Vault

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Don Schröer, Chairman
James E. Carter, Sr.
Alyce A. Hanley
Dwight D. Ornquist
G. Nanette Thompson

In the Matter of the Tariff Revision, Designated as TL4-306, Filed by KENAI PIPE LINE COMPANY To Set Forth a Rate and Rules for Refined Petroleum Products and Its Filing in Compliance with Order P-85-1(5) To Show the Effect of the Tax Reform Act of 1986 on Rates	P-85-1 ORDER NO. 42
In the Matter of the Tariff Revision, Designated as TL7-306, Filed by KENAI PIPE LINE COMPANY for a Rate Increase and a Rule Change	P-91-2 ORDER NO. 34
In the Matter of the Tariff Revision, Filed July 29, 1993, by KENAI PIPE LINE COMPANY for an Emergency Rate Increase	P-93-2 ORDER NO. 18
In the Matter of the Tariff Revision, Designated as TL9-306, Filed by KENAI PIPE LINE COMPANY for a Rate Increase and a Rate Redesign	P-93-3 ORDER NO. 14

ORDER GRANTING MOTION TO RESPOND; DENYING MOTION TO STRIKE; DENYING INTERVENTION TO SHELL OIL COMPANY, SHELL WESTERN E&P INC., AND THE STATE OF ALASKA; ACCEPTING SETTLEMENT SUBJECT TO CONDITION; VACATING FINAL RATES PREVIOUSLY SET; SETTING FINAL RATES FOR DECEMBER 4, 1984, THROUGH MARCH 31, 1995; AND ALLOCATING COSTS IN AND CLOSING DOCKETS

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BY THE COMMISSION:

Background

On January 9, 1995, KENAI PIPE LINE COMPANY (KPL) and Tesoro Alaska Petroleum Company (Tesoro)[1] filed a settlement agreement dated December 29, 1994, entered into by KPL and KPL's then stockholders, Chevron Pipe Line Company (Chevron) and Atlantic Richfield Company (ARCO), and Tesoro (Settlement Agreement). A copy of the Settlement Agreement is attached to this Order as Appendix A. In the same filing KPL also submitted a stock purchase agreement dated December 29, 1994, by and between Chevron and ARCO, as sellers of KPL, and Tesoro as buyer of KPL (Stock Purchase Agreement).[2] KPL's filing was made in consolidated Dockets P-85-1 and P-91-2 and Dockets P-93-2[3] and P-93-3,[4]

[1]Tesoro is the present owner of KPL. At the time of the January 9, 1995, filing it was the sole shipper over KPL's pipeline.

[2]On June 28, 1994, Tesoro applied for authority to acquire KPL from ARCO and Chevron. That application was processed in Docket P-94-8.

[3]By Order P-91-2(26)/P-85-1(34)/-P-93-2(9), dated June 3, 1994, proceedings in consolidated Dockets P-85-1 and P-91-2 and in Docket P-93-2 were suspended, pending settlement negotiations between KPL and Tesoro (Order Suspending Proceedings).

[4]Docket P-93-3 was opened to consider a rate increase filed by KPL on July 20, 1993. The Commission rejected KPL's filing. (Order P-93-3(1), dated August 19, 1993, and Order P-93-3(2), dated August 24, 1993.) Those Orders are on appeal to the Superior Court.

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all of which concern the rates of KPL, and in Docket P-94-8 (now closed) which concerned the acquisition of KPL by Tesoro.[5]

In Order P-85-1(39)/P-91-2(31)/P-93-2(15)/P-93-3(11)/-P-94-8(5) (Order Approving Stock Purchase), dated February 27, 1995, the Commission approved the acquisition of KPL by Tesoro in Docket P-94-8, subject to the filing by Tesoro of a parent-company guarantee and subject to KPL reducing rates to those set by the Commission at the conclusion of Phase II of Dockets P-85-1 and P-91-2. Those conditions have been met[6] and Commission approval of the acquisition is final. (Order P-94-8(8), dated June 6, 1995.) Tesoro is now the owner of KPL.

In the Order Approving Stock Purchase the Commission deferred consideration of the Settlement Agreement[7] because Shell Oil Company and Shell Western E&P Inc. (collectively, Shell) and the State of Alaska (State) objected to Commission acceptance of

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[5]*See* n. 2, *supra*.

