

Fairbanks Daily News-Miner (Community Perspective)

<http://newsminer.com/2007/05/27/7200>

State needs to become major player in TAPS tariff case

By Richard Fineberg

Published May 27, 2007

Every minute of the day, while high-paid attorneys and accountants pepper each other and regulators with obscure and sometimes ridiculous legal arguments, the state treasury loses another \$400 in excess trans-Alaska pipeline system (TAPS) shipping charges, or tariffs. Most of that money goes directly into the pockets of BP, ConocoPhillips and Exxon Mobil, which control more than 19 out of 20 barrels of North Slope crude oil and own a similar share of the pipeline system.

This long-running revenue hemorrhage stems from the difference between the TAPS tariffs for in-state oil, set by the Regulatory Commission of Alaska (RCA) about 11 percent of TAPS oil and the much higher tariff the oil companies charge for transporting the remaining 89 percent of TAPS shipments bound for the Lower 48.

With the notable exception of recent columns by Dermot Cole in this newspaper, the press tends to ignore this problem. It's just too complicated. And when it is covered, it is liable to be misreported. Take, for example, the initial reporting of the recent decision of a Federal Energy Regulatory Commission (FERC) administrative law judge. That decision supported the claim of independent TAPS shippers Anadarko and Tesoro that TAPS tariffs for Lower 48 shipments are excessive. Determining that Anadarko and Tesoro made a strong case, the judge recommended that the commission should reduce tariffs to a level near that of the RCA's 2002 order.

We're talking about RCA tariffs of about \$2 per barrel versus current FERC tariffs of more than \$5 per barrel. Every dollar per barrel in tariff charges costs the state 25 cents in reduced royalty and production tax revenue.

According to initial press reports, the recent decision at FERC "revolves around an inconsistency in the cost to move a barrel of oil through the pipeline." How does inconsistency figure into the picture? The state's principal argument in this case was that different tariffs for the same service are discriminatory. Near the end of her decision, the administrative judge noted that the reduced tariffs she was recommending would render the state's argument moot. Elsewhere in the lengthy decision, the FERC judge mentioned state arguments only occasionally. In sum, Tesoro and Anadarko did the heavy lifting, arguing against excessive tariffs; the state's main argument was largely irrelevant.

When the state has so much at stake in the outcome of the TAPS tariff case, how did it become a minor player? This question deserves consideration for more reasons than lost revenue and litigation expense. The state wants independent companies to find the yet-undiscovered natural gas necessary to make the gas line project economic. But excess tariffs penalize the independent companies, along with the state. Laughing all the way to the bank as they pocket excess revenue from oil pipeline overcharges, the Big Three must smile to think that the gas pipeline tariff plays an even more significant role in that project's economics, providing new opportunities for them to plunder other shippers.

The May 17 TAPS case ruling is the latest in a string of decisions that call into question the 1985 TAPS tariff settlement, negotiated with the TAPS owners by the Department of Law and its consultants. The law firm of Morrison & Foerster was Department of Law's leading consultant in that case and has been the state's principal pipeline tariff aide ever since. According to the Alaska Budget Report, between July 2003 and the end of 2006, that firm also received \$12 million for its assistance on the proposed gas pipeline contract far more than any other firm.

After the FERC administrative law judge's recent decision on TAPS tariffs was announced, the governor issued a statement saying she was "pleased with the FERC decision." The governor stated that "[t]he state's attorneys are reviewing the decision and preparing to participate in the next phase of the litigation." I wonder what the consulting lawyers are making as they jog around the regulatory track while the state treasury continues to hemorrhage at the rate of \$400 per minute.

After serving in the governor's office two decades ago, I prepared a report to the state Legislature that penetrated the wall of confidentiality and confusion surrounding TAPS tariffs to document 20 examples of delayed information, needless opacity, important omissions and even misinformation that contributed to the approval of the 1985 TAPS settlement that haunts the state today. At that time, I ended another report to the Legislature with this question: If war is too important to be left to the generals, should petroleum litigation policy be left in the hands of the lawyers?

Gov. Palin: Tear down this wall!

Richard Fineberg, an independent oil and gas analyst from Ester, served as senior policy adviser to the governor on oil and gas policy between 1987 and 1989. In 2001 he prepared and presented expert testimony in the Regulatory Commission of Alaska's TAPS tariff case for the RCA's Public Advocacy Section. Additional background on TAPS tariff issues can be found at his Web site (www.finebergresearch.com).

