Report of the Committee on Oil Pipeline Regulation

The year 1986 represented the beginning of a new era of oil pipeline regulation as the Federal Energy Regulatory Commission (FERC or Commission) began the process of implementing the oil pipeline guidelines announced in June and December, 1985. Two major cases proceeded through full hearing and briefing.[1] In late April, 1987, an initial decision was issued in the case involving Southern Pacific Pipe Lines Inc. (SPPL). Several other cases—some involving discrimination claims—were begun. Meanwhile, the United States Department of Justice issued its final report on oil pipeline deregulation, recommending that except for the Trans Alaska Pipeline System (TAPS), five lower-48 pipelines and possibly six additional pipelines, economic regulation be discontinued.

I. Southern Pacific Pipe Lines, Inc. (IS85-15)

In June, 1985, SPPL filed FERC Tariff No. 85 which proposed rate increases on movements of petroleum products from points in California and Texas to points in Arizona, principally Phoenix. The rate to Phoenix from California and from El Paso, Texas was increased from 87.5 cents per barrel to 115.4 cents per barrel. The rate change was proposed to be effective on October 1, 1985.

On September 27, 1985, Navajo Refining Company (Navajo) protested the tariff filing, claiming that it discriminated against Texas shippers when compared to California shippers. On September 30, 1985, the Oil Pipeline Board (OPB) suspended the tariff filing for one day, initiated an investigation, and issued a keep account order.[2]

Subsequently, Navajo and SPPL resolved their differences and submitted an offer of settlement in November, 1985. Under the settlement, the rates from El Paso to Tucson and Phoenix would have been increased from 79.5 cents to 115.4 cents, as originally proposed by SPPL, but those rates would have been subject to hold-downs for future periods. The Staff opposed the settlement on the basis that it had not been provided with data justifying the proposed rates under Opinion 154-B.

At the request of SPPL and the Staff, the presiding administrative law judge (ALJ) certified to the Commission the question of whether the Staff's opposition was sufficient to prevent the settling parties from resolving their differences without making a finding under Opinion 154-B.[3] In a May 1986 order, the Commission ruled that the settlement should not be certified without a finding by the ALJ that a "close correlation" exists between SPPL's revenues and its cost of service under Opinion 154-B.[4]

1. Williams Pipe Line Co., 31 F.E.R.C. ¶ 61,377 (1985) [hereinafter Opinion 154-B]; Williams Pipe Line Co., 33 F.E.R.C. ¶ 61,327 (1985) [hereinafter Opinion 154-C].
2. Southern Pac. Pipe Lines, Inc., 32 F.E.R.C. ¶ 62,721 (1985).
3. Southern Pac. Pipe Lines, Inc., 33 F.E.R.C. ¶ 63,096 (1985).
4. Southern Pac. Pipe Lines, Inc., 35 F.E.R.C. ¶ 61,242 (1986).

Hearings were held during August, 1986. Initial post-hearing briefs were filed on January 22, 1987, and reply briefs on February 17, 1987. The major issues revolve around interpretation of Opinions 154-B and 154-C. First, on the question of the appropriate capital structure, SPPL argued for the pipeline's actual capital structure of 100% equity. According to SPPL, the Opinion 154-B pronouncement that the capital structure of a pipeline's parent company should be utilized when a pipeline has no debt should not be applied because SPPL issued debt in the past and could issue debt without parent guarantees today, and because SPPL's managerially-determined capital structure is prudent. Both the Staff and the intervening Airlines[5] argued that a 100% equity capital structure is unreasonable and too costly to ratepayers. The Staff advocated usage of the seventy-eight percent equity ratio of SPPL's corporate parent, Sante Fe Southern Pacific Corporation. In the alternative, the Staff argued for a hypothetical capital structure of approximately sixty percent equity. The Airlines contended that neither SPPL's actual capital structure nor the consolidated structure of SPPL's parent should be used; they suggested that a thirty percent equity ratio is consistent with SPPL's low risk nature.

With regard to the cost of capital, SPPL argued for a 10.5% real cost of equity with a 100% equity capital structure based on a "fundamental risk" analysis which uses accounting data to derive a risk measure for wholly-owned subsidiaries. With a seventy-eight percent equity ratio, SPPL argued that the real cost of equity would be 12.7%. The Staff, basing its estimation of the cost of equity on an assumption that oil pipelines and natural gas pipelines are generally comparable in risk, argued for a 7.86% real rate of return on equity if a seventy-eight percent equity capital structure is adopted. The Airlines, while arguing that SPPL is a very low risk operation, did not recommend a specific real return on equity.

A dispute also exists as to SPPL's cost of debt. If the parent company capital structure is utilized, SPPL argued that the actual embedded cost of debt was inappropriate because it was heavily influenced by railroad debt secured by specific assets and, hence, unrealistically low compared to both the embedded and current cost of debt of most other corporations. SPPL offered instead a current cost of debt of 11.75% or, alternatively, an embedded debt cost of a "stand-alone" SPPL for the years in which most of its recent investment was made of 12.62%. The Staff calculated an embedded parent company debt cost of 7.35% or, alternatively, a debt cost of 11.07% associated with its recommended hypothetical equity ratio of sixty percent. Navajo calculated the parent company embedded debt cost at 6.65%.