[6]As of April 1, 1995, KPL reduced its rates to those determined by the Commission to be just and reasonable in Order P-91-2(23)/P-85-1(31), dated October 29, 1993, issued at the conclusion of KPL's last adjudicated rate case (consolidated Dockets P-85-1 and P-91-2). The Commission approved those rates at its Tariff Action Meeting of April 14, 1995, and those rates are now permanent rates for the period beginning April 1, 1995.

[7]In their Motion for Expedited Consideration and Notice for Commission Approval of Stock Purchase Agreement, Settlement Agreement, and Application of Tesoro for Authority To Acquire Kenai Pipe Line Company, filed January 19, 1995, KPL and Tesoro requested that the Settlement Agreement and the Stock Purchase Agreement be considered and approved at the same time.

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the Settlement Agreement.[8] In that Order the Commission also requested that the State supplement its petition to intervene with information concerning its financial interest in these proceedings.[9] The Commission also required Shell to file a petition to intervene if Shell wished the Commission to further consider Shell's objection to the Settlement Agreement and its request for refunds.[10]

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[8]In that Order the Commission stated:

> With respect to the Settlement Agreement, however, there are two entities objecting to its acceptance by the Commission, and the public interest considerations are less clear.
>
> The Commission has determined that a decision on the Settlement Agreement has wider policy implications and should not be made without further careful consideration by the Commission, which has not been possible within the time constraints imposed by KPL and Tesoro. Accordingly, a decision on the Settlement Agreement is deferred. (Order Approving Stock Purchase, p. 13.)

[9]The State had filed a petition to intervene out of time on February 15, 1995, in Dockets P-85-1, P-91-2, P-93-2, P-93-3, and P-94-8. That petition to intervene as it relates to Docket P-94-8 was denied by the Commission in Order P-94-8(8). The Commission's decision in Docket P-93-3 is on appeal to the Superior Court The Commission no longer has any authority to grant or deny intervention into that Docket. The State's petition to intervene will be addressed only in Dockets P-85-1, P-91-2, and P-93-2 in this Order.

[10]Shell had filed a statement of objection to approval of the Settlement Agreement on February 9, 1995 (Shell Statement of Objection). In that filing Shell asserted that, according to KPL's calculations, it was owed refunds in the amount of $380,153.60. Shell objected to settlement of the KPL rate proceedings through any method that did not provide compensation to Shell for overcharges during the period 1985 through 1993. (Shell Statement of Objection, p. 2.)

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Filings

On March 7, 1995, Shell filed a petition to intervene in Dockets P-85-1, P-91-2, P-93-2, P-93-2, P-93-3, and P-94-8.[11] Shell stated that during the period June 1, 1985, through May 31, 1991, it was a shipper on KPL's pipeline and that, as a shipper, it had a substantial interest in the subject matter of the KPL proceedings and was entitled to intervene and participate as a party. Shell further stated that its intervention would not broaden the issue in the proceedings or cause delay and that its interests were not represented by any existing party since it was the only shipper on KPL's pipeline that was not affiliated with KPL or Tesoro. Shell also stated that it was willing to participate in further proceedings should the Commission determine that further proceedings are necessary.

On March 10, 1995, the State filed Supplemental Comments Regarding Impacts of the Settlement Agreement (State Supplemental Comments) in response to the Commission's directive to file information concerning its financial interest in these proceedings.

On March 21, 1995, KPL and Tesoro each filed an opposition to Shell's petition to intervene (KPL Opposition and Tesoro

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[11]Shell's petition to intervene insofar as it relates to Docket P-94-8 has been denied. (Order P-94-8(8).) As previously noted (*see* n. 9), the Commission is without authority to grant or deny intervention to Shell in Docket P-93-3. Shell's petition to intervene into Docket P-93-2 is denied because Shell is not economically impacted during the time period covered by that Docket, August 1, 1993, through March 31, 1995.

Opposition, respectively). Both KPL and Tesoro argued that under the Commission's regulations and previous decisions Shell's petition should be denied.

Both KPL and Tesoro argued that under 3 AAC 48.110(d) Shell's petition to intervene was not timely filed and that, therefore, Shell was required to clearly show good cause for its failure to file the petition on time. They asserted that Shell had not only not shown good cause but had given no explanation at all for its failure to timely file. (KPL Opposition, pp. 6 - 8; Tesoro Opposition, pp. 2 - 4.)

