

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>BP Pipelines (Alaska) Inc.</b>	)	<b>Docket Nos. IS07-75-000</b>
	)	<b>IS08-78-000</b>
<b>ConocoPhillips Transportation Alaska, Inc.</b>	)	<b>Docket Nos. IS07-56-000</b>
	)	<b>IS08-62-000</b>
<b>ExxonMobil Pipeline Company</b>	)	<b>Docket Nos. IS07-55-000</b>
	)	<b>IS08-65-000</b>
<b>Koch Alaska Pipeline Company, LLC</b>	)	<b>Docket Nos. IS07-48-000</b>
	)	<b>IS08-64-000</b>
<b>Unocal Pipeline Company</b>	)	<b>Docket Nos. IS07-41-000</b>
	)	<b>IS08-53-000</b>
<b>Anadarko Petroleum Corporation</b>	)	
<b>v.</b>	)	<b>Docket No. OR08-5-000</b>
<b>TAPS Carriers</b>	)	

**EXPLANATORY STATEMENT  
REGARDING OFFER OF SETTLEMENT  
AND MOTION FOR SHORTENED COMMENT PERIOD**

Pursuant to Rules 206, 216 and 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206, 385.216, and 385.602 (2009), Section 343.3(d) of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 C.F.R. § 343.3(d) (2009), and Section 1802(d)(2) of the Energy Policy Act of 1992, the attached Offer of Settlement is jointly submitted by the Trans Alaska Pipeline System (“TAPS”) Carriers,<sup>1</sup> the State of Alaska (“State”), Anadarko Petroleum Corporation (“Anadarko”), Tesoro

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<sup>1</sup> The TAPS Carriers are BP Pipelines (Alaska) Inc. (“BPPA”), ConocoPhillips Transportation Alaska, Inc. (“CPTAI”), ExxonMobil Pipeline Company (“EMPCo”), Koch Alaska Pipeline Company, LLC (“KAPCO”) and Unocal Pipeline Company (“UPC”).

Alaska Company and Tesoro Corporation (collectively “Tesoro”), Flint Hills Resources Alaska, LLC (“Flint Hills”), Arctic Slope Regional Corporation (“ASRC”), Petro Star Inc. (“Petro Star”) and the Commission Trial Staff (“Staff”) (collectively the “Settling Parties” and individually a “Settling Party”). Through this Offer of Settlement, the Settling Parties seek Commission approval of a Settlement Agreement (“Agreement”) that was entered into on December 17, 2009. The Agreement resolves all matters at issue in Docket Nos. IS08-78-000, IS08-62-000, IS08-65-000, IS08-64-000, IS08-53-000 and OR08-5-000 (the “2008 Dockets”). The Agreement does not affect Docket Nos. IS07-75-000, IS07-56-000, IS07-55-000, IS07-48-000 and IS07-41-000 (the “2007 Dockets”). All active parties and participants in the 2008 Dockets support the Offer of Settlement.<sup>2</sup>

As required by Rule 602(c), the Settling Parties include the following with their Offer of Settlement:<sup>3</sup>

- This Explanatory Statement and Motion for Shortened Comment Period
- A copy of the executed Settlement Agreement entered into among the Settling Parties (Attachment 1);
- A list of references to orders of the Commission relevant to an evaluation of this Offer of Settlement (Attachment 2); and

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<sup>2</sup> Apart from the Settling Parties, the only other party to the above-referenced proceedings is the Regulatory Commission of Alaska, which intervened in the 2007 Dockets but not the 2008 Dockets.

<sup>3</sup> Only the Agreement creates binding obligations on the participants. Any descriptions or summaries of the Agreement contained in the accompanying documents are provided for informational purposes only.

- A proposed Commission order approving the Offer of Settlement (Attachment 3)

This Explanatory Statement is not part of the Agreement and does not in any way supersede, modify or qualify the Agreement, which is controlling.

This Explanatory Statement discusses the background of the proceeding, requests approval of the Offer of Settlement and summarizes the provisions of the Agreement. The key features of the Agreement are (1) establishment of a settlement rate for the TAPS Carriers from January 1, 2008, through the respective settlement periods as specified in the Agreement for each TAPS Carrier; (2) payment of refunds to all TAPS shippers for the periods settled by the Agreement; (3) stipulation to the calendar year 2008 amounts of certain cost of service elements on a total TAPS basis; (4) withdrawal of the protests and complaints in the 2008 Dockets, and (5) withdrawal by certain parties of their opposition to depreciation studies submitted by the TAPS Carriers with respect to the period 2005-2008. If the Commission issues a final order approving the Agreement, without modification or conditions, then refunds will be paid in accordance with the Agreement. The State as well as Anadarko and Tesoro will withdraw their protests and complaints in the 2008 Dockets, and the 2008 Dockets will terminate.

#### **I. MOTION FOR SHORTENED COMMENT PERIOD**

Pursuant to Rule 602(f)(2) initial comments on an offer of settlement are due 20 days after filing of the offer, and reply comments are due 30 days after filing of the offer “unless otherwise provided by the Commission.” The Parties respectfully submit that a shortened comment period is appropriate in this case. As noted above, all of the active

parties and participants in the above-referenced dockets either support or do not oppose the Offer of Settlement. The Parties therefore request that the Commission require any initial comments to be submitted within 10 days of filing of this Offer of Settlement (*i.e.*, on or before January 25, 2010) and require any reply comments to be submitted within 15 days of this Offer of Settlement (*i.e.*, on or before February 1, 2010).

## **II. BACKGROUND**

This case involves the 2007 and 2008 rates filed by the TAPS Carriers for interstate transportation of crude oil. On or about December 1, 2006, each of the TAPS Carriers filed tariffs containing revised rates for interstate transportation on TAPS to take effect January 1, 2007 (the “2007 TAPS Rates”). The 2007 TAPS Rates, which were filed in the 2007 Dockets,<sup>4</sup> were submitted in accordance with the Commission-approved TAPS Settlement Agreement (“TSA”). *See Trans-Alaska Pipeline Sys.*, 33 FERC ¶ 61,064 (1985); *Trans-Alaska Pipeline Sys.*, 35 FERC ¶ 61,425 (1986). On December 13, 2006, the State, Anadarko and Tesoro protested the 2007 TAPS Rates.<sup>5</sup> On December 28, 2006, the Commission accepted the TAPS Carriers’ 2007 rate filings effective January 1, 2007, and suspended them subject to refund. *BP Pipelines (Alaska) Inc.*, 117

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<sup>4</sup> BPPA originally filed its 2007 tariff (Tariff No. 33) in Docket No. IS07-62-000. On December 15, 2006, BPPA withdrew Tariff No. 33 before it took effect and replaced it with Tariff No. 34, which was filed in Docket No. IS07-75-000.

<sup>5</sup> With respect to the BPPA tariff, the Anadarko/Tesoro protest was originally filed in Docket No. IS07-62-000. After BPPA withdrew Tariff No. 33 and filed Tariff No. 34 in Docket No. IS07-75-000, Anadarko and Tesoro filed another protest in Docket No. IS07-75-000 on December 22, 2006.