Another issue in sharp dispute is whether the reasonableness of SPPL's rates should be evaluated on a systemwide (including intrastate) or on a segmented basis. Further, if the rates are to be analyzed on a segmented basis, should the South Line's revenues and costs be analyzed separately for the eastern portion (El Paso to Phoenix) and the western portion (Los Angeles to

5. On August 4, 1986, a group of nine Airlines (Airlines) moved for leave to intervene and offered testimony. After hearing oral argument, the ALJ granted the Airlines' motion to intervene.

Phoenix). SPPL argued that systemwide regulation, based on a zone-of-reasonableness concept, is both legally permissible and preferable, and that the South Line is a single, physically integrated system. The Staff and Navajo took the position that the eastern and western portions of the South Line are separate systems and, for this reason, cost allocation is necessary.

On the issue of the starting rate base, SPPL argued that under Opinion 154-B, it is entitled to a starting rate base using the transition rate base formula provided in that Opinion. The Airlines argued that the starting rate base should be set at a net depreciated original cost level because SPPL in past years had consistently achieved or exceeded its cost of capital and, therefore, had not "deferred" any earnings. The Staff and Navajo accepted a starting rate base level using the transition formula but argued that SPPL should be permitted a return *on*, but not a return *of*, the portion of the starting rate base in excess of net depreciated original cost. AOPL contended that the economically correct starting rate base for any oil pipeline should be based on its last (1983) valuation.

Other issues include whether accumulated deferred income taxes (ADIT) should be deducted in full from SPPL's rate base or whether, as argued by SPPL, a revenue requirement deduction reflecting the time value of the ADIT balance should be utilized; whether SPPL is entitled to depreciate the Allowances for Funds Used During Construction (AFUDC) component of its rate base; and whether, if SPPL's rates are determined to be excessive, relief should be prospective only.

On April 30, 1987, the ALJ issued his Initial Decision.[6] The ALJ found that the proposed increases in rates were not found to be just and reasonable and ordered refunds, with interest, of all collections made pursuant to the increases. The basis for the holding was that SPPL had failed to allocate revenues and expenses between interstate and intrastate commerce. The ALJ also denied SPPL's request that the record be reopened to make any allocations found to be necessary. The ALJ noted that SPPL was aware during the hearing that the allocation issue was being raised and did not seek to submit new evidence.

While holding that the rate increases should be rejected on the allocation issue alone, the ALJ proceeded to discuss additional issues that were raised during the course of the hearing. Although the ALJ found that SPPL's management does have discretion to vary and design rates throughout its pipeline system, the ALJ held that each of the rates, not just the total company revenues, must be just and reasonable and not unduly discriminatory. The ALJ then held that the North Line and the eastern and western portions of the South Line are not a single system but are "segments" that must have their own separate cost of service computations.

On the question of whether the Trended Original Cost (TOC) methodology should be used to judge the reasonableness of SPPL's rates, the ALJ first discussed the rationale behind the Commission's decision to adopt TOC, *i.e.*, partially to foster competition among oil pipelines. The ALJ then found that

6. Southern Pac. Pipe Lines, Inc., 39 F.E.R.C. ¶ 63,018 (1987).

in the case of SPPL there was no competition on either the eastern or western portions of the South Line. The ALJ determined that the Commission in Opinions 154-B and 154-C did not provide an exception to its TOC policy, hence, SPPL's rates should be examined using the TOC methodology.

The ALJ also discussed the starting rate base issue. The ALJ found that the reason the Commission opted for a starting rate base equal to the 1983 valuation was because of investor reliance. The ALJ concluded that the Airlines had failed in their attempt to show that SPPL was not entitled to a starting rate base because its past earnings were excessive. The ALJ found that the Airlines' witness had done his analysis on the basis of depreciated original cost, not on valuation. Further, the witness had not broken down revenues and expenses between interstate and intrastate, nor done so on the separate segments of SPPL's system. The ALJ also denied SPPL's computation of a starting rate base because it was done on the basis of a 100% equity capital structure that resulted in a starting rate base number higher than the 1983 valuation.

On the question of whether the difference between the valuation amount in the starting rate base and the depreciated original cost amount should be amortized, the ALJ found that there should be no amortization of any differences occurring prior to the date of the starting rate base. The ALJ distinguished the starting rate base situation for TOC rate base write-ups occurring after the date of the starting rate base, holding that in the latter situation the write-ups should be amortized. The ALJ held that TOC is not used to establish the starting rate base, but only to determine the computation of rates based on that starting rate base; consequently, no write-up is included in the starting rate base and there is none to be amortized.

