, oil pipeline rates appear to have a minimal impact upon the ultimate consumer. Furthermore, actual and potential market competition is found to act as the major constraint on oil pipeline rates. The Commission suggests that Congress re-examine the relevance of regulation to the modern circumstances of the industry.

2. Light-Handed Regulation

Unless and until Congress changes the applicable statute, the Commission finds that its regulation should be a *supplement* to the workings of the market. Regulation should act as a check on "gross abuse" occasioned by any monopoly or other market distortions. As a result, oil pipeline rates should be judged by a standard of ordinary commercial reasonableness. The "lowest reasonable rate standard" used in the regulation of public utilities to limit rates to precise costs of service is inappropriate for oil pipeline rates.

These findings affect the manner in which oil pipelines are to be regulated and the circumstances under which their rates are to be scrutinized. Aggressive and independent intervention by the Commission and its staff into questions of oil pipeline rate reasonableness is found to be unnecessary. Thus, oil pipeline rates will be suspended and/or investigated only upon the protest of an aggrieved party. The FERC's Oil Pipeline Board is specifically directed to heed this finding, and FERC staff, as a general rule, is instructed not to participate in oil rate suspension cases.

3. Rate Base and Depreciation

Although the Commission states its preference for use of an original cost rate base — especially some sort of trended original cost — it nevertheless declines to use such rate base in its regulation of oil pipelines, principally on the grounds that the costs of a switchover to an original cost scheme would not be worth the benefits which might result. The Commission also finds that it would be difficult under an original cost scheme both (1) to estimate precisely the real costs of capital because of the highly leveraged capital structures which are common in the oil pipeline industry, and (2) to compensate adequately for the risk which is involved in oil pipeline investment.

Hence, the ICC valuation rate base is retained. The only two changes which are made in the formula to compute the rate base are relatively minor. First, property "used but not owned" by a carrier (*i.e.*, leased property) is to be excluded from the rate base. Second, the ICC's formula treatment of cash working capital can be rebutted by reference to the actual needs of a carrier. The opinion declines to make certain changes in the valuation formula suggested by the industry to reflect more accurately current values, but retains the formula's six percent going concern value.

Although the Commission expresses concern over the mismatch of depreciation methodologies in the ICC formula whereby the rate base is depreciated through "condition percents" while straight-line depreciation is used to determine cost of service, it will make no changes for the present because the industry appears presently to derive no benefit from this mismatch. Instead, the question will be deferred to a rulemaking when time and resources permit. In the meantime, corrections can be made in any individual cases if the mismatch produces egregious results (*e.g.*, if a pipeline's capital has been completely recovered through depreciation charges but a substantial portion of its rate base remains.)

In connection with its consideration of depreciation issues, the Commission rules on the question of regulatory treatment of an oil pipeline's purchase price — an issue particularly important to *Williams*, which had purchased its line for more than $160 million dollars above its depreciated original cost and more than $120 million over its ICC valuation. Finding that rates should not be affected merely because an asset is sold and purchased (absent a showing of improvements in efficiency and service), the Commission disallows any recognition of the purchase price of the line

for purposes of setting its rates. The Commission also establishes a general rule for the future regarding the purchase price of oil pipelines: only depreciated original cost will be recognized for ratemaking purposes except where a showing of substantial benefit to ratepayers attributable to the purchase can clearly be established. Cautious buyers are urged to seek declaratory orders where such exceptions are sought prior to the purchase of a line.

Although the valuation methodology is retained, annual valuations performed for each oil pipeline company are found to be unnecessary. The Commission announces that it will for the time being continue to provide annual valuation updates for those carriers that request them. It adds, however, that it will reconsider the valuation update program if the 1941 Consent Decree is vacated (which it was on December 13, 1982 (see below)) or if new oil pipeline legislation is passed by Congress. The Commission also suggests that an "ad hoc" valuation could be used in any rate litigation which might arise.

4. Rate of Return

The traditional ICC eight and ten percent guideline rates of return (for crude and product lines, respectively) are rejected as outmoded and indefensible. Finding the rate of return suggestions of both the industry and its adversaries "unhelpful," and also rejecting use of the rate of return methodology fashioned after the Consent Decree, the Commission fashions its own rate of return methodology to be applied on a case-by-case basis.