Tesoro argued that any right Shell had to intervene expired years ago. Tesoro asserted that Shell's interest in these proceedings was a mere expectation of lower rates and refunds that Shell did nothing to create and that the extent of that interest was inconsequential compared with KPL's and Tesoro's interests in resolving the proceedings.[12] Tesoro further argued that contrary to the assertion contained in Shell's petition, Shell's intervention would surely broaden the issues and delay resolution of the proceedings. (Tesoro Opposition, pp. 5 - 6.)

KPL argued that it was uncertain whether Shell would succeed in establishing a right to any refund if it were allowed to intervene and that, if Shell were permitted to intervene, the Commission would expend resources to determine if Shell was or was

[12]Tesoro noted that the parties' attorneys' fees and costs exceeded Shell's potential financial stake by a factor of five.

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not entitled to a refund in some amount. KPL also argued that the Commission had previously denied late intervention in other cases citing, most notably, Order P-86-2(41)/P-86-3(7)/P-90-1(12), dated October 29, 1993. (KPL Opposition, pp. 7 - 9.)

On April 3, 1995, Tesoro and KPL filed joint comments on the State Supplemental Comments (Tesoro/KPL Comments).

Chevron and ARCO, which are not parties to these proceedings, also filed a response to the State Supplemental Comments on April 3, 1995.

On April 21, 1995, the State filed a motion to allow a response by the State to the Tesoro/KPL Comments (State Motion To Allow Response) along with a response to the Tesoro/KPL Comments (State Response to Tesoro/KPL Comments).

On May 19, 1995, Tesoro and KPL filed a joint motion to strike the State's Motion To Allow Response (Tesoro/KPL Motion To Strike).

On May 30, 1995, Chevron and ARCO filed a joinder in the Tesoro/KPL Motion To Strike.

On June 12, 1995, the State filed an opposition to the Tesoro/KPL Motion To Strike.

Pending Motions

The State Motion To Allow Response was not opposed, except that, after the time to answer that motion had passed, the Tesoro/KPL Motion To Strike was filed. Although the State Response to KPL/Tesoro Comments was not contemplated by the

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Commission, the Commission found that further filings in this matter were helpful. Therefore, the KPL/Tesoro Motion to Strike is denied and the State Motion To Allow Response is granted. KPL and Tesoro had an opportunity to respond to the State Response To Tesoro/KPL Comments in the Tesoro/KPL Motion To Strike and, although that motion is denied, the Commission has considered the information contained in the motion.

The Settlement Agreement

The Settlement Agreement is straightforward. It addresses suspended KPL rates covering a period beginning December 3, 1984,[13] and ending March 31, 1995,[14] in consolidated Dockets P-85-1 and P-91-2 and in Docket P-93-2;[15] the Alaska Superior Court

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[13]The first of the rate cases which KPL and Tesoro seek to conclude through the Settlement Agreement began in early 1985, more than ten years ago. However, KPL and Tesoro have been engaged in tariff litigation concerning KPL's facilities almost continuously since 1982 when KPL sought deregulation of its Nikiski Marine Terminal in Commission Docket P-82-4.

[14]As previously noted (*see* n. 6), KPL reduced its rates as of April 1, 1995, to those set by the Commission. Thus, the Settlement Agreement does not cover periods after March 31, 1995.

[15]The rates at issue in Docket P-85-1 are the refined products rate for the period beginning December 3, 1984, and ending November 19, 1987, and all rates of KPL, including the refined products rate, for the period beginning November 20, 1987, and ending May 31, 1991. The rates at issue in Docket P-91-2 are all KPL rates for the period beginning June 1, 1991, and ending July 31, 1993. The rates at issue in Docket P-93-2 are all KPL rates for the period beginning August 1, 1993, and ending March 31, 1995. (As noted above, rates complying with the Order Approving Stock Purchase became effective April 1, 1995. Thus, the rates on and after April 1, 1995, are not a subject of the Settlement Agreement.)