FERC ¶ 61,352 (2006). The Commission held the 2007 Dockets in abeyance pending the outcome of proceedings involving the TAPS Carriers' 2005 and 2006 rates in Docket Nos. IS05-82-000, *et al.*

On or about November 30, 2007, each of the TAPS Carriers filed tariffs in the 2008 Dockets containing revised rates for interstate transportation on TAPS to take effect January 1, 2008 ("2008 TAPS Rates").<sup>6</sup> On December 14, 2007, the State and Anadarko protested the 2008 TAPS Rates.<sup>7</sup> On December 28, 2007, the Commission accepted the 2008 TAPS Rates effective January 1, 2008, and suspended them subject to refund. *Unocal Pipeline Company*, 121 FERC ¶ 61,300 (2007). The Commission also consolidated the dockets involving the protests of the 2008 TAPS Rates with the proceeding regarding the 2007 TAPS Rates and held the consolidated case in abeyance pending the outcome of the Commission's investigation of the TAPS Carriers' 2005 and 2006 rates in Docket Nos. IS05-82-000, *et al. Id.*

On June 20, 2008, the Commission issued its order on the initial decision regarding the TAPS Carriers' 2005 and 2006 rates. *BP Pipelines (Alaska), Inc.*, 123 FERC ¶ 61,287 (2008) ("Opinion No. 502"). Opinion No. 502 found the TAPS Carriers'

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<sup>6</sup> The 2008 TAPS Rates were the last rates filed by the TAPS Carriers in accordance with the TSA, which terminated on December 31, 2008.

<sup>7</sup> Anadarko's filing included a complaint against the 2008 TAPS rates, which was docketed as Docket No. OR08-5-000. On January 7, 2008, the Commission issued a notice of complaint; however, that notice was rescinded on January 9, 2008, with the Commission stating that the prior notice had been issued "in error." The Commission's order accepting and suspending the 2008 TAPS Rates did not discuss the complaint, and no further action has been taken by the Commission with respect to the complaint.

2005 and 2006 interstate rates not to be just and reasonable and directed the Carriers to submit a compliance filing calculating rates for 2005 and 2006 consistent with the Commission's decision. The Commission subsequently issued two orders on rehearing of Opinion No. 502. *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,215 (2008); *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,317 (2009). All three orders are currently on appeal to the United States Court of Appeals for the District of Columbia Circuit in No. 08-1270, *et al.*<sup>8</sup>

On July 22, 2008, Anadarko and Tesoro filed a motion requesting that the Commission summarily dispose of the TAPS Carriers' 2007 and 2008 rate filings. Anadarko and Tesoro argued that the 2007 and 2008 TAPS rates should be rejected as inconsistent with Opinion No. 502 or, alternatively, that the TAPS Carriers should be required to file new lower rates for 2007 and 2008 to the level of the 2006 rates calculated by the TAPS Carriers in their compliance filing in Docket Nos. IS05-82-000, *et al.* The Commission agreed that summary disposition was appropriate, but rejected Anadarko's and Tesoro's request that the Carriers lower their 2007 and 2008 rates to the level of the 2006 rates. *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,367 at P 19 (2008) ("December 2008 Order"). The Commission also directed the TAPS Carriers to submit a compliance filing calculating rates for 2007 and 2008 consistent with the methodology established in Opinion No. 502. *Id.*

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<sup>8</sup> Consolidated with lead case No. 08-1270 are Nos. 08-1271, 09-1025, 09-1026, 09-1030, 09-1031, 09-1033, 09-1215, 09-1222, 09-1223, 09-1229 and 09-1232.

On January 28, 2009, the TAPS Carriers submitted their compliance filing calculating rates for 2007 and 2008. The compliance filing was protested by the State and by Anadarko and Tesoro. Petro Star and Flint Hills filed comments supporting the TAPS Carriers' position that the 2004 TAPS rates constitute a refund floor for the 2007 and 2008 rate proceedings. On April 16, 2009, the Commission ruled on the TAPS Carriers' compliance filing. *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,047 (2009) ("April 2009 Order"). As an initial matter, the Commission rejected the arguments of the State, Anadarko and Tesoro that the Commission should use a longer useful life than the 2034 useful life employed in Opinion No. 502. *Id.* at P 37.<sup>9</sup> The Commission further held that the TAPS Carriers' 2004 rates constitute the refund floor for each Carrier for the 2007 and 2008 TAPS rates. *Id.* at PP 38-41. Because the TAPS Carriers' 2007 compliance filing rate fell below the refund floor applicable to each Carrier, the Commission found that no further proceedings regarding the 2007 compliance filing rate were necessary.<sup>10</sup> The Commission accepted the 2007 compliance filing rate and directed the TAPS Carriers to refund the difference between the rates charged in 2007 and the applicable 2004 refund floor. *Id.* at P 42 and Ordering Paragraph B. In contrast, the TAPS Carriers' 2008 compliance filing rate was above the refund floor applicable to each Carrier; the Commission therefore accepted the 2008 compliance filing rate on an

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<sup>9</sup> The State and Anadarko/Tesoro filed requests for rehearing of the Commission's useful life ruling, which requests the Commission denied. *BP Pipelines (Alaska) Inc.*, 128 FERC ¶ 61,219 (2009).

<sup>10</sup> The State of Alaska has an appeal pending on the refund floor issue filed with the D.C. Circuit in case No. 09-1125.

interim basis subject to further investigation and hearing. *Id.* at P 48. The Commission held the investigation of the 2008 compliance filing rate in abeyance pending the outcome of Settlement Judge procedures pursuant to Rule 603. *Id.* at P 51 and Ordering Paragraphs F-I.<sup>11</sup> The Commission directed the TAPS Carriers to issue preliminary refunds for 2008 equal to the difference between the rates charged and the 2008 compliance filing rate. *Id.* at P 50 and Ordering Paragraph D.<sup>12</sup>

In May 2009, each of the TAPS Carriers paid refunds for 2007 and preliminary refunds for the period January 1, 2008 through April 30, 2009, pursuant to the April 2009 Order. In addition, BPPA, CPTAI and KAPCO each filed tariffs to charge the 2008 compliance filing rate as an interim rate beginning May 1, 2009. UPC also filed a tariff containing the 2008 compliance filing rate as an interim rate; however, as discussed further below, effective May 1, 2009, UPC also offered a volume incentive rate that was lower than the interim rate. As also noted below, EMPCo filed a new cost of service rate that took effect May 1, 2009. Since the EMPCo rate was higher than the 2008 compliance filing rate, EMPCo did not file a tariff to charge the 2008 compliance filing rate as an interim rate on a going-forward basis.

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<sup>11</sup> On April 24, 2009, the Chief Administrative Law Judge appointed Judge H. Peter Young as the Settlement Judge. The Settlement Judge procedures before Judge Young resulted in the Agreement included with this Offer of Settlement.

<sup>12</sup> Several petitions for review of the December 2008 Order and the April 2009 Order were filed with the D.C. Circuit and consolidated in lead case No. 09-1078. The cases consolidated with the lead case are Nos. 09-1079, 09-1081, 09-1082, 09-1083, 09-1084, 09-1125, 09-1169, 09-1171, 09-1172 and 09-1173.



Each of the TAPS Carriers filed new cost of service rates in 2009. BPPA's rates were filed in Docket Nos. IS09-348-000 and IS09-395-000 and took effect July 1, 2009 and August 1, 2009, respectively. CPTAI's rates were filed in Docket No. IS09-384-000 and took effect July 4, 2009. EMPCo's rates were filed in Docket Nos. IS09-177-000 and IS09-391-000 and took effect May 1, 2009 and July 9, 2009, respectively. KAPCO's rates were filed in Docket No. IS10-54-000 on November 25, 2009, and took effect January 1, 2010. The UPC volume incentive rate, which took effect May 1, 2009, was filed in Docket No. IS09-176-000. UPC cancelled the volume incentive rate effective December 1, 2009, due to lack of shipper utilization. On November 25, 2009, UPC filed new cost of service rates in Docket No. IS10-52-000, which took effect January 1, 2010. Concurrent with that filing, UPC submitted a petition for partial waiver of FERC's rate change filing requirements, which was docketed as OR10-3-000. The above dockets are referred to collectively as the "2009 Dockets."