Under that methodology, a fair rate of return would comprise three elements. The first element is the amount needed to pay interest on *actual* debt. The Commission rejects the use of hypothetical capital structures.

The second element of the return provides a fully compensatory premium for guarantees of debt made by a parent company. This premium reflects the value which is imputed to that guarantee by investors, and will be derived on the basis of expert testimony as to the costs of debt which would be incurred by an oil pipeline in the bond market *absent* parent company guarantees — *i.e.*, on a "stand-alone" basis.

The third element is a "real entrepreneurial rate of return" to be applied to the equity portion of the valuation rate base. The Commission determines that the "gross abuse" which its regulation is designed to check can best be measured by reference to the returns earned in a roughly comparable sector of the economy. The Commission offers eight possible measures for this comparable earnings analysis. They can be summarized as follows:

> The nominal rate of return on equity actually earned over the most recent 1- or 5-year period in (a) the petroleum industry, (b) American industry generally or (c) oil company non-pipeline investments (or the total return realized on a common stock portfolio over a 5-year or longer period.)

The Commission directs that the measure most favorable to a pipeline be used.

To prevent what the Commission finds would otherwise be "double-counting" for the effects of inflation, the equity return is adjusted downward to the extent that compensation for inflation has already been provided in the valuation rate base. The return is then applied to the so-called equity portion of the rate base, which is determined by deducting the carrier's total outstanding debt (and deferred taxes) from the rate base.

The decision notes that the returns realized under this new methodology might be considered excessive under a public utility standard. (The decision refers, for example, to an apparent 61 percent return on book value of equity to a hypothetical

pipeline). However, the opinion reiterates that it is more appropriate to look toward the unregulated competitive sector of the economy for standards appropriate to the nature of the industry, emphasizing market forces as the major constraint on oil pipeline rates. Thus, the Commission refers to the returns under its new methodology as "ceilings that we assume will be seldom reached in actual practice." The opinion also refers to the risk of underinvestment in the industry as a more serious concern than precise measurement of costs.

5. System-Wide Regulation

Consistent with "traditional transportation doctrine" and its desire to "give free play to competitive factors," and in order to avoid cost allocation inquiries, the Commission states that it will continue to regulate oil pipelines on a system-wide basis. "Averaging" thus will be permitted in the regulation of those parts of a pipeline's operations which are physically connected. However, intracompany averaging between *unconnected* systems is forbidden. Also, situations where rates are shown to be structured so as to favor an owner-shipper over non-owners would be viewed with "great seriousness."

6. Regulatory Treatment of Federal Income Taxes

The decision considers three major issues concerning the regulatory treatment of federal income taxes. First, as to the proper rate treatment for the effects of accelerated tax depreciation, carriers will be free to select either "normalization" or "flow through." Normalization is preferred, however, because it facilitates comparison with other sectors of the economy where returns are computed on a normalized basis. Deferred tax reserves will be deducted from the rate base on the theory that it would be unfair to require shippers to pay a return on amounts which it is contended they have contributed.

By contrast, investment tax credits will not be deducted from the rate base. An analysis of congressional intent and related case law leads the Commission to conclude that it is not free to exclude such credits from the rate base.

Finally, the decision holds that the tax expense component of an oil pipeline's cost of service should be calculated on a "stand-alone" rather than on a consolidated basis. On this issue, no reason is found to treat oil pipelines differently from the public utilities the agency regulates. This holding will be reexamined after the Commission's policy in this area is reconsidered on a generic basis.

7. Transactions With Affiliates

The Commission holds that the pipeline companies have the burden of showing the reasonableness of any transactions with, or payments to, affiliates which are challenged in litigation. The Uniform System of Accounts for Oil Pipelines is found to provide insufficient safeguards against abuse in this area.

8. Further Proceedings in Phase II

The case is remanded to Presiding Administrative Law Judge Benkin for further hearings to apply the opinion's general principles to the specific situation of Williams Pipe Line Company. The question of future rates will be decided as well as whether past rates were excessive, and the amount of refunds and reparations, if

any, which should be awarded. Preference, prejudice, and discrimination claims will also be considered. (The Commission also referred to the judge a motion by Explorer Pipeline Company to be dismissed from the case. Because Explorer's joint tariff with Williams had been previously cancelled in 1980, the judge granted the motion on January 6, 1983.)