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appeal[16] of certain Orders in Dockets P-85-1, P-91-2, P-93-2,[17] and P-93-3; and three Federal Energy Regulatory Commission (FERC) proceedings.[18]

In the Settlement Agreement KPL and Tesoro agree to make the temporary rates in Docket P-93-2 permanent and to request that the Commission, the FERC, and the Superior Court finally dispose of all outstanding matters without refunds (Paragraphs 3.A. and 3.B. of the Settlement Agreement). The effect of the Settlement Agreement is to make the rates actually collected by KPL (rather than the filed rates or the rates set by the Commission) the final rates for the periods covered by the Settlement Agreement. The filed rates, the collected rates, and the Commission-determined rates for the relevant periods are set out in schedules attached to this Order as Appendix B.

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[16]That appeal is Superior Court Case No. 3AN-93-10645 CIV, filed November 19, 1993. Although proceedings in Dockets P-85-1, P-91-2, and P-93-2 continued before the Commission after November 19, 1993, KPL had appealed certain Orders in those Dockets as well.

[17]Notwithstanding the fact that KPL appealed Orders issued in Dockets P-85-1, P-91-2, and P-93-2, those Orders were not final orders concluding those Dockets; those proceedings continued before the Commission, and were still properly before the Commission, when the Settlement Agreement was filed.

[18]This Order will not address Docket P-93-3 since the Commission's final Orders in that Docket are on appeal and the proceeding is no longer before the Commission. Likewise, the FERC proceedings are not addressed because they are not before the Commission.

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The Commission Staff (Staff), which is a party to consolidated Dockets P-85-1 and P-91-2 but not to Dockets P-93-2 and P-93-3, did not sign the Settlement Agreement or file any comments or recommendation with respect to the settlement.

Standards for Acceptance of Settlements

In the Order Approving Stock Purchase, the Commission stated as follows:

> In the absence of the objections of Shell and the State, the Settlement Agreement would have been accepted by the Commission. Since objections have been filed, the Commission must consider them and determine whether it should reject those objections on the merits or as untimely and accept the Settlement Agreement or whether it should resolve the underlying proceedings in a manner other than that contemplated by the Settlement Agreement. (Order Approving Stock Purchase, pp. 13 - 14.)

That preliminary acceptance by the Commission was based on precedent from other proceedings conducted under AS 42.06. In previous pipeline rate proceedings, the Commission has determined that it is unnecessary to specifically determine that a settlement is just and reasonable if all economically impacted parties

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support the settlement.[19] In those cases the Commission acted under the provisions of 3 AAC 48.090(d)(2) which reads as follows:

> At any stage of the proceeding, prior to entry of a commission's final order
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> . . . .
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> (2) the proceeding may be terminated by filing a stipulation agreed to by all parties of record provided the commission does not find that the public interest requires the proceeding to be continued . . . .

With regard to those previous settlements, the Commission has found it reasonable to interpret that regulation as requiring "no more than the consent, express or presumed, of all economically impacted parties."[20]

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[19]Those cases concerned the rates for shipping over the Trans Alaska Pipeline System (TAPS) for the period 1977 to 1986 (accepted in Order P-86-2(14), dated May 30, 1987); rates for Milne Point Pipe Line Company for the period beginning April 3, 1989, and continuing into the indefinite future (accepted in Order P-85-3(9), dated December 27, 1990); rates for Cook Inlet Pipe Line Company for the period January 1, 1983, through March 5, 1993 (accepted in Order P-82-6(28)/P-92-5(9), dated September 1, 1993); rates for Kuparuk Transportation Company (KTC) for the period October 4, 1984, and continuing into the indefinite future (accepted by Order P-85-2(20), dated October 29, 1993); a methodology for calculating TAPS rates for the period July 11, 1986, and continuing into the indefinite future (accepted by Order P-86-2(41)/P-86-3(7)/P-90-1(12)); rates for Endicott Pipeline Company for the period beginning October 4, 1987, and continuing into the indefinite future (accepted in Order P-87-3(6), dated November 17, 1993); methodologies for making quality bank adjustments for the period beginning January 1, 1991, and continuing into the indefinite future for KTC (accepted in Order P-90-3(12)/-P-94-2(5)/P-94-9(2), dated August 1, 1994.

[20]Order P-86-2(14), p. 3.

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The Commission's regulations at 3 AAC 48.820(23) define "party" as follows:

> "party" means a person who is designated as a party by statute or by the commission by order in a proceeding, and includes an applicant, complainant, petitioner, respondent, intervenor, or protestant, or the commission staff.