The State and Anadarko separately protested the cost of service rate filings submitted by each of the TAPS Carriers in the 2009 Dockets (except only the State protested UPC's volume incentive rate filing). On April 28, 2009, the Commission accepted UPC's volume incentive rate filing in Docket No. IS09-176-000, subject to refund and the outcome of the proceedings concerning the TAPS Carriers' 2008 compliance filing rates, explaining that if the final maximum rate determined in those proceedings is lower than UPC's volume incentive rate, the refund condition will apply. *Unocal Pipeline Co.*, 127 FERC ¶ 61,088 (2009), *aff'd on reh'g*, 129 FERC ¶ 61,211 (2009). On April 29, 2009, the Commission accepted and suspended, subject to refund,

EMPCo's rate filing in Docket No. IS09-177-000. *ExxonMobil Pipeline Co.*, 127 FERC ¶ 61,089 (2009). On June 30, 2009, the Commission accepted and suspended the rates in the remaining BPPA, CPTAI and EMPCO 2009 dockets, made them subject to refund and consolidated the proceedings in Docket Nos. IS09-348-000, *et al. BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316 (2009) ("June 30 Suspension Order"). On December 28, 2009, the Commission accepted and suspended the rates filed by UPC in Docket No. IS10-52-000 and the rates filed by KAPCO in Docket No. IS10-54-000, and consolidated those dockets (along with UPC's request for waiver in Docket No. OR10-3-000) with the consolidated proceedings in Docket Nos. IS09-348-000, *et al. Unocal Pipeline Company*, 129 FERC ¶ 61,275 (2009).<sup>13</sup> The participants in Docket Nos. IS09-348-000, *et al.*, engaged in settlement judge procedures, but ultimately determined that further settlement judge procedures would not be useful. On December 22, 2009, the Chief Administrative Law Judge terminated the settlement judge procedures and appointed Judge Michael J. Cianci, Jr. as the Presiding Judge for the hearing in the 2009 Dockets.

As noted below, the Agreement also addresses certain depreciation studies submitted by the TAPS Carriers in Docket Nos. DO06-5-000, DO06-6-000, DO06-7-000, DO06-8-000, and DO06-9-000. On or about August 11, 2006, each TAPS Carrier submitted a depreciation study supporting new depreciation rates to be implemented for

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<sup>13</sup> The dockets currently consolidated with Docket No. IS09-348-000 are Docket Nos. IS09-384-000, IS09-391-000, IS09-395-000, IS09-177-000, IS09-176-000, IS10-52-000, IS10-54-000 and OR10-3-000. As noted above, these dockets are referred to collectively as the "2009 Dockets."

accounting (book) purposes beginning January 1, 2005.<sup>14</sup> The TAPS Carriers' depreciation studies were based on a projected TAPS life ending on December 31, 2034. The State, Anadarko and Tesoro protested the TAPS Carriers' submissions. In March 2009, the TAPS Carriers re-submitted their depreciation studies (in the same "DO06" dockets shown above) and requested expedited action in order to permit the revised depreciation rates to be reflected in each Carrier's 2008 Form 6. Anadarko and Tesoro protested the re-submitted depreciation studies. The State filed an answer asking the Commission to defer ruling on the depreciation studies until the various pending TAPS rate proceedings were resolved. As of the filing of this Offer of Settlement, the depreciation studies remain pending before the Commission.

### **III. REQUEST FOR APPROVAL**

The purpose of this Offer of Settlement is to resolve all issues in the 2008 Dockets. As a result of the Agreement, the Settling Parties request that the Commission terminate the 2008 Dockets.<sup>15</sup>

The Agreement resolves the challenges brought by the State and by Anadarko and Tesoro to the 2008 TAPS Rates and satisfies the protests and complaints regarding those rates. The Agreement establishes a settlement rate of \$3.33 per barrel from January 1, 2008 through the end of the settlement periods specified in the Agreement for each TAPS

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<sup>14</sup> CPTAI submitted a revised depreciation study on October 31, 2006.

<sup>15</sup> The Commission proceedings regarding the 2007 Dockets are completed subject to judicial review.

Carrier. The Agreement requires the TAPS Carriers to pay refunds to all TAPS shippers equal to the difference between the rates charged (net of preliminary refunds already paid) and the settlement rate for the period settled by the Agreement. The Agreement also stipulates the calendar year 2008 amounts of certain cost of service elements on a total TAPS basis. Those cost of service elements are: (1) Depreciation Expense, (2) Equity AFUDC Amortization, (3) Debt AFUDC Amortization, (4) Amortization of Deferred Return, (5) State Tax Depreciation, (6) Federal Tax Depreciation and (7) Amortization of Excess Tax Reserve. The Agreement provides that no future TAPS cost of service rates will be calculated relying on any actual 2008 amount that does not conform to the amounts stipulated in the Agreement with respect to the above cost of service elements.

The Agreement does not affect the 2007 Dockets, for which petitions for review are pending at the D.C. Circuit. The Agreement also does not affect future rates, including the 2009 TAPS rate filings at issue in the 2009 Dockets, except to the extent that the Agreement stipulates to certain cost of service elements for calendar year 2008 and provides for certain additional rate filings to implement the Agreement as discussed further below in the description of Paragraph 3 of the Agreement.

The Agreement will become effective upon approval by the Commission without modification or conditions. The Agreement was negotiated as a package, and its terms are closely interrelated; therefore, if the Commission rejects or modifies any provision of the Agreement or otherwise imposes conditions on the Agreement, the Agreement will immediately terminate and be deemed withdrawn as an offer of settlement.

The Agreement is intended to resolve uncertainty and minimize the continued expenses of litigation in this proceeding. It also provides assurances to the Settling Parties with respect to the rates for interstate movements on TAPS for the settlement periods. The Commission should approve the Offer of Settlement because it is fair and reasonable and in the public interest.

#### **IV. SUMMARY OF AGREEMENT**

The Agreement contains the following principal terms:

Paragraph 1. This paragraph provides that the Settling Parties will jointly submit the Agreement to the Commission for approval as an offer of settlement under 18 C.F.R. § 385.602; that the Settling Parties shall cooperate, each at its own expense, in seeking and supporting such approval on an expedited basis; and that the date on which the Agreement is approved by the Commission without modification or conditions shall be deemed the Settlement Approval Date.

Paragraph 2. This paragraph explains that the Settling Parties agree to a fixed Settlement Rate of \$3.33 per barrel for the applicable Settlement Periods as defined in Paragraph 6 of the Agreement. Paragraph 2 further states that, within 30 days after the Settlement Approval Date, each TAPS Carrier will refund to its shippers the difference (if any) between the Settlement Rate and the tariff rate paid by that TAPS Carrier's shippers for interstate movements of crude petroleum during the applicable Settlement Period (net of any preliminary refunds already paid). Paragraph 2 makes clear that no refunds shall be due with respect to any movements during the applicable Settlement Period for which

the tariff rate paid was equal to or lower than the Settlement Rate (as is true in the case of UPC's volume incentive rate that took effect on May 1, 2009). The paragraph also states that all refunds shall include interest calculated at the applicable FERC refund interest rate and that each TAPS Carrier will file a refund report with the Commission within 30 days after the payment of refunds. The paragraph provides that each Settling Party shall bear its own costs and attorneys' fees incurred with respect to the litigation of this matter, and that, except for the refunds described above, no Settling Party shall seek additional refunds or any other form of relief (including, without limitation, reparations) with respect to the TAPS Carriers' interstate tariff rates during the applicable Settlement Periods.