C. *Concurring and Dissenting Opinions*

The lengthy decision does not receive unqualified endorsement of all members of the Commission. In a concurring opinion, Commissioner Sheldon concludes first that Congress should deregulate the oil pipeline industry. Turning to the FERC's own regulation, Commissioner Sheldon questions certain aspects of the decision primarily concerning the rate of return formula. She believes that the returns allowed in the opinion might permit some pipelines to charge unreasonable rates. Concern is also expressed over the administrative practicality of the formula. The novel concepts of an "insurance premium" and an "entrepreneurial rate of return" may be difficult to apply in practice. The need for case-by-case determinations, furthermore, is questioned, and a generic rate of return approach is suggested. The presiding judge in Phase II is asked (1) to ensure that the returns meet the just and reasonable standard applicable to the industry, and (2) to develop a record of sufficient breadth that a generic rate of return can be devised by the Commission.

Commissioner Richard also concurs with the decision but emphasizes that Congress should re-examine the purpose of oil pipeline regulation and provide clear direction to the Commission on the matter. He emphasizes that no showing has been made sufficient to justify radical changes in the way the industry is currently regulated. He also discusses briefly why the approach which the Commission uses in its regulation of gas pipelines is inapplicable to oil pipelines. The inability to guarantee returns to oil pipelines is specifically cited.

Although Commissioner Hughes concurs in some aspects of the opinion, he dissents generally to much of "the tone and content" of the opinion. He also details what in his view are the many and major flaws in the majority's retention of the valuation rate base and adoption of a new rate of return methodology. Commissioner Hughes concludes that much of the opinion is a "smoke screen" to cover the majority's "failure to adequately review and find a workable solution to an admittedly complex problem." The dissent also proposes as an alternative approach, a variant of the trended original cost method advanced by Dr. Stewart C. Myers, a witness for Marathon Pipe Line Company. In line with the proposal of Commissioner Sheldon, Commissioner Hughes suggests adoption of industry-wide rate of return guidelines in a separate rulemaking proceeding. Such an approach, he contends, would avoid needless case-by-case litigation and would preserve one of the "admirable features" of the ICC regulatory system.

D. *Appeal of the Decision*

Petitions for judicial review of the opinion were filed before the U.S. Court of Appeals for both the Tenth Circuit and the District of Columbia Circuit. By order dated January 21, 1983, in *Association of Oil Pipe Lines v. U.S.*, Docket Nos. 82-2459, *et al.*, the Tenth Circuit granted a motion by shippers to transfer the appeal to the D.C. Circuit "in the interest of justice." The *Williams* proceedings before FERC had been held pursuant to a remand by the D.C. Circuit in *Farmers Union Central Exchange v.*

FERC, 584 F.2d 408 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 995 (1978). At the time this article went to press, no briefing schedule had been established by the D.C. Circuit.

On the agency level, a petition for rehearing of the opinion was filed with the Commission on December 30, 1982, by the shippers. The petition alleges that the Commission erred in its interpretations of the intent and standards of the Interstate Commerce Act, in its retention of the ICC valuation rate base without adequate rationale, in its adoption of its unprecedented rate of return methodology, and in its adoption of system-wide regulation. Forty-one specific allegations of error are made. Under FERC rules, no answers to the petition are permitted; and if the agency does not act upon the petition within 30 days, it will be deemed denied.

II. Trans-Alaska Pipeline System

Phase I

By order issued the same day as the *Williams* decision (November 30, 1982), the FERC remanded the first phase of the Trans-Alaska Pipeline System case (Docket No. OR78-1) for further hearings. The Commission foud that the basic premises underlying the Commission's new ratemaking principles announced in *Williams* may not apply to circumstances presented by TAPS. Factors specifically cited included the alleged monopoly power of TAPS, the potential effects which its rates may have on ultimate consumers, the significance of TAPS rates on independent producers, and TAPS high risks which may require more specific compensation. Additional record evidence and a *supplemental* initial decision in the light of the *Williams* opinion were found to be necessary before the Commission passes on the question of the appropriate ratemaking methodology to be used in the TAPS case. Administrative Law Judge Benkin, who presided over hearings in the Williams case and who has been co-presiding judge in the TAPS hearings since November, has been assigned to preside over the remand proceeding.