Fairbanks Daily News-Miner (Community Perspective)

Throwing good money after bad

By Richard Fineberg
April 20, 2007 (p. A4)

Everybody knows: throwing good money after bad isn't smart. But state bureaucracy seems to operate on different rules. Consider the continued failure to stop the massive, ongoing hemorrhage of state revenue caused by excessive Trans-Alaska Pipeline System (TAPS) shipping charges

Every dollar of TAPS overcharges reduces state royalty and tax revenue by approximately 25 cents. The principal beneficiaries are BP, ConocoPhillips and Exxon Mobil, which own approximately 96 percent of TAPS and control a similar portion of North Slope production. The prospect of paying those overcharges out of pocket also curbs interest in North Slope exploration by independent developers.

The root of the problem is the complex and controversial 1985 TAPS Settlement Agreement between the pipeline system owners and the state, which was represented by the Department of Law and its highly paid consultants.

In 2002, the Regulatory Commission of Alaska determined that the pipeline owners were charging far too much for transporting oil from the North Slope to Valdez under the terms of the 1985 settlement.

Based on commission data, I estimate that since 1977, TAPS overcharges have enabled the pipeline owners to pocket — at state expense — at least \$4.5 billion more in 2007 dollars than the amount necessary to repay all costs, plus a reasonable return on their investment. Today, excessive TAPS tariffs continue to cost the state treasury approximately \$400 per minute — more than \$500,000 per day.

The regulatory commission, a quasi-independent state agency, only has authority over TAPS oil destined for in-state refiners, or approximately 11 percent of total shipments through the pipeline system. Tariffs on 89 percent of TAPS oil fall under the jurisdiction of the Federal Energy Regulatory Commission, which still uses the 1985 settlement agreement to set tariffs.

The pipeline owners went to court to appeal the RCA's 2002 order.

In 2006, a Superior Court judge rejected the owners' arguments, upholding the commission decision "in all respects." The owners continued their protest to the Alaska Supreme Court, where a decision is still months away. Meanwhile, for

most of the oil regulated by FERC under the terms of the 1985 settlement, the TAPS owners have dramatically increased the tariffs.

Two companies with no ownership interest in the pipeline system — Anadarko, the North Slope's largest independent producer, and Tesoro, an independent refiner — have protested the increased tariffs at FERC and been joined by the Department of Law on technical grounds. The FERC staff recently weighed in on the side of the protesters, describing the owners' defense of their tariffs in terms such as "silly," "obfuscating" and contrary to FERC precedent. The FERC staff brief is the latest confirmation that the TAPS owners used everything but the kitchen sink and meaningful ratemaking data to justify unreasonably high tariffs.

For most of the decade since Tesoro launched its RCA tariff protest in 1996, the Department of Law case managers, hamstrung by legal conundrums their predecessors helped create, sided with the pipeline owners. Now, as the weight of the decisions against the 1985 settlement accumulates, the Department of Law has belatedly changed course.

But its arguments for lower tariffs seem muted, convoluted and tenuous. Instead of aggressively seeking lower tariffs at FERC, the Department of Law appears to be paddling in the wake of the protesting shippers. Meanwhile, high pipeline tariffs continue to thwart the potential developers the state now courts for gas line development while the state treasury quietly continues to bleed.

The period for renegotiation of the pipeline tariff terms officially began Jan. 1.

This is not an issue the state can afford to continue to talk to death.

If the state really wants to assure just and reasonable tariffs on the Alaska pipeline that will encourage potential developers to come north to explore for oil and gas on the North Slope, pipeline tariff case management requires immediate attention.

By funding the Department of Law's feckless tariff maneuvers without rigorous oversight and clear policy guidance, the administration and the Legislature are simply throwing good money after bad, to the detriment of the public interest.

I believe careful review of the pipeline's tariff history and analysis of recent developments demonstrate that primary responsibility for formulating and executing state pipeline tariff policy should be transferred from the Department of Law and its consultants to the state's resource management agencies.

Richard Fineberg, an independent oil and gas analyst from Ester, served as senior policy adviser to the governor on oil and gas policy from 1987 to 1989. In 2001, he presented expert testimony in the TAPS tariff case for the Regulatory Commission of Alaska's Public Advocacy Section. Additional background on TAPS tariff issues can be found at the author's Web site (www.finebergresearch.com). In particular, see the author's Feb. 28 research report quantifying

current and historical TAPS tariff overcharges, in addition to his March 2 historical review and a March 10 analysis and commentary on the March 5 House Resources Committee hearing.