Paragraph 3. This paragraph sets forth certain tariff filing obligations that apply to the TAPS Carriers upon approval of the Agreement by the Commission:

- a. Subparagraph 3(a) provides that the three TAPS Carriers that filed increased cost of service tariffs prior to November 2009 (BPPA, CPTAI and EMPCo) (referred to in the Agreement as the "Pre-November 2009 Filing Carriers") will each file a revised tariff to reduce its currently effective interstate tariff rates by two (2) cents per barrel. The purpose of this adjustment is to implement the provision noted in the last sentence of Paragraph 4 of the Agreement in which the TAPS Carriers agree not to calculate or defend rates on the basis that pre-2005 property balances should be treated as 100% equity in computing the deferred return element in cost of service. Subparagraph 3(a) describes when the revised tariffs

shall take effect and provides that the effective date of the revised tariffs will be known as the “Settlement Implementation Date.”

- b. Subparagraph 3(b) indicates that if a Pre-November 2009 Filing Carrier files a revised interstate tariff rate based on cost of service prior to the Settlement Approval Date, and in so doing implements the stipulation set forth in the last sentence of Paragraph 4 of the Agreement, then that Pre-November 2009 Filing Carrier is relieved of its filing obligation under subparagraph 3(a) of the Agreement.
- c. Subparagraph 3(c) explains that it is the intent of the Settling Parties that the tariff filings to be made under subparagraph 3.a. above (the “Settlement Implementation Tariff Filings”) are solely for the purpose of implementing the Agreement and therefore do not need to be accompanied by a cost of service or other justification as provided in the Commission’s tariff filing rules for oil pipelines. This subsection provides that Commission approval of the Agreement shall be deemed a waiver of any otherwise applicable tariff filing requirements in Parts 341, 342 and 346 of the Commission’s regulations to the extent necessary to permit the filing and acceptance of such Settlement Implementation Tariff Filings. Subsection 3(c) further explains that each Pre-November 2009 Filing Carrier will file its Settlement Implementation Tariff Filing in its existing 2009 Docket and the Settling Parties intend that those Settlement Implementation Tariff Filings will be addressed along with the 2009 Dockets; however, other than reducing rates

as provided herein, the Settlement Implementation Tariff Filings of the Pre-November 2009 Filing Carriers are intended to have no effect on the proceedings with respect to the 2009 TAPS tariffs in the 2009 Dockets, and are not intended to affect either the base year or test year for purposes of evaluating the rates at issue in that proceeding or the protests that were filed with respect to the 2009 Dockets.

- d. Subsection 3(d) explains that a Settling Party that protested a 2009 tariff filing made by a Pre-November 2009 Filing Carrier prior to the date of this Settlement Agreement may protest a Settlement Implementation Tariff Filing by that Carrier solely to preserve its prior protest and to request that the Settlement Implementation Tariff Filing be suspended for a nominal period subject to refund and further investigation. No Settling Party, however, may protest, seek rejection of, or otherwise challenge a Settlement Implementation Tariff Filing, nor may any Settling Party use a TAPS Carrier's Settlement Implementation Tariff Filing to argue that the Commission should reject any tariff filings made by that TAPS Carrier prior to the Settlement Approval Date.

Paragraph 4. This paragraph includes stipulations regarding the annual amounts of certain cost of service elements on a total TAPS basis for FERC ratemaking purposes during calendar year 2008. The paragraph explains that the Settling Parties agree not to contest the use of these stipulated amounts as the actual amounts in the specified cost categories for calendar year 2008, nor will they calculate future FERC cost-of-service



rates relying on any actual calendar year 2008 amounts that do not conform to these stipulated amounts. The paragraph also provides that the TAPS Carriers agree that, through the Settlement Period and for purposes of the 2009 Dockets, they will not calculate or defend rates on the basis that TAPS property balances should be treated as 100% equity in computing the deferred return element in cost of service; provided, however, that (i) nothing in the Agreement requires any TAPS Carrier to refund any part of its existing interstate tariff rates prior to the final refund order in the 2009 Dockets and (ii) nothing in the Agreement limits the right of Settling Parties to challenge in the 2009 Dockets any aspect of the methodologies or cost-of-service balances associated with the cost elements listed in paragraph 4, other than the amounts stipulated in paragraph 4.

Paragraph 5. This paragraph states that no appeals, rehearings or other future rulings by the Commission or any reviewing court shall affect in any way the Settlement Rate of \$3.33 per barrel during the applicable Settlement Periods or the amounts stipulated in paragraph 4.

Paragraph 6. This paragraph lays out the respective Settlement Periods for each TAPS Carrier. The Settlement Periods are different for each TAPS Carrier, because, as noted above, the TAPS Carriers filed new cost of service rates at different times in 2009. The Settlement Period for all TAPS Carriers begins January 1, 2008, and ends on the date prior to the effective date of each Carriers' first 2009 cost of service rate filing (*i.e.*, for BPPA, June 30, 2009; for CPTAI, July 3, 2009; for EMPCo, April 30, 2009; for KAPCO, December 31, 2009; and for UPC, December 31, 2009).

Paragraph 7. This paragraph explains that, upon the Settlement Approval Date, (1)

all matters in the 2008 Dockets will be resolved and the 2008 Dockets will be terminated, and (2) the Settling Parties other than the TAPS Carriers will release all claims they might have regarding the TAPS Carriers' interstate tariff rates during their respective Settlement Periods. Paragraph 7 also provides that, within fifteen (15) days after the Settlement Approval Date, the State, Anadarko and Tesoro will withdraw with prejudice all protests and complaints, including protests of compliance filings, filed by them regarding the TAPS Carriers' 2008 interstate tariff rates during their respective Settlement Periods. The paragraph explains that it is not intended to limit or otherwise restrict the reservations of rights of the Settling Parties regarding the post-Settlement Period rates of the TAPS Carriers as set forth elsewhere in the the Agreement.

Paragraph 8. This paragraph provides that, within fifteen (15) days after the Settlement Approval Date, the State, Anadarko and Tesoro will, with respect to the period January 1, 2005 through December 31, 2008, withdraw with prejudice their oppositions to the depreciation studies filed by the TAPS Carriers in FERC Docket Nos. DO06-5-000, DO06-6-000, DO06-7-000, DO06-8-000, and DO06-9-000. Paragraph 8 further provides that no Settling Party shall thereafter oppose the filing by the TAPS Carriers of a request to the Commission for expedited approval of the Depreciation Studies with respect to accounting and financial reporting for the period January 1, 2005 through December 31, 2008. The paragraph explains that the Settling Parties stipulate and agree that neither the withdrawal of the oppositions nor the Commission's approval of the Depreciation Studies for the period January 1, 2005 through December 31, 2008 shall have any precedential effect with respect to ratemaking for the TAPS Carriers,

including without limitation either the total of accumulated depreciation to be used for ratemaking purposes or the depreciable life of TAPS, for periods after December 31, 2008.

Paragraph 9. This paragraph explains that the Agreement is without prejudice to the positions of the Settling Parties in D.C. Circuit Docket Nos. 08-1270, *et al.*, Nos. 09-1078, *et al.*, and No. 09-1228, or any further proceedings resulting from those cases.

Paragraph 10. This paragraph makes clear that the Agreement, and the withdrawal of protests pursuant to paragraph 7, is without prejudice to challenges by any Settling Party to (i) the TAPS Carriers' interstate tariff rates outside of the TAPS Carriers' respective Settlement Periods and/or (ii) the inclusion and appropriate rate treatment of capital expenditures and other costs and rate elements, including those relating to the TAPS Carriers' Strategic Reconfiguration project, in the TAPS Carriers' interstate tariff rates outside of the TAPS Carriers' respective Settlement Periods, regardless of whether such challenges relate to assets placed into service within or outside of the respective Settlement Periods; provided, however, that such challenges shall not affect the \$3.33 Settlement Rate for the applicable Settlement Periods or the amounts stipulated in paragraph 4 of the Agreement.