With regard to SPPL's capital structure, the ALJ rejected the actual SPPL 100% equity capital structure as too expensive to ratepayers given that SPPL faces no competition from any pipeline and, therefore, does not face business risks that would justify so much equity. The ALJ also rejected the Opinion 154-B guidance of using the parent capital structure when a pipeline such as SPPL has no outstanding long-term debt. The ALJ found that the seventy-nine percent equity structure of the parent would also yield a starting rate base in excess of the valuation rate base, a result the ALJ felt the Court of Appeals would reject. The ALJ's conclusion was that a hypothetical capital structure should be adopted. However, the ALJ was unable to accept, the Staff's hypothetical capital structure because it was based on a sample of only three pipelines. The ALJ concluded that the record was insufficient to make a determination of what should be the proper hypothetical capital structure.

In determining the cost of equity capital, the ALJ held that the cost should reflect investor expectations and utilize a risk analysis that examines competition faced by the particular pipeline. Because the testimony of all the rate of return witnesses was based on capital structures rejected by the ALJ, the ALJ concluded that the cost of equity could not be established. The ALJ did hold, however, that the cost of the parent company's debt did not reflect the cost of debt that SPPL would face on a "stand-alone" basis.

The ALJ also held that a portion of SPPL's starting rate base related to

AFUDC should not be depreciated. Finally, the ALJ held that all of SPPL's accumulated deferred income taxes should be deducted from the rate base.

II. KUPARUK TRANSPORTATION COMPANY (IS85-9 AND OR85-1)

Another major rate case that is proceeding concurrently with the *Southern Pacific* case involves Kuparuk Transportation Company (KTC), a four-company partnership that operates a thirty-seven mile crude oil pipeline on Alaska's North Slope. The majority ownership and operating responsibility of KTC resides with Kuparuk Pipeline Company, a subsidiary of Atlantic Richfield. The remaining ownership is divided among subsidiaries of British Petroleum, the Standard Oil Company and UNOCAL. The pipeline system connects the Kuparuk River Unit, a billion-plus barrel oil field, to pump station No. 1 on the Trans-Alaska Pipeline System. There are intermediate connections to the West Sak and Milne Point fields along the route.

The pipeline began operations in October, 1984, when a twenty-four-inch elevated pipeline replaced a sixteen-inch pipeline that Kuparuk Pipeline previously had solely owned and operated over the same route. The initial proposed rate was sixty-nine cents per barrel. That rate was reduced in January, 1985, to sixty-one cents per barrel for the full length movements and fifty-five cents per barrel for the intermediate point movements. In January, 1985, the State of Alaska filed a complaint against the sixty-nine cent rate and protested the sixty-one cent filing. The Arctic Slope Regional Corporation (ASRC) and Conoco, Inc., a shipper through the Milne Point connection, subsequently intervened and participated in the proceeding.[7]

The proceeding was suspended until Opinion 154-B was issued in June, 1985. Following discovery in late 1985 and early 1986, KTC filed its case-in-chief on May 15, 1986. On August 1, 1986, the State, ASRC and Conoco filed their testimonies and on August 29, 1986, the Staff filed its case. KTC's rebuttal case was filed on October 14, 1986. All parties filed pre-hearing briefs on October 29, 1986, with the hearing conducted during November, 1986. Initial post-hearing briefs and reply briefs were submitted on February 17 and March 23, 1987, respectively. Separate findings of fact and conclusions of law were filed on April 10, 1987.

As in the *Southern Pacific* proceeding, several of the major issues revolve around interpretations of Opinions 154-B and 154-C. On the question of the appropriate capital structure, KTC argued for the pipeline's actual capital structure of seventy percent equity. According to KTC, the Opinion 154-B pronouncement that the capital structure of a pipeline's parent company should be utilized when a pipeline issues debt that is guaranteed by its parent should not be applied because Opinion 154-B did not appear to have been written with KTC's partnership structure in mind. The State argued for a hypothetical capital structure of seventy percent debt on the basis that the parent companies' weighted average debt ratio resulting from application of Opinion 154-B does not adequately reflect the low risk nature of KTC. The

7. The Association of Oil Pipelines, the Staff of the Alaska Public Utilities Commission and Phillips Pipe Line Company also intervened but did not actively participate or submit briefs.

Staff used the weighted average 1984 parent company captial structure of seventy-five percent equity but expressed a preference for a hypothetical capital structure of fifty percent equity.

There were also disagreements as to the cost of equity capital. The State and the Staff argued for costs of equity (real) in the range of 7.8 to 11.5% during the years 1984 through 1986 while KTC argued for real equity costs of 11.34 to 15.25% during that same period. With regard to the cost of debt, the State and KTC added an increment to the cost of KTC's debt to reflect the fact that the debt was guaranteed; the Staff declined to do so.