The parties to consolidated Dockets P-85-1 and P-91-2 are KPL, Tesoro, and Staff. The parties to Docket P-93-2 are KPL and Tesoro. Staff is not an economically impacted party. Thus, unless other parties are now admitted to the KPL proceedings, termination of those proceedings requires only the stipulation of KPL and Tesoro and a finding by the Commission that the public interest does not require the proceeding to be continued.

Petitions To Intervene

Shell is a producer in fields served by KPL and in addition was a shipper over KPL's facilities. The State is a royalty owner in fields served by KPL. A shipper actually pays the rates demanded by a pipeline carrier and thus, has an obvious interest in pipeline tariff cases. A shipper is always granted intervention by the Commission, if its petition to intervene is timely filed. However, producers and royalty owners in Alaska fields also have legitimate interests in pipeline transportation charges (which are part of the cost of sending oil to market) even when they do not actually ship over the pipeline. The value of their oil can be affected even if they sell the oil prior to pipeline shipment or take royalty oil in value.

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Unquestionably, both Shell and the State would have been permitted to intervene in these proceedings if their petitions had been timely filed. Therefore, the only question for the Commission to decide is whether they should be permitted to intervene out of time. The further filings from Shell and the State listed in this Order were requested by the Commission in order to make that determination.[21]

3 AAC 48.110(d), which governs the time for filing petitions to intervene, reads as follows:

> Unless otherwise ordered by the commission, a petition for permission to intervene must be filed with the commission before the first prehearing conference or, if no conference is to be held, not later than 30 days before the hearing. A petition for permission to intervene which is not timely filed will be dismissed unless the petitioner **clearly shows good cause for failure to file that petition on time.** (Emphasis added.)

The Commission can find no reason at all to excuse Shell's late request for intervention and no legitimate reason to excuse the State's late request for intervention. Neither Shell nor the State have shown good cause for failure to file their petitions on time.

In its petition to intervene Shell stated that it was a producer and shipper during a number of years. Yet it did not state any reason for its delay in requesting intervention.

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[21]While simply being a producer or royalty owner is sufficient to support timely intervention, it is also necessary to consider exact economic interests in assessing whether late intervention should be granted or a proceeding should be continued because it is required by the public interest.

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In its petition to intervene the State claimed that it was not until the Commission issued Order P-85-1(36)/P-91-2(28)/-P-93-2(12)/P-93-3(8)/P-94-8(2), dated January 27, 1995 (Order Requesting Comments), that it learned that "Tesoro and KPL were seeking to resolve their differences in a manner that might adversely and unlawfully impact the State's interests." In fact, the State had been on notice since June 1994 that KPL and Tesoro were contemplating a settlement of these proceedings. (Order Suspending Proceedings.)[22] It was certainly possible to foresee at that time that the proceeding might be settled with reduced refunds or even with no refunds.

Shell received actual notice of the pendency of these proceedings when it received notification that it might be gran ed

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[22]The Order Suspending Proceedings was served on the Division of Oil and Gas of the State Department of Natural Resources and on the Oil and Gas Audit Division of the State Department of Revenue. That Order restated a stipulation that had been filed by KPL, Tesoro, and Staff, as follows:

> The parties stated that KPL and Tesoro had been engaged in settlement negotiations during the preceding several weeks and that they anticipated reaching an agreement regarding all matters at issue in these Dockets within the near future. The parties requested that the Commission **withhold issuance of the refund order which is pending in Docket P-85-1** and take no further action in any of these Dockets until the conclusion of settlement discussions. (Emphasis added.)

The State claims cognizance of the Order Requesting Comments and states that the Order Requesting Comments was the event that prompted its request for intervention. The Order Requesting Comments was served on the same State officials as the Order Suspending Proceedings. The State cannot now disclaim knowledge that the parties were engaged in settlement negotiations.

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refunds in consolidated Dockets P-85-1 and P-91-3. The prudent course at that point would have been at least to carefully monitor the proceedings if not seek to intervene to protect that potential refund.

It was incumbent upon Shell and the State at the time that the Order Suspending Proceedings was issued to attempt to intervene in the proceedings in order to protect their respective interests. An intervention at that point was already untimely but might have been granted since such intervention would not have broadened the issues or delayed the proceedings. The proceedings were suspended for settlement negotiations.