Paragraph 11. This paragraph indicates that the Agreement is without prejudice to the State of Alaska's claims with respect to the refund floor applicable to rates outside of the TAPS Carriers' respective Settlement Periods.

Paragraph 12. This paragraph states that the Agreement is without prejudice to the positions of the Settling Parties regarding whether the TAPS Carriers should be required

to (1) charge uniform rates or be subject to uniform maximum rates and (2) implement a pooling mechanism and, if so, the details and effective date of any such mechanism.

Paragraph 13. This paragraph provides that in future proceedings with respect to TAPS rates, no Settling Party shall be permitted to rely on the Agreement as a basis for objecting to discovery regarding costs, throughput or other rate elements during the TAPS Carriers' respective Settlement Periods.

Paragraph 14. This paragraph states that the Settling Parties intend the Agreement to be an integrated package, no part of which is separable from the whole. Paragraph 14 further explains that each Settling Party has made compromises in various positions in order to reach a voluntary agreement that fully resolves the 2008 Dockets (subject to the reservations of rights set forth in the Agreement) and that if the Agreement is rejected or modified by the Commission or a reviewing court that the Agreement shall immediately terminate and be deemed withdrawn. The paragraph indicates that if the Agreement is not approved in its entirety without modification or condition, it shall be subject to Commission Rule 602(e) (18 C.F.R. § 385.602(e)) and its terms shall be null and void and of no effect and may not be used in any way to prejudice any Settling Party's litigation position in any forum. The paragraph also provides that if the Agreement is initially approved without modification or condition and the TAPS Carriers pay refunds, but such approval is subsequently withdrawn or subjected to modification or condition, all refunded monies will be repaid with interest at the applicable FERC refund interest rate.

Paragraph 15. This paragraph explains that the language of the Agreement is to be

construed according to its fair meaning and not strictly for or against any of the Settling Parties. The paragraph further states that it is the intent of the Settling Parties that the Agreement, once approved by the Commission, will be enforceable by the Commission against the Settling Parties and that no obligation under the Agreement will be for the benefit of or be enforceable by any third party.

Paragraph 16. This paragraph states that the Agreement constitutes the entire agreement among the Settling Parties, which may be changed only by a written instrument executed by the Settling Parties.

Paragraph 17. This paragraph provides that the Agreement is not an admission of liability on the part of any Settling Party and does not represent any agreement among the Settling Parties as to any regulatory or legal principles. The paragraph further explains that approval of the Agreement by the Commission does not constitute approval of, or precedent regarding, any principle or issue settled herein. The paragraph states that, once approved, the standard of review for any modifications to the Settlement Agreement by the Commission acting *sua sponte* or by third parties shall be the most stringent standard permissible under applicable law.

Paragraph 18. This paragraph provides that the Parties may re-open the Settlement Agreement for the limited purpose of resetting the terms of the Settlement Agreement if the Commission does not accept and suspend the UPC and KAPCO 2009 tariff filings effective January 1, 2010. This provision is moot, since, as noted above, the Commission did accept and suspend the UPC and KAPCO 2009 tariff filings effective January 1, 2010.

Paragraph 19. This paragraph explains that the Agreement may be executed in separate and identical counterparts.

## **V. COMMENTS**

In accordance with Rules 602(d)(2) and 602(f), 18 C.F.R. §§ 385.602(d)(2), 385.602(f), initial comments on the Offer of Settlement would be due 20 days from filing and reply comments would be due 30 days from filing. As discussed above, however, the Parties respectfully request that the comment period be shortened so that initial comments are due 10 days from filing (*i.e.*, on or before January 25, 2010) and reply comments are due within 15 days of this Offer of Settlement (*i.e.*, on or before February 1, 2010).

## **VI. INFORMATION TO BE PROVIDED WITH SETTLEMENT AGREEMENT**

Pursuant to the Chief Administrative Law Judge's October 15, 2003 Notice to the Public entitled "Information to be Provided with Settlement Agreements," the Settling Parties provide the following:

### **a. What are the issues underlying the settlement and what are the major implications?**

The Agreement resolves all issues in the 2008 Dockets. Specifically, the Agreement provides for a stipulated rate from January 1, 2008 through the end of the respective settlement periods. The Agreement also provides for certain stipulated 2008 cost of service elements for calculation of future rates. There are no major policy implications arising from the settlement and the Settling Parties have agreed that it will have no precedential effect.

**b. Whether any of the issues raise policy implications.**

The Agreement does not raise any policy implications for the Commission. The Agreement has been tailored to address only the issues in dispute in the 2008 Dockets, and specifically does not attempt to resolve any policy issues.

**c. Whether other pending cases may be affected.**

The Agreement resolves the 2008 Dockets and addresses the depreciation studies filed by the TAPS Carriers in FERC Docket Nos. DO06-5-000, DO06-6-000, DO06-7-000, DO06-8-000, and DO06-9-000. The Agreement does not affect any other pending cases, except to the extent that certain cost of service elements are stipulated to as of the end of calendar year 2008.

**d. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved.**

The Agreement does not involve any issues of first impression. To the knowledge of the Settling Parties, there are no previous reversals on the issues involved in the Agreement.

**e. Whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard, i.e., the applicable standard of review.**

As noted above with respect to Paragraph 17, once approved, the standard of review for any modifications to the Settlement Agreement by the Commission acting *sua sponte* or by third parties shall be the most stringent standard permissible under applicable law.

## VII. CONCLUSION

For the reasons set forth above, the Settling Parties request that the Commission approve this Offer of Settlement as fair and reasonable and in the public interest.

Respectfully submitted,

**BP Pipelines (Alaska) Inc.**

**ConocoPhillips Transportation Alaska, Inc.**

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Dated: January 15, 2010

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**Attachment 1**

**Copy of Settlement Agreement**

## **TAPS 2008 SETTLEMENT AGREEMENT**

Pursuant to Rules 206, 216 and 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. §§ 385.206, 385.216, and 385.602 (2009), Section 343.3(d) of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 C.F.R. § 343.3(d) (2009), and Section 1802(d)(2) of the Energy Policy Act of 1992, the undersigned parties (collectively the “Settling Parties” and individually a “Settling Party”) hereby enter into this Settlement Agreement. The purpose of this Settlement Agreement is generally to resolve the proceedings in FERC Docket Nos. IS08-78-000, IS08-62-000, IS08-65-000, IS08-64-000, IS08-53-000, and OR08-5-000, including all sub-dockets (the “2008 FERC Dockets”)<sup>1</sup> and to establish interstate tariff rates for the transportation of crude petroleum through the Trans Alaska Pipeline System (“TAPS”) during the respective Settlement Periods defined herein for each of the TAPS Carriers.<sup>2</sup> In consideration of the provisions set forth in this Settlement Agreement, the Settling Parties hereby agree as follows:

1. Following its execution, the Settling Parties will jointly submit this Settlement Agreement to the Commission for approval as an offer of settlement under 18 C.F.R. §

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<sup>1</sup> This Settlement Agreement does not affect the FERC dockets relating to the 2007 TAPS rates, which remain subject to pending petitions for review in the United States Court of Appeals for the D.C. Circuit.

<sup>2</sup> The TAPS Carriers are BP Pipelines (Alaska) Inc. (“BPPA”), ConocoPhillips Transportation Alaska, Inc. (“CPTAI”), ExxonMobil Pipeline Company (“EMPCo”), Koch Alaska Pipeline Company, LLC (“KAPCO”), and Unocal Pipeline Company (“UPC”).