There were large differences in the calculation of deferred taxes. The State and the Staff argued that approximately $20 million of deferred taxes associated with assets acquired from the predecessor sixteen-inch pipeline system should be factored into KTC's rates. KTC argued that those deferred taxes, if indeed they even existed, should have no bearing on the new pipeline's rates. In addition, there was disagreement over how the Commission's "stand-alone" income tax policy should be implemented with regard to construction period deferred taxes. KTC argued that those deferred taxes should be recognized only when the income from KTC was sufficient to utilize the timing differences. The State and the Staff argued that timing differences should be recognized immediately if the consolidated groups actually filing the income tax returns were able to utilize those timing differences.

The proceeding also involves a joint-usage issue. The sixteen-inch predecessor pipeline was subsequently converted to a gas line after the twenty-four-inch line began operation. Both of those pipelines rest on top of vertical support members (VSMs) that are owned by the twenty-four-inch system. KTC argued that the use of the VSMs by the sixteen-inch line is only incidental and that fifty percent of the revenue collected by KTC for the usage should be treated as non-jurisdictional to encourage further rental agreements. The State argued that the gas and oil pipelines equally use and benefit from the VSMs and, therefore, fifty percent of the cost of the VSMs should be allocated to the non-jurisdictional usage. The Staff argued that thirty-two percent of the revenue requirement associated with the VSMs should be properly attributed to non-jurisdictional usage.

Other issues involve the calculation of the expense component for dismantling and removing the pipeline at the end of its life; whether cost of service depreciation should be calculated on a straight-line or on an accelerated basis; whether the fifty-five cent per barrel intermediate point rate bears a proper relationship to the sixty-one cent full length rate; whether a so-called variable tariff methodology that automatically adjusts certain cost of service components should be utilized; and whether, assuming a traditional test year approach to calculating future rates is utilized, the 1986 test year should reflect certain actual data that became a part of the record.

III. Other FERC Proceedings

A. *Phillips Pipe Line Co. (IS78-1, et al.)*

This long-standing case was finally settled in 1986. It was June, 1978, when Phillip's rates were first placed under investigation.[8] In January, 1980, the Commission stayed further proceedings in all pending oil pipeline rate cases, including the *Phillips* case, pending a decision by the Commission in the *Williams* proceeding that was expected to establish a methodology for regulating oil pipeline rates.[9]

Following issuance of Opinion 154-B in June, 1985, the ALJ issued an order reactivating the *Phillips* proceeding. However, the ALJ later suspended the procedural schedule when it became clear that the parties were close to an agreement settling the case. In April, 1986, the parties submitted a stipulation and agreement, which required no refunds by Phillips and dismissed with prejudice all investigations in the various consolidated dockets. The Staff submitted comments suggesting that the Commission should find that the company's oil pipeline revenues during the investigation period were not unjust or unreasonable. Intervenors Farmland Industries, Inc. and Kerr-McGee Refining Corporation took issue with that suggestion as being inconsistent with the stipulation and agreement. The ALJ held that the Staff's comments raised no genuine issue of material fact and certified the settlement as an uncontested offer of settlement.[10] The Commission approved the settlement by order dated June 20, 1986.[11]

B. Dome Pipeline Corporation (IS85-13 and IS86-2)

In April, 1986, Dome Pipeline reached a settlement with several Canadian shippers who had protested various incentive rates Dome applied to propane shipments on Dome's Cochin pipeline system. The Cochin pipeline extends 1900 miles from Fort Saskatchewan, Alberta to terminals at Sarnia, Ontario, passing through the United States for nearly 1200 miles from the international border near Maxbass, North Dakota to the international border in the Detroit River.

Previous, in June, 1985, Dome had filed FERC Tariff No. 36, which proposed a summer discount propane rate of $1.59 per barrel applicable to all delivery points with the exception of two terminals where the base propane rates were already less than $1.59 per barrel. Eligibility for the discount rate was limited to shippers who contracted to ship-or-pay for at least 50,000 barrels per delivery point per thirty-day period. Several Canadian shippers—CanStates, Energy Polysar Ltd., Koch Hydrocarbons Canada, ICG Liquid Gas Ltd., and PetroCanada, Inc. - protested the filing, contending that the tariff was discriminatory and that the net effect afforded Dome an exclusive forty-five percent tariff reduction.

Following an OPB order suspending the tariff for one day and instituting an investigation,[12] Dome revised the discount rate in FERC Tariff No. 38. The revised tariff applied a forty-five percent discount to all delivery points for any shipper who contracted 185% of its five year average for each designated

8. Phillips Pipe Line Co., 3 F.E.R.C. ¶ 62,023 (1978).
9. Association of Oil Pipelines, Order Staying Proceedings, 10 F.E.R.C. ¶ 61,023 (1980).
10. Phillips Pipe Line Co., 35 F.E.R.C. ¶ 63,040 (1986).
11. Phillips Pipe Line Co., 35 F.E.R.C. ¶ 61,380 (1986).
12. Dome Pipeline Corp., 32 F.E.R.C. ¶ 62,025 (1985).

thirty-day period, subject to a 5,000 barrel minimum. When Dome filed an offer of settlement incorporating the terms of its new tariff filing, the protestors and the Staff objected, arguing that the new tariff did not adequately address the discrimination issue and did not provide the cost justification mandated by Opinion 154-B. Dome then withdrew its offer of settlement.