Earlier in the year, motions for expedited decision in Phase I had been filed by the State of Alaska and the Department of Justice after settlement negotiations with the TAPS owners failed. (The Alaskan state legislature in May 1982 rejected a tentative settlement agreement between the State and BP Pipelines Inc. because the agreement set forth no ratemaking methodology which the legislature felt was "necessary for long-term stability.") By order dated July 12, 1982, the FERC denied these motions, finding that any special circumstances of the case might be better evaluated against general industry rules which at that time had not yet been formulated. The order also recounted reasons for the Commission's inaction in the oil pipeline area including the Commission's unfamiliarity with the industry and the complexity of the issues involved. Changes in Commission personnel and in the climate of regulation were also cited.

Phase II

Following the submission of extensive testimony by protestants in late 1981, hearings began in early 1982 into the costs of construction of the TAPS line. Pretrial briefs submitted by protestants allege that imprudent construction management increased the cost of the line by more than two billion dollars and that these additional costs should be excluded form the carriers' rate bases. Cross-examination of protestants' witnesses was completed in December. The owners are scheduled to submit testimony on cost of construction issues in April 1983, with hearings on that testimony set to begin in June.

By order issued December 15, 1982, the testimony of two key owner witnesses who died during the year without being cross-examined was admitted into evidence. The ruling concerning one of those witnesses, Frank P. Moolin, Senior Project Manager, was certified to the Commission because he had not been made available for cross-examination and becuase the outcome of the second phase of the case may turn on whether his testimony becomes part of the record. The Commission voted to affirm the ruling in a meeting on January 26, 1983.

In other Phase II matters, stipulations concerning (1) the cost of service allowance for the depreciation of the line and (2) the issue of preemption were agreed to by all parties and approved by the Commission on September 23, 1982 and August 12, 1982, respectively. A motion to expedite hearings on the non-cost of construction issues in Phase II is currently pending.

III. Other Oil Pipeline Cases

Developments of interest did not end with the *Williams* and *TAPS* decisions. This section discusses other significant oil pipeline cases — first on the administrative level where, among other things, a massive backlog of cases were terminated; and then at the federal court level, where the forty-year-old Consent Decree was vacated.

A. *Administrative*

In *American Petrofina Pipe Line Company, et al.*, Docket Nos. IS80-14, *et al.*, the FERC on December 15, 1982, applied the mandates of the *Williams* opinion to pending oil pipeline rate investigations, and terminated those cases where no protests had been filed. The backlog of cases which had been stalled pending a decision in *Williams* had become massive. In all, over 500 dockets involving the rates of sixty-nine oil pipeline companies were dismissed. The order also dismissed as moot petitions for rehearing of the Oil Pipeline Board suspensions. (Cases in settlement negotiations will continue to be considered by separate order as they are presented to the Commission.) In a dissenting opinion, Commissioner Hughes argued that the Commission had acted hastily. He believed that some of the cases appeared to warrant at least some scrutiny, either because the rates were high under the old ICC guidelines or because they involved questions about service or access. He also noted that if the *Williams* standards are modified on appeal or remand, the modified standards could not be applied to any of the dismissed cases. He added that it was "not impossible" that actions for reparations might be brought in some of the terminated dockets based on modified standards.

The Department of Justice asked the FERC to reconsider its dismissal of one of those cases, *Phillips Pipe Line Company*, Docket No. IS78-1, in a petition for rehearing filed in that docket on January 20, 1983. Alleging fifty specific errors in the *Williams* opinion, the Department argued that the agency could not rely on the opinion to dismiss *Phillips* and other pending cases. The Department also argued that the Commission's failure in the opinion to establish proper standards of justness and reasonableness impaired the Department's ability to enforce the Elkins Act, 49 U.S.C. §§ 41 *et seq.* The Department apparently takes the position that a carrier's dividend payments to a shipper-owner cannot be considered illegal rebates under the Elkins Act if those payments are based on just and reasonable rates. On January 20, 1983, the Department also filed a petition for review of the *Phillips* dismissal with the U.S. Court of Appeals for the District of Columbia Circuit.