385.602. The Settling Parties shall cooperate, each at its own expense, in seeking and supporting such approval on an expedited basis. The date on which this Settlement Agreement is approved by FERC without modification or conditions shall be deemed the Settlement Approval Date.

2. The Settling Parties agree to a fixed Settlement Rate of \$3.33 per barrel for the applicable Settlement Periods as defined in paragraph 6 hereof. Within 30 days after the Settlement Approval Date, each TAPS Carrier will refund to its shippers the difference between the Settlement Rate and the tariff rate paid by that TAPS Carrier's shippers for interstate movements of crude petroleum during the applicable Settlement Period as defined in paragraph 6 hereof (net of any preliminary refunds already paid by that TAPS Carrier). With respect to any movements during the applicable Settlement Period for which the tariff rate paid was equal to or lower than the Settlement Rate, no refund shall be due. All such refunds shall include interest calculated at the applicable FERC refund interest rate from the date of payment of the relevant invoice to the date of payment of the refund. Each TAPS Carrier will file a refund report with the Commission within 30 days after the payment of such refunds. Each Settling Party shall bear its own costs and attorneys' fees incurred with respect to the litigation of this matter. Except for the refunds described above, no Settling Party shall seek additional refunds or any other form of relief (including, without limitation, reparations) with respect to the TAPS Carriers' interstate tariff rates during the applicable Settlement Periods.

3. The following tariff filing obligations will apply to the TAPS Carriers upon approval of this Settlement Agreement by the FERC:

- a. Subject to subparagraph 3.b. below, BPPA, CPTAI and EMPCo (the “Pre-November 2009 Filing Carriers”) shall each file a revised tariff sheet to reduce its currently effective interstate tariff rates by two (2) cents per barrel. The effective date of those revised tariff sheets (hereafter the “Settlement Implementation Date”) shall be the first day of a calendar month that is no less than 10 days nor more than 41 days after the Settlement Approval Date. The Settling Parties hereby waive any objection to the filing of such tariffs on less than 30 days notice to the extent necessary to comply with this provision.
- b. To the extent that, prior to the Settlement Approval Date, a Pre-November 2009 Filing Carrier files a change to its currently effective interstate tariff rate based on cost of service, and in so doing implements the stipulation set forth in the last sentence of paragraph 4 hereof in calculating such rate change, then such Pre-November 2009 Filing Carrier shall be relieved of its filing obligation under subparagraph 3.a. above.
- c. It is the intent of the Settling Parties that the tariff filings to be made under subparagraph 3.a. above (the “Settlement Implementation Tariff Filings”) are solely for the purpose of implementing this Settlement Agreement, and therefore need not be accompanied by a cost-of-service or other justification as provided in the Commission’s tariff filing rules for oil pipelines. Commission approval of this Settlement Agreement shall be deemed a waiver of any otherwise applicable tariff filing requirements in

Parts 341, 342 and 346 of the Commission's rules to the extent necessary to permit the filing and acceptance of such Settlement Implementation Tariff Filings. Each Pre-November 2009 Filing Carrier will file its Settlement Implementation Tariff Filing in its existing 2009 Docket and the Settling Parties intend that those Settlement Implementation Tariff Filings will be addressed along with the 2009 TAPS tariffs in FERC Docket Nos. IS09-348-000 and related dockets consolidated in *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316 (2009) (the "2009 Dockets").<sup>3</sup> However, other than reducing rates as provided herein, such Settlement Implementation Tariff Filings by the Pre-November 2009 Filing Carriers are intended to have no effect on the proceedings with respect to the 2009 Dockets. In particular, those Settlement Implementation Tariff Filings are not intended to affect either the base year or test year for purposes of evaluating the rates at issue in the 2009 Dockets or the protests that were filed with respect to the 2009 Dockets.

- d. A Settling Party that protested a 2009 tariff filing made by a Pre-November 2009 Filing Carrier prior to the date of this Settlement Agreement may protest a Settlement Implementation Tariff Filing by that Carrier solely to

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<sup>3</sup> The referenced 2009 Dockets are IS09-348-000, IS09-384-000, IS09-391-000, IS09-395-000, IS09-177-000 and IS09-176-000. In addition, three new dockets (IS10-52-000, OR10-3-000 and IS10-54-000) are expected to be consolidated with the other listed 2009 Dockets and, to the extent they are so consolidated, should also be deemed to be 2009 Dockets.

preserve its prior protest and to request that the Settlement Implementation Tariff Filing be suspended for a nominal period subject to refund and further investigation. Otherwise, no Settling Party may protest, seek rejection of, or otherwise challenge a Settlement Implementation Tariff Filing, nor may any Settling Party use a TAPS Carrier's Settlement Implementation Tariff Filing to argue that the Commission should reject any tariff filings made by that TAPS Carrier prior to the Settlement Approval Date.

4. The Settling Parties hereby stipulate and agree that the following are the annual amounts of various cost elements incurred by the TAPS Carriers on a total TAPS basis for FERC ratemaking purposes during calendar year 2008:

Depreciation Expense	\$27.9 million
Equity AFUDC Amortization:	\$ 1.7 million
Debt AFUDC Amortization:	\$ 1.3 million
Amortization of Deferred Return:	\$ 8.1 million
State Tax Depreciation:	\$73.6 million
Federal Tax Depreciation:	\$69.7 million
Amortization of Excess Tax Reserve:	\$ 0.3 million

The Settling Parties agree that they will not contest the use of these figures as the actual amounts in the specified cost categories for calendar year 2008, nor will they calculate future FERC cost-of-service rates relying on any actual calendar year 2008 amounts that do not conform to these stipulated amounts. The TAPS Carriers further agree that,



through the Settlement Period and for purposes of the 2009 Dockets, they will not calculate or defend rates on the basis that TAPS property balances should be treated as 100% equity in computing the deferred return element in cost of service; provided, however, that (i) nothing herein shall require any TAPS Carrier to refund any part of its existing interstate tariff rates prior to the final refund order in the 2009 Dockets, and (ii) nothing herein shall limit the right of Settling Parties to challenge in the 2009 Dockets any aspect of the methodologies or cost-of-service balances associated with the cost elements listed in this paragraph 4, other than the amounts stipulated in this paragraph 4.

5. No appeals, rehearings or other future rulings by the Commission or any reviewing court shall affect in any way the Settlement Rate of \$3.33 per barrel during the applicable Settlement Periods or the amounts stipulated in paragraph 4 above.

6. The Settlement Periods for each TAPS Carriers shall be as follows:

- a. The BPPA Settlement Period shall be January 1, 2008 through June 30, 2009.
- b. The CPTAI Settlement Period shall be January 1, 2008 through July 3, 2009.
- c. The EMPCo Settlement Period shall be January 1, 2008 through April 30, 2009.
- d. The KAPCO Settlement Period shall be January 1, 2008 through December 31, 2009.
- e. The UPC Settlement Period shall be January 1, 2008 through December 31, 2009.

7. Upon the Settlement Approval Date, (1) all matters in the 2008 FERC Dockets will be resolved and the 2008 FERC Dockets will be terminated, and (2) the Settling Parties other than the TAPS Carriers will release all claims they might have regarding the TAPS Carriers' interstate tariff rates during their respective Settlement Periods. Within fifteen (15) days after the Settlement Approval Date, the State of Alaska, Anadarko Petroleum Corporation, Tesoro Corporation and Tesoro Alaska Company ("the State and Anadarko/Tesoro") shall withdraw with prejudice all protests and complaints, including protests of compliance filings, filed by them regarding the TAPS Carriers' 2008 interstate tariff rates during their respective Settlement Periods. Nothing in this paragraph is intended to limit or otherwise restrict the reservations of rights of the Settling Parties regarding the post-Settlement Period rates of the TAPS Carriers as set forth elsewhere in this Settlement Agreement.