On January 28, 1986, Dome filed another tariff—FERC Tariff No. 42—that established incentive rates for propane shipments during the months from April to August. The rates, reflecting reductions ranging from 7.9 to 46.8%, required no minimum throughput. In addition, shippers could earn the right to ship a volume of propane at the incentive rate during the period from September to March equal to the volume shipped during the summer months. CanStates and ICG Liquid Gas Ltd. protested the filing, alleging potentially discriminatory aspects of the rates, including access to Dome storage and potential long haul/short haul violations. The OPB put the rates under a one-day suspension and ordered an investigation, but declined to consolidate the new tariff filing (IS86-2) with the ongoing proceeding (IS85-13).[13]

The parties finally agreed on a settlement in April, 1986. The terms of the settlement extended only to future discount propane rates, and the intervenors agreed to drop all claims for reparations. Dome, in turn, agreed to maintain a summer incentive tariff for propane shipments through March, 1990, and to maintain the existing underlying full rate propane tariffs through March, 1987.

The settlement also resolved the long haul/short haul issues in the incentive rates. The incentive rate for propane shipments from Maxbass, North Dakota to the Detroit River was set at between fifty and fifty-five percent of the full rate through March, 1989, not to exceed seventy percent of the full rate through March, 1990. In addition, any change in the ratio of the incentive rate to the full rate from Maxbass to the Detroit River would result in the same percentage change in the incentive rate at each upstream point through March, 1990.

On April 30, 1986, the ALJ certified the settlement as uncontested; the settlement was subsequently approved by the Commission. The ALJ later granted the Staff's motion to dismiss the proceeding in IS86-2.[14]

C. *Milne Point Pipe Line Co. (IS86-1)*

Another North Slope Alaskan oil pipeline rate case, initiated in 1985, was resolved in 1986. Milne Point Pipe Line is a ten-mile crude oil feeder line that connects to the Kuparuk Transportation Company system which, in turn, connects to the Trans Alaska Pipeline System. When the State of Alaska protested Milne Point's October 1985 initial tariff rate of $1.91 per barrel, that rate was suspended for one day and placed under investigation.[15] After discovery was completed in early 1986, Milne Point filed its opening testimony in June, 1986. Milne's throughput, however, which initially had been expected

13. Dome Pipeline Corp., 34 F.E.R.C. ¶ 62,446 (1986).
14. Dome Pipeline Corp., 35 F.E.R.C. ¶ 63,035 (1986); 35 F.E.R.C. ¶ 61,381 (1986).
15. Milne Point Pipe Line Co., 33 F.E.R.C. ¶ 62,053 (1985).

to reach 30,000 barrels per day, declined during 1986 to approximately 11,000-13,000 barrels per day due to field production problems and the decline in the world price of oil. As a consequence, the rate controversy became moot and in October, 1986, the State of Alaska and Milne Point jointly filed a motion to dismiss the investigation. The Staff supported that motion.

On December 31, 1986, production in the Milne Point field was suspended and the pipeline temporarily ceased transporting crude oil. Subsequently, the Commission terminated the investigation in Docket No. IS86-1, and directed Milne to cancel its FERC Tariff No. 1 or, in the alternative, to show cause why the tariff should not be cancelled.[16] In a March 1987 filing, Milne objected to the Commission's directive, arguing that the suspension of production was not on a permanent basis and that a resumption of production in transportation could occur at any time.

D. ARCO Pipe Line Co. (IS86-3 and IS87-15, et al.)

In March, 1986, ARCO filed FERC Tariff Nos. 1609-1640 and 1642-1646 to put into effect a general rate increase on its lower-48 system. Total Petroleum, Inc. protested FERC Tariff No. 1621 which proposed an increase on rate and throughput from Ardmore, Oklahoma to Kansas City, Kansas. The protest was withdrawn in April, 1986.

In an April 1986 order, the OPB suspended the proposed increases for one day, but declined at that time to issue a formal investigation, allowing the Staff to complete a review of the filing for compliance with Opinion Nos. 154-B and 154-C.[17] Subsequently ARCO provided the Staff with additional information to support its proposed increases. In August, 1986, the OPB issued an order instituting a formal investigation into the rate increase.[18] ARCO appealed the order, arguing that absent a shipper complaint, an investigation should not be undertaken by the FERC without a disclosure of contested issues. While that appeal was pending, the ALJ issued an order directing the Staff to provide ARCO with a list of elements, not simply, "boilerplate", that the Staff found to be unlawful.[19]

In October, 1986, the Commission affirmed the OPB's August 1986 order, noting that the ALJ's subsequent September 1986 order would give ARCO adequate notice of the contested issues. In addition, the Commission held that the OPB can order investigations regardless of whether there is a recognized aggrieved party.[20]