By letter orders in December, the Commission approved without refund

obligations settlements of investigations into the unprotested rates of *Buckeye Pipe Line Company*, Docket No. IS80-15, and *Mid-America Pipeline Company*, Docket No. IS80-9. In comments on the *Buckeye* settlement, Commission staff concluded that under the savings provisions of the Department of Energy Organization Act, ICC guidelines could continue to be applied to oil pipeline rates until new rate standards become effective. Looking to break the logjam of pending cases, Staff recommended approval of uncontested settlements and acceptance of tariff filings where rates fall within the ICC guidelines. Some settlements initiated before the *American Petrofina* order must still be brought before the Commission for approval.

Earlier in the year, the FERC considered several cases where protests were filed. In *Cheyenne Pipe Line Company*, Docket No. IS82-91, and *Kaneb Pipeline Company*, Docket No. IS82-92 (April 29, 1982), the Commission departed from its normal one day suspension policy and suspended for the full statutory period (seven months) tariffs which had been filed in connection with the sale of Cheyenne's system to Kaneb. Kaneb's new tariffs, which would have implemented a reversal of the line's flow, were not permitted to go into effect during the suspension. The Commission opted for this unusual action to alleviate shipper concerns over the potential hardships and possible anticompetitive effects of the sale. The day after the suspension, however, Kaneb and Cheyenne cancelled the proposed sale and by order dated May 13, 1982, were permitted to reinstate their old tariffs. Commissioner Sheldon dissented to the way the majority had found itself able to extend its authority into questions of entry or exit from pipeline operation simply because cancellation of the former owner's tariffs and implementation of the new owner's tariffs were timed to take place simultaneously.

The Commission also reacted to complaints by shippers in *Tipco Crude Oil Company v. Shell Oil Pipeline Corporation*, Docket No, OR82-1 (May 4, 1982). The Commission construed a petition for review of an Oil Pipeline Board tariff acceptance as a complaint under Section 13(1) of the Interstate Commerce Act and established a hearing where the complainant, Tipco, would have the burden of proving violations of the Act. Tipco protested Shell's terminating its documentation of in-line transfers of crude oil. (Interestingly, Shell had stopped the service partially to settle an investigation by FERC's Office of Enforcement.) The case took an unusual turn when, after extensive discovery began, Tipco claimed financial inability to proceed with the complaint and requested Commission appointment of a special counsel. An association of independent refiners supported Tipco's request. After certification of the case to the Commission by the presiding administrative law judge, the Commission denied appointment of a special counsel and dismissed the investigation by order issued January 19, 1983. Appointment of a special counsel was found to be unnecessary in view of the comprehensive remedies afforded small businesses in actions before government agencies under the Equal Access to Justice Act. The Commission also found that no substantiation of any allegation had been provided to date and that there had been no clear showing that the agency even had jurisdiction concerning the matter in question. Finally, because Tipco appeared to have the financial resources to continue, but, for its own reasons, was unwilling to do so, the Commission saw no reason to continue the case.

In an October 4, 1982 letter to Representative Philip R. Sharp (D-Indiana), FERC Chairman C. M. Butler III revealed that several private investigations of oil pipelines were continuing. Matters under investigation, according to the letter, include denial of access to facilities, forced sales, unequal treatment of shippers, performance of untariffed services, disclosure of confidential shipper information, and tampering with shipments. The status of private investigations in light of the

Commission's decision in *Williams* is unclear. The decision does not address private investigations directly; its pronouncements concerning investigations and suspensions of *rate filings* only upon protests by aggrieved parties may not apply to such investigations.