If Shell and the State had attempted to intervene at the time settlement negotiations were begun, KPL and Tesoro would have had the opportunity to include Shell and the State in the settlement negotiations and to craft the settlement in a manner that was satisfactory to Shell and the State. Even if the Commission had denied intervention, KPL and Tesoro would have been on notice that a settlement not acceptable to Shell or the State might be the subject of further litigation at the appellate level,[23] and thus, could have tried to satisfy those interests in some way.

At this point in time, there can be no doubt that the intervention of Shell and the State would broaden the issues and

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[23]Nonparties have been permitted to appeal Commission decisions under particular circumstances. *City of Kenai v. State of Alaska, Public Utilities Commission,* 736 P.2d 760 (Alaska 1987). However, those circumstances do not appear to be present in this case.

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delay the proceedings.[24] Had it not been for Shell's and the State's objections, these proceedings would have been concluded when the Commission issued the Order Approving Stock Purchase on February 27, 1995. Intervention now would cause the proceedings to continue at the Commission level instead of being finally concluded here.

The Commission does not require that a person who intervenes in a proceeding be an active participant in the proceeding. An intervenor may sit back and receive service of filings and orders and do nothing. It could be argued that the Commission should waive the requirement for timely intervention since an inactive intervenor does not influence the course of the proceeding anyway. However, from the point of view of the active participants, timely intervention is very important for exactly the reasons illustrated by this case.[25] Timely intervention puts the other parties to the proceeding on notice that any settlement to which an inactive party objects will be a contested settlement.

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[24]Under 3 AAC 48.110(b) that is one of the factors the Commission must take into account in ruling on petitions to intervene.

[25]While it may seem a technicality to require one isolated filing, it is not. Active parties to a proceeding are entitled to assume that nonparties who have had notice of the tariff filings upon which the proceeding is based either have no interest in the rates at issue in the proceeding or believe that their interest is not sufficient to merit participation in the proceeding. Active parties should be entitled to assume that they are free to reach an amicable settlement without fear that it could be scuttled by nonparties.

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The Commission has different rules for the resolution of a contested settlement. A contested settlement must be decided on the merits and cannot be disposed of under 3 AAC 48.090(d)(2).

Settlements can occur at any point in the proceedings. Thus, an interested entity should intervene as soon as it recognizes its interests. No suspension need precede attempts to settle. In this case, Shell and the State had notice over and above that in the usual proceeding. They knew or could have known through reasonable diligence that the parties were engaged in settlement negotiations. In this case the settlement negotiations were publicly noticed by Commission order seven months before a settlement was actually filed.

The Commission has previously granted very late interventions after a settlement of extensive litigation was filed.[26] However, the Commission construed those interventions as applying only to rates charged after the date of intervention.

Under a strict interpretation of those previous Commission precedents, the State would be entitled to challenge rates

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[26]In the TAPS rate proceeding, Petro Star Inc. (Petro Star) was permitted to intervene after a settlement of TAPS rates was filed. (Order P-86-2(2)/P-86-3(1), dated August 26, 1986.) However, that settlement affected future as well as past rates. Petro Star was permitted to challenge rates only from the date it petitioned to intervene. It was not allowed to challenge past rates at all, even though it was a shipper and had paid those past rates. Arctic Energy Co. (AEC) was also admitted as a party but its intervention, which was later withdrawn, applied only to future rates since AEC had not yet built its refinery and, therefore, had not yet shipped oil. (Order P-86-2(6)/P-86-3(2)/-P-86-4(1), dated December 12, 1986.)

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from February 15, 1995, through March 31, 1995. It is unlikely the potential gains to the State would exceed the litigation costs necessary to adjudicate this case. Any gains the State might realize for the 45-day period do not justify the cost of a full-blown rate case.[27] It appears from Shell's petition to intervene that Shell was not economically impacted during the period between the filing of its petition to intervene (March 7, 1995) and the date KPL filed Commission-determined rates (March 31, 1995).[28] Therefore, it would have no interest in participating in such a case.

The petitions of Shell and the State to intervene are denied in this Order because they are untimely. The Commission will not waive its requirement of timely filing because intervention by Shell and the State will broaden the issues