The OPB consolidated several other ARCO tariff filings with the investigation into a general rate filing. On November 28, 1986, new rates proposed for transportation of crude petroleum to and from points in Texas were suspended for one day. The November 28 order similarly suspended a joint tariff between ARCO and Williams Pipe Line Company covering the movement of petroleum products from Ardmore, Oklahoma, to points in nine other states

16. Milne Point Pipe Line Co., 38 F.E.R.C. ¶ 61,279 (1987).
17. ARCO Pipe Line Co., 35 F.E.R.C. ¶ 62,202 (1986).
18. ARCO Pipe Line Co., 36 F.E.R.C. ¶ 62,212 (1986).
19. ARCO Pipe Line Co., 36 F.E.R.C. ¶ 63,064 (1986).
20. ARCO Pipe Line Co., 37 F.E.R.C. ¶ 61,031 (1986).

(IS87-1, IS87-2).[21] On February 27, 1987, the OPB suspended for one day cancellation supplements for several ARCO tariffs which resulted in rate increases when other tariffs replaced these cancelled tariffs (IS87-13).[22] In addition, a March 31, 1987 OPB order suspended for one day FERC Tariff No. 1656 involving transportation of petroleum products from Ardmore to the Dallas-Fort Worth Airport (IS87-15).[23] All of the above filings were accepted subject to refund and made a part of the investigation in the general rate case, IS86-3.

The Staff submitted its statement of issues in February, 1987, in a "top sheet" form. The issues included, (1) the starting rate base question, (2) whether the inflation write-up should be amortized in the cost of service, (3) capital structure and rate of return, (4) treatment of deferred taxes, and (5) the impact of the Tax Reform Act of 1986.

Under the present procedural schedule for the consolidated proceedings, ARCO's case-in-chief was due on May 29, 1987, the Staff's case-in-chief was due on September 4, 1987, and ARCO's rebuttal was due on October 16, 1987. A hearing is scheduled to commence on November 9, 1987.

E. Paloma Pipe Line Company (IS86-4)

In June, 1986, Paloma filed FERC Tariff No. 16, proposing a general rate increase for transportation of crude petroleum from offshore Louisiana to points within Louisiana. In July, 1986, the OPB suspended the tariff for one day but, instead of ordering a formal investigation, the OPB provided Paloma an opportunity to submit additional data in support of its filing.[24] Paloma elected to file a motion to withdraw and to submit a tariff to reinstate the rates effective prior to the proposed rate increase. On December 10, 1986, the OPB accepted Paloma's withdrawal of its tariff, ordered a refund with interest of all amounts collected under FERC Tariff No. 16, and terminated the proceeding.[25]

F. Mid-America Pipeline Company (IS86-5)

In August, 1986, Mid-America filed FERC Tariff No. 20 containing volume incentive rates from certain eligible origins in New Mexico to Mt. Belvieu, Texas. Northwest Pipeline Corporation and FT&T, Inc. jointly protested the filing, claiming that Mid-America's rates were discriminatory. The protest alleged violations of sections 2 and 3(1) of the Interstate Commerce Act.

FT&T transports Northwest's natural gas liquids from Northwest's Ignacio, Colorado gas processing plant to Mt. Belvieu, Texas on Mid-America's system via an exchange agreement with two carriers on Mid-America's system. The Ignacio origin point is approximately the same distance from Mt.

21. ARCO Pipe Line Co., 37 F.E.R.C. ¶ 62,169 (1986).
22. ARCO Pipe Line Co., 38 F.E.R.C. ¶ 62,199 (1987).
23. ARCO Pipe Line Co., 38 F.E.R.C. ¶ 62,345 (1987).
24. Paloma Pipe Line Co., 36 F.E.R.C. ¶ 62,113 (1986).
25. Paloma Pipe Line Co., 37 F.E.R.C. ¶ 62,194 (1986).

Belvieu, Texas as the point of origin from which Northwest's competitors ship their liquids from a Conoco plant in New Mexico to Mt. Belvieu.

On the same day the protest was filed, September 30, 1986, the OPB instituted an investigation into Mid-America's tariff resulting in a one-day suspension of the filing.[26] In November, 1986, Mid-America submitted a settlement offer, which was certified as uncontested on December 17, 1986.[27] Under the terms of the settlement, Northwest will operate a four-inch line that runs southward from its Ignacio plant to Conoco's plant. Mid-America, at its expense, agreed to connect Northwest's four-inch line to Mid-America's system, at which point Northwest liquids will be eligible for the incentive rate. Mid-America also agreed to lower the threshold volume for eligibility for the incentive rate to 3,000 barrels per day from the originally proposed 10,000 barrels per day. The Commission approved the settlement of January 30, 1987.[28]

G. *Four Corners Pipe Line Company (IS87-4)*

In December, 1986, the American Independent Refiners Association (AIRA), a national association of small and independent refiners, protested a volume incentive tariff for a portion of the Four Corners' system proposed to become effective on January 1, 1987. In filing FERC Tariff No. 57, Four Corners proposed variable rates ranging from 105 cents to 148 cents per barrel for shipments from Long Beach, California to San Juan County, New Mexico. The applicable rate for a shipper would depend upon the number of barrels shipped per day during a month. The proposed tariff was intended to replace the existing 148 cents per barrel tariff for all volumes shipped. AIRA contended that the proposed rates discriminated against small and independent refiners, as these shippers could not match the large volume shipping requirements necessary to take advantage of the incentive rates.