8. Within fifteen (15) days after the Settlement Approval Date, the State and Anadarko/Tesoro will, with respect to the period January 1, 2005 through December 31, 2008, withdraw with prejudice their oppositions (including all answers and protests) to the revised depreciation studies (the "Depreciation Studies") filed by the TAPS Carriers in FERC Docket Nos. DO06-5-000, DO06-6-000, DO06-7-000, DO06-8-000, and DO06-9-000. No Settling Party shall thereafter oppose the filing by the TAPS Carriers of a request to the Commission for expedited approval of the Depreciation Studies with respect to accounting and financial reporting for the period January 1, 2005 through December 31, 2008. The Settling Parties stipulate and agree that neither the withdrawal of the oppositions as provided herein nor the Commission's approval of the Depreciation

Studies for the period January 1, 2005 through December 31, 2008 shall have any precedential effect with respect to ratemaking for the TAPS Carriers, including without limitation either the total of accumulated depreciation to be used for ratemaking purposes or the depreciable life of TAPS for periods after December 31, 2008.

9. This Settlement Agreement is without prejudice to, and shall not affect in any way, either the petitions for review pending in consolidated D.C. Circuit Docket Nos. 08-1270 *et al.*,<sup>4</sup> which arise from Opinion No. 502, *BP Pipelines (Alaska) Inc.*, 123 FERC ¶ 61,287 (June 20, 2008), *order on reh'g, BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,215 (Nov. 20, 2008), *order on reh'g, BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,317 (June 30, 2009); consolidated D.C. Circuit Docket Nos. 09-1078, *et al.*,<sup>5</sup> which arise from *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,367 (Dec. 29, 2008), *order on reh'g, BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,047 (April 16, 2009); and D.C. Circuit Docket No. 09-1228, which arises from *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316 (June 30, 2009); or any further proceedings resulting from those petitions for review; provided, however, that the outcome of those petitions for review, and any further proceedings resulting from those petitions for review, shall not affect the \$3.33 Settlement Rate for the applicable Settlement Periods or the amounts stipulated in paragraph 4 hereof. No Settling Party shall use this Settlement Agreement as a basis for objecting to any position

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<sup>4</sup> The cases consolidated with D.C. Circuit No. 08-1270 are Nos. 08-1271, 09-1025, 09-1026, 09-1030, 09-1031, 09-1033, 09-1215, 09-1222, 09-1223, 09-1229 and 09-1232.

<sup>5</sup> The cases consolidated with D.C. Circuit No. 09-1078 are 09-1079, 09-1081, 09-1082, 09-1083, 09-1084, 09-1125, 09-1169, 09-1171, 09-1172 and 09-1173.

another Settling Party may take in the aforementioned petitions for review and in any further proceedings resulting from those petitions for review.

10. This Settlement Agreement and the withdrawal of protests pursuant to paragraph 7 shall be without prejudice to challenges by any Settling Party to (i) the TAPS Carriers' interstate tariff rates outside of the TAPS Carriers' respective Settlement Periods and/or (ii) the inclusion and appropriate rate treatment of capital expenditures and other costs and rate elements, including those relating to the TAPS Carriers' Strategic Reconfiguration project, in the TAPS Carriers' interstate tariff rates outside of the TAPS Carriers' respective Settlement Periods, regardless of whether such challenges relate to assets placed into service within or outside of the respective Settlement Periods; provided, however, that such challenges shall not affect the \$3.33 Settlement Rate for the applicable Settlement Periods or the amounts stipulated in paragraph 4 hereof.

11. This Settlement Agreement is without prejudice to the State of Alaska's claims with respect to the refund floor applicable to rates outside of the TAPS Carriers' respective Settlement Periods.

12. This Settlement Agreement is without prejudice to the positions of the Settling Parties regarding whether the TAPS Carriers should be required to (1) charge uniform rates or be subject to a uniform maximum rate and (2) implement a pooling mechanism and, if so, the details and effective date of any such mechanism.

13. In future proceedings with respect to TAPS rates, no Settling Party shall be permitted to rely on this Settlement Agreement as a basis for objecting to discovery regarding costs, throughput or other rate elements during the TAPS Carriers' respective

Settlement Periods.

14. The Settling Parties intend this Settlement Agreement to be an integrated package, no part of which is separable from the whole. Each Settling Party has made compromises in various positions in order to reach a voluntary agreement that fully resolves the 2008 FERC Dockets (subject to the reservations of rights set forth herein). Accordingly, if the Commission rejects this Settlement Agreement in its entirety, or if the Commission or a reviewing court modifies or imposes conditions on the Settlement Agreement, this Settlement Agreement shall immediately terminate and shall be deemed withdrawn as an offer of settlement or for any other purpose, and the Settling Parties shall be free to pursue all Commission proceedings, appeals or other courses of action necessary to protect their rights. If this Settlement Agreement is not approved in its entirety without modification or condition, it shall be subject to Commission Rule 602(e) (18 C.F.R. § 385.602(e)) and the terms hereof shall be null and void and of no effect and may not be used in any way to prejudice any Settling Party's litigation position in any forum. If the Settlement Agreement is initially approved in its entirety without modification or condition and the TAPS Carriers pay refunds pursuant to paragraph 2 hereof, but such approval is subsequently withdrawn or subjected to modification or condition, all refunded monies shall be repaid with interest at the applicable FERC refund interest rate.

15 The language of this Settlement Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against any of the Settling Parties. The intent of the Settling Parties is that this Settlement Agreement, once approved by the Commission as provided herein, shall be enforceable by the Commission against the

Settling Parties. No obligation under this Settlement Agreement shall be for the benefit of or be enforceable by any third party.

16. This Settlement Agreement constitutes the entire agreement among the Settling Parties with respect to the subject matter hereof. It may be modified, amended or supplemented only by a written instrument executed by the Settling Parties.

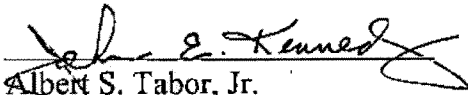
17. This Settlement Agreement is not an admission of liability on the part of any Settling Party and does not represent any agreement among the Settling Parties as to any regulatory or legal principles. Approval of this Settlement Agreement by the Commission does not constitute approval of, or precedent regarding, any principle or issue settled herein. Once approved, the standard of review for any modifications to the Settlement Agreement by the Commission acting *sua sponte* or by third parties shall be the most stringent standard permissible under applicable law.

18. This agreement is based on the assumption that the KAPCO FERC Tariff No. 14 and UPC FERC Tariff No. 306 will be accepted and suspended by the Commission to become effective January 1, 2010, subject to refund, and further that FERC Docket Nos. IS10-52-000, OR10-3-000 and IS10-54-000 will be consolidated with the 2009 Dockets. If the Commission otherwise disposes of these tariffs the Parties agree that this Settlement Agreement will be re-opened for the limited purpose of resetting the terms of this Settlement Agreement to be consistent with the Commission's disposition of those tariffs.

19. This Settlement Agreement may be executed in separate and identical counterparts.

WHEREFORE, the foregoing Settlement Agreement is executed on behalf of the Settling Parties as of December 17, 2009.

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WHEREFORE, the foregoing Settlement Agreement is executed on behalf of the Settling Parties as of December 17, 2009.