Other FERC cases of interest involved approval of potentially controversial items. For example, the Oil Pipeline Board in *Explorer Pipeline Company,* Docket No. FS82-3 (August 31, 1982), accepted without suspension a diffential tariff system. Explorer charges lower rates to shippers who contract to transport guaranteed amounts of oil over a two-year period. It had sought a ruling concerning the applicability of § 4(1) of the Interstate Commerce Act which prohibits carriers from charging more for shorter hauls than for longer hauls except upon filing for special relief. The Board held that the services provided by Explorer to its contract and non-contract shippers were materially different and that the provisions of § 4(1) did not apply. The order cited the Commission's approval of two-tier tariffs in *Texas Deepwater Port Authority,* Docket No. OR79-2 (March 7 and August 14, 1979).

In Opinion No. 144, *Florida Gas Transmission Company,* Docket No. CP74-192 (September 2, 1982), the FERC approved the transfer of a 24-inch 890-mile natural gas pipeline owned by Florida Gas to an affiliate, Transgulf Pipeline Company. The line is to be converted to carry petroleum products. The transfer price of $236 million is essentially the cost to Florida Gas of replacing the transferred line with a 30-inch gas line (plus an allowance for the value of deferred income tax liability and compensation for the reduction in linepack.) Although the Commission approved the $236 million as a prudent expenditure for the gas line, it deferred the question of whether that price could be included in the rate base of the oil line. The order noted that an oil ratemaking methodology had not yet been established and that the proceeding was not a Transgulf rate case. No ruling has been made subsequently as to how the *Williams* opinion would apply to the Transgulf case.

By order in *Association of Oil Pipelines,* Docket No. SP82-6, issued February 10, 1982, oil pipelines were granted authority to cancel tariffs under suspension or postponement. The order extends for three years a special permission authority originally granted by the ICC. The order does not apply to situations, among others, where only a portion of a suspended tariff is cancelled.

The FERC also considered special circumstances surrounding commencement of operations by two oil pipelines in 1982. On February 19, 1982, in Docket No. OR82-1, the Oil Pipeline Board authorized Kuparuk Pipeline Company, as a "developmental stage enterprise," to capitalize costs during an initial "start-up" period. The construction period for the line was extended until throughput averaged more than 60,000 barrels per day for thirty days, or until April 1, 1982, whichever came first. During such time, the line's tariff revenues were credited against construction costs. The company's petition requesting the action noted that ICC regulations and precedent were silent about when a facility comes "into service," and cited as support FERC and FPC authorization of testing periods for natural gas pipelines and electric utilities. The Board emphasized that the authorization was for accounting and reporting purposes only, and subject to modification upon determination of an appropriate ratemaking methodology for the line.

By order issued December 6, 1982, in Docket No. OR83-1, the Commission permitted another new facility, LOOP, Inc., to follow FASB procedures allowing the treatment of interest earned on short-term investments during construction as income. The order reversed an earlier Oil Pipeline Board ruling which required the company to follow standard ICC accounting rules requiring such interest income to be used to offset debt costs. The Commission authorized the variance from ICC

regulations as an interim measure, noting, among other things, that no shipper contested the action and that the company would otherwise have had to obtain additional financing. The order also cited the facility's uniqueness and the fact that it was not yet operational. (LOOP, Inc. is a deepwater port; the question of FERC's jurisdiction over it is currently pending in Docket No. OR81-3. The port was permitted by Oil Pipeline Board order dated December 2, 1981, to capitalize costs during 1982 as a developmental stage enterprise.) In a dissenting opinion, Commissioner Hughes cited a recent FASB amendment which requires treatment of interest in a manner similar to standard ICC regulations where, as in the case of LOOP, the invested funds derive from tax-exempt industrial revenue bonds.

B. *Federal Court*

By orders issued December 13, 1982, in *U.S. v. Atlantic Refiing Co., et al.*, Civil Action No. 14060 (D.D.C.), the 1941 Oil Pipe Line Consent Decree was vacated. Entered into in settlement of charges that dividends to pipeline owners were illegal rebates under the 1903 Elkins Act, the Decree limited dividends to seven percent of a pipeline's valuation. Because of its treatment of interest expense, the Decree had a major impact upon financing patterns in the industry and led to capital structures highly leveraged by debt. The Department over the last year successfully negotiated a stipulation to vacate the Decree which was eventually joined by 62 out of the 66 defendant parties and which also applies to the four non-joining defendants. For the most part, the stipulation concerns disposition of "surplus accounts" containing more than $100 million in excess earnings, and permits transfer of the funds to defendant parties establishing capital accounts; such parties then have five years to dispose of the funds in accordance with terms similar to, but slightly more expansive than, those of the Decree.