On December 31, 1986, the OPB suspended the proposed tariff for one day and instituted an investigation. In addition, the OPB required Four Corners to respond to certain listed data requests, and it set procedural dates for Four Corners' direct case and testimony, and the presentation of the Staff's "top sheets".[29]

At the first pre-hearing conference, the ALJ denied Four Corners' request for extensions of time in which to submit responses to the data requests and to file the company's direct case. The ruling adopted the Staff's position, that the ALJ had no discretion to vary the OPB's order. Subsequently, Four Corners appealed the OPB's decision and moved for a stay of procedural dates.

The Commission granted several extensions of time for Four Corners to submit its testimony. On March 2, 1987, Four Corners filed answers to the data requests and its direct case in the form of cost of service schedules. Also on March 2, 1987, the Commission issued a Notice of Intent to Act on the

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26. Mid-America Pipeline Co., 36 F.E.R.C. ¶ 62,359 (1986).

27. Mid-America Pipeline Co., No. IS86-5-000 (Dec. 17, 1986) (Certification of Uncontested Settlement).

28. Mid-America Pipeline Co., 38 F.E.R.C. ¶ 61,091 (1987).

29. Four Corners Pipe Line Co., 37 F.E.R.C. ¶ 62,289 (1986).

appeal[30] and later granted an extension of time to April 30, 1987, for the filing of Four Corners' testimony.[31]

Meanwhile, Four Corners filed FERC Tariff No. 59, to be effective April 1, 1987, to eliminate the volume discount and lower the overall rate from 148 cents per barrel to 120 cents per barrel, thereby eliminating, at least prospectively, the discrimination issue. The OPB accepted this tariff for filing, suspended the rates for one day, and consolidated the new tariff filing (IS87-17) with the ongoing proceeding.[32] On April 30, 1987, the Commission denied Four Corners' appeal and directed Four Corners to file its testimony.[33]

H. Buckeye Pipe Line Company (IS87-14 and FS87-2)

In December, 1986, Penn Central, the owner of the Buckeye pipeline system, sold ninety-nine percent of its interest to a limited partnership, Buckeye Partners, L.P., and retained a one percent general partnership interest in the Buckeye pipeline. Shortly thereafter, Buckeye filed a general rate increase of approximately six percent, effective March 15, 1987, on petroleum products movement to and from points in New York, New Jersey, Pennsylvania, Ohio, Michigan, Indiana and Illinois. USAir, Inc. protested the proposed increase. The protest was withdrawn after Buckeye withdrew its proposed rate increases involving the Pittsburgh Airport. Subsequently, the Air Transport Association of America moved for leave to intervene out of time. The ALJ granted the motion over Buckeye's opposition.[34]

On March 13, 1987, the OPB suspended for one day Buckeye's proposed rate increase, instituted an investigation, and granted interim relief from section 4 of the Interstate Commerce Act.[35] The OPB order discussed Buckeye's proposed justification for its tariff increase, noting that Buckeye's projected $28 million shortfall in revenues contrasted with the Staff's data that showed excess revenues of $6 million. The differences, according to the OPB, centered around rate base development, rate of return and operating expenses.[36]

By order of April 7, 1987, the ALJ directed Buckeye to file its direct case and testimony on May 27, 1987. A pre-hearing conference was scheduled for June 15, 1987, with the Staff's "top sheets" due August 26, 1987.[37]

30. Four Corners Pipe Line Co., No. IS87-4-000 (FERC filed Mar. 2, 1987) (Notice of Intent to Act).

31. Four Corners Pipe Line Co., No. IS87-4-000 (FERC filed Apr. 7, 1987) (Notice of Further Extension of Time).

32. Four Corners Pipe Line Co., 38 F.E.R.C. ¶ 62,346 (1987).

33. Four Corners Pipe Line Co., 39 F.E.R.C. ¶ 61,091 (1987).

34. Buckeye Pipe Line Co, No. IS87-14-000 (FERC filed May 1, 1987) (Order Granting Petition to Intervene Out of Time).

35. Interstate Commerce Act § 4, 49 U.S.C. § 10,726 (1982) (prohibiting carriers from charging a higher rate to a less distant point over the same line in the same direction).