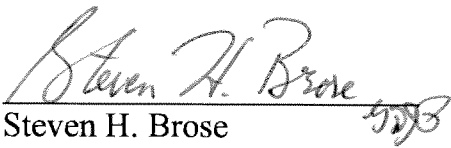
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WHEREFORE, the foregoing Settlement Agreement is executed on behalf of the Settling Parties as of December 17, 2009.

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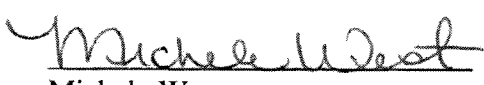
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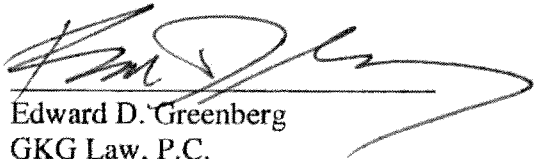
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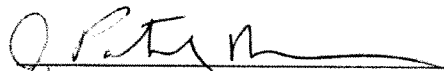
  
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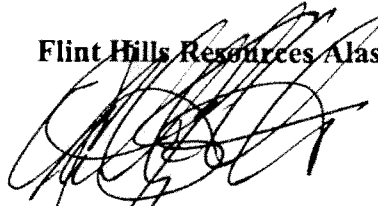
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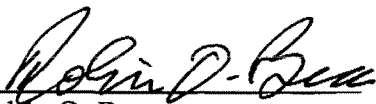
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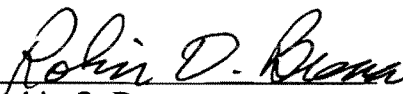
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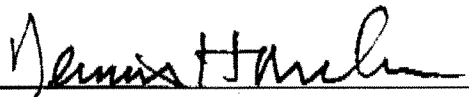
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## Attachment 2

### Commission Orders Relevant to Evaluation of Settlement

- *BP Pipelines (Alaska) Inc.*, 117 FERC ¶ 61,352 (2006) (accepting and suspending 2007 TAPS rates).
- *Unocal Pipeline Company*, 121 FERC ¶ 61,300 (2007) (accepting and suspending 2008 TAPS rates).
- *BP Pipelines (Alaska), Inc.*, 123 FERC ¶ 61,287 (2008) (“Opinion No. 502”) (ruling on 2005 and 2006 TAPS rates and establishing methodology for calculating just and reasonable TAPS rates going forward), *order on reh’g, BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,215 (2008), *order on reh’g, BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,317 (2009).
- *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,367 (2008) (“December 2008 Order”) (granting summary disposition with respect to 2007 and 2008 TAPS rates and directing TAPS Carriers to submit compliance filing).
- *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,047 (2009) (“April 2009 Order”) (ruling on compliance filing).
- *BP Pipelines (Alaska) Inc.*, 128 FERC ¶ 61,219 (2009) (rejecting request for rehearing of the April 2009 Order regarding the useful life of TAPS).
- *Unocal Pipeline Co.*, 127 FERC ¶ 61,088 (2009) (accepting UPC 2009 volume incentive rate filing subject to refund).
- *ExxonMobil Pipeline Co.*, 127 FERC ¶ 61,089 (2009) (accepting EMPCo cost of service rate filing subject to refund).
- *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,316 (2009) (“June 30 Suspension Order”) (accepting BPPA, CPTAI, EMPCO and UPC 2009 rate filings subject to refund).
- *Unocal Pipeline Company*, 129 FERC ¶ 61,275 (2002) (accepting UPC and KAPCO 2009 cost of service rate filings subject to refund).

**Attachment 3**

**PROPOSED ORDER APPROVING OFFER OF SETTLEMENT**

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>BP Pipelines (Alaska) Inc.</b>	)	<b>Docket Nos. IS07-75-000</b>
	)	<b>IS08-78-000</b>
<b>ConocoPhillips Transportation Alaska, Inc.</b>	)	<b>Docket Nos. IS07-56-000</b>
	)	<b>IS08-62-000</b>
<b>ExxonMobil Pipeline Company</b>	)	<b>Docket Nos. IS07-55-000</b>
	)	<b>IS08-65-000</b>
<b>Koch Alaska Pipeline Company, LLC</b>	)	<b>Docket Nos. IS07-48-000</b>
	)	<b>IS08-64-000</b>
<b>Unocal Pipeline Company</b>	)	<b>Docket Nos. IS07-41-000</b>
	)	<b>IS08-53-000</b>
<b>Anadarko Petroleum Corporation</b>	)	
<b>v.</b>	)	<b>Docket No. OR08-5-000</b>
<b>TAPS Carriers</b>	)	

**ORDER APPROVING OFFER OF SETTLEMENT  
(ISSUED \_\_\_\_\_)**

On January 15, 2010, the Trans Alaska Pipeline System (“TAPS”) Carriers,<sup>1</sup> the State of Alaska, Anadarko Petroleum Corporation, Tesoro Alaska Company, Tesoro Corporation, Flint Hills Resources Alaska, LLC, Arctic Slope Regional Corporation, Petro Star Inc. and the Commission Trial Staff (collectively the “Settling Parties” and individually a “Settling Party”) submitted a Settlement Agreement in the captioned proceedings for approval pursuant to Rule 602. The Settlement Agreement resolves all

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<sup>1</sup> The TAPS Carriers are BP Pipelines (Alaska) Inc. (“BPPA”), ConocoPhillips Transportation Alaska, Inc. (“CPTAI”), ExxonMobil Pipeline Company (“EMPCo”), Koch Alaska Pipeline Company LLC (“KAPCO”) and Unocal Pipeline Company (“UPC”).

matters at issue in Docket Nos. IS08-78-000, IS08-62-000, IS08-65-000, IS08-64-000, IS08-53-000 and OR08-5-000 (the “2008 Dockets”).

Review of the Agreement and related comments received pursuant to Rule 602 indicates that the Agreement should be approved as being fair, reasonable and in the public interest as an uncontested settlement of the differences between the parties in these proceedings. This Settlement Agreement establishes stipulated rates for TAPS from January 1, 2008, through the end of the respective settlement periods set forth in the Agreement for each TAPS Carrier and provides for refunds for all TAPS shippers for the applicable periods.

The Commission finds that this Settlement Agreement provides a fair and reasonable resolution of the matters at issue in the 2008 Dockets and is in the public interest. The Commission therefore approves the Settlement Agreement as submitted and terminates the 2008 Dockets. Neither the Settlement Agreement nor the Commission’s approval of this settlement constitutes approval as to any regulatory or legal principles.

The Commission finds that the only dockets remaining in the above-referenced proceedings are Docket Nos. IS07-75-000, IS07-56-000, IS07-55-000, IS07-48-000, and IS07-41-000 (the “2007 Dockets”). The Commission ruled on the issues in the 2007 Dockets in *BP Pipelines (Alaska) Inc.*, 125 FERC ¶ 61,367 (2008); *BP Pipelines (Alaska) Inc.*, 127 FERC ¶ 61,047 (2009); *BP Pipelines (Alaska) Inc.*, 128 FERC ¶ 61,219 (2009). Petitions for review of the first two of those decisions are pending before the D.C. Circuit in No. 09-1078, *et al.*

The Commission hereby approves the settlement without modification.

By direction of the Commission.

Kimberly D. Bose, Secretary

CERTIFICATE OF SERVICE

I hereby certify that the foregoing offer of settlement has this day been served on each person designated on the official service list compiled by the Secretary for this proceeding and those persons entitled to receive a copy of the offer of settlement pursuant to Rule 602(d)(1).

Dated at Washington, D.C. on this 15<sup>th</sup> day of January, 2010.

/s/ William E. Flynn  
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