In *Belle Fourche Pipeline Co. v. U.S.*, Civil Action No. C82-0145 (D. Wyo., August 18, 1982), the court held that U.S. District Courts do not have jurisdiction to enjoin FERC private investigations of oil pipelines. The court had stayed an investigation of Belle Fourche by the FERC's Office of Enforcement earlier in the year but here granted the FERC's motion to dismiss for lack of jurisdiction. Under the Department of Energy Organization Act, the Interstate Commerce Act was held to apply to the investigation and to require action first before the agency with appeal therefrom to a U.S. Court of Appeals. The dismissal has now been stayed by the court, however, pending its ruling on the pipeline's amended complaint charging that the FERC is trying to create a jurisdictional void against review of its private investigations.

IV. Rulemaking Orders

In 1982 the FERC issued four rulemakings of importance to the oil pipeline industry. The Commission adopted new Rules of Practice and Procedure which will apply to oil pipeline cases. The Commission determined the interest rate to be applied to oil pipeline refunds. It also streamlined the industry's reporting requirements.

By Order No. 225 in Docket No. RM78-22 (April 28, 1982), the FERC adopted new Rules of Practice and Procedure which apply to all proceedings before it. Until the new rules became effective on August 26, 1982, the agency had been operating under former FPC rules for its gas and electric work and under ICC rules for its oil pipeline matters. In the new comprehensive rules, the ICC rules were discontinued

...evised. ... FERC Form No. 6; ... agency revised ... In Order No. ... According to the order, the revision reduces by about 20 ... schedules were eliminated ... the annual report ... formation which must be reported on the form.

V. Proposed Legislation

During 1982, Congress considered three bills to deregulate oil pipeline rates. Although hearings were held on all three bills, none was reported out of committee; as a result, all died at the end of the 97th Congress.

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House bills in hearings on September 23, 1982.

In the hearings, the oil pipeline industry supported ...
including revisions to the Interstate Commerce Act, for all pipelines ...
TAPS. One shipper and associations representing independent gasoline marketers and independent refiners spoke out against the bills. The State of Alaska testified against inclusion of TAPS. Government witnesses supported the concept of deregulation but questioned the need to retain common carrier and anti-discrimination provisions while deleting rate provisions only. They also saw the need for a mechanism to retain or renew rate regulation where monopoly power could be demonstrated. According to one of the witnesses, the administration is ...ing a legislative proposal to be introduced in the 98th Congress which would ...overnment concerns.

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Two bills, S. 1626 and H.R. 4488, would have repealed those provisions of the ...rtment of Energy Organization Act which authorize the FERC to suspend, ...e or prescribe oil pipeline rates. These proposals would not have applied to ...stem. The third bill, H.R. 6815, would have included the TAPS line in ...ulation and also would have deleted provisions in the Interstate ...rtaining to the regulation of rates. The Subcommittee on Energy ...ate Commerce Committee considered S. 1626 in hearings on ...Committee heard testimony on September 29, 1982. In the ...Fossil and Synthetic Fuels of the Committee on Energy ... 4488 on May 10, 1982. It considered both ...d rate deregulation, ... including

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...cumstances of TAPS separately. The order became
...983, 30 days after publication in the *Federal Register.* (Prior to
...uer, the Oil Pipeline Board had applied the prime rate in its rate
...ders. For TAPS refunds, the applicable interest rate was that on 90-day
Treasury bills at the time of the original *TAPS* suspensions.)

The FERC streamlined its reporting requirements for oil pipelines with two orders in 1982. By Order No. 222 in Docket No. RM82-24 (April 6, 1982), the Commission discontinued the "Quarterly Report of Pipeline Companies," Form ICC-QPS. Since 1938, the form had collected information on revenues and barrels of oil transported from pipelines whose revenues exceed $500,000 annually. The FERC found that the form could be eliminated because the same data is required on a more comprehensive basis in the annual report filed by pipelines ... 960, Docket No. RM82-5 (September 21, 1982) the ... Form P was renamed ...