36. Buckeye Pipe Line Co., 38 F.E.R.C. ¶ 62,256 (1987).

37. Buckeye Pipe Line Co, No. IS87-14-00 (FERC filed Apr. 7, 1987) (Order of Chief Judge Modifying Procedural Dates).

IV. Amerada Hess Pipeline Corporation, et al. (Docket No. OR87-9)

On December 30, 1986, Arctic Energy Co. (Arctic Energy), filed a protest of the eight TAPS carriers' tariff filings proposed to be effective January 1, 1987.[38] The tariff filings were in accordance with a previous Commission order approving a settlement of the TAPS rate proceeding.[39] Arctic Energy alleged that the TAPS owners' connection policy effectively precludes Arctic Energy from access to TAPS at its desired connection point at Fox, Alaska. The OPB suspended the tariff filings for one day and directed the TAPS owners to respond to the Arctic Energy protest.[40]

Subsequently, the TAPS owners moved to vacate the suspension. On March 18, 1987, the Commission terminated the suspension and investigation arising out of the protest but treated Arctic Energy's protest as a complaint, thereby instituting a new proceeding (Docket No. OR87-9), and directed the TAPS owners to respond to the complaint.[41] The TAPS owners responded by stating that neither the Interstate Commerce Act nor the Commission's regulations require that a connection policy be part of a carrier's published tariff. In addition, the owners stated that the present connection policy is necessary for both safety and efficiency and is consistent with the obligations under the Trans Alaska Pipeline Authorization Act.

V. TAPS Settlement

In October, 1985, the Commission approved the TAPS settlement agreement with respect to six of the eight carriers.[42] Subsequently, the two remaining carriers, Sohio Pipe Line Company (Sohio) and Amerada Hess Pipeline Corporation (Amerada Hess), voluntarily signed the settlement agreement. Commission approval of the settlement for those two carriers was granted on June 27, 1986.

The Arctic Slope Regional Corporation (ASRC) filed petitions for review in the United States Court of Appeals for the District of Columbia Circuit with regard to both of the settlement approval orders. That case was temporarily stayed until resolution of a dispute concerning the scope of the appeals record. The court subsequently ruled on that dispute and then established a hearing schedule. The schedule provided for ASRC's brief on June 11, 1987; followed by the FERC's brief on July 14; the TAPS owners' and State of Alaska's brief on July 31; a supplemental brief by the two late-signed carriers (Sohio and Amerada Hess) also on July 31; ASRC's reply brief and the deferred appendix on August 18; and oral argument on September 22. The panel consisted of Judges Robinson, Ginsburg and Starr.

38. Amerada Hess Pipeline Corp., 37 F.E.R.C. ¶ 62,292 (1986).

39. Trans Alaska Pipeline System, 33 F.E.R.C. ¶ 61,064 (1985); 35 F.E.R.C. ¶ 61,425 (1986).

40. Amerada Hess Pipeline Corp., 38 F.E.R.C. ¶ 61,278 (1987).

41. For a discussion of the details of the complicated settlement agreement, see the 1985 *Report of the Committee on Oil Pipeline Regulation*, 7 Energy L.J. 243, 246-48 (1986).

42. Trans Alaska Pipeline System, 35 F.E.R.C. ¶ 61,425 (1986).

A similar settlement concerning the intrastate rates is presently awaiting a decision by the Alaska Public Utilities Commission.

VI. DEREGULATION

In May, 1986, the U.S. Department of Justice issued a final report on oil pipeline deregulation. A preliminary report had been issued two years earlier in May, 1984. The report concluded that five lower-48 pipelines—Calnev, Colonial, Southern Pacific, Williams and Chevron's Salt Lake City to Spokane line—should continue to be rate regulated. The report stated that further study was needed for six other pipelines before a determination could be made as to whether or not they should be deregulated: Badger, Kaneb, Texas Eastern, West Shore, Wyco, and Yellowstone. While the report did not study TAPS, the Department recommended continued regulation of the pipeline. Finally, the report recommended that all new crude and refined petroleum product pipelines should be deregulated.

The administration-backed "Oil Pipeline Regulatory Reform Act of 1987" (S.539; H.R.1155) is before the 100th Congress. The premise of the administration's bill is that most oil pipelines are sufficiently competitive, hence, elimination of all economic regulation is desirable. Antitrust statutes would serve as the check on potential abuses. Under the proposed legislation, TAPS will continue to be regulated. However, economic regulation will be eliminated for other oil pipelines unless, upon petition of the Attorney General, the Secretary of Energy makes a finding that continued regulation is necessary to limit exercise of substantial market power in a significant portion of the markets where a particular pipeline operates. New pipelines will not be subject to the FERC's regulatory jurisdiction.

The Association of Oil Pipelines was expected to introduce an alternative deregulation bill. Under that proposed bill, all pipelines, including TAPS, would no longer be subject to FERC rate regulation. However, oil pipelines would continue to be subject to the common carrier obligation not to discriminate among shippers.

Edward J. Twomey, *Chairman*
Steven H. Brose, *Vice Chairman*

James F. Bell	David B. Pinkert
Leonard L. Coburn	David M. Schwartz
Roger B. Coven	Albert S. Tabor, Jr.
Glenn E. Davis	Timothy M. Walsh
James E. Mann	Walker L. Walters
Norman A. Pedersen	Richard T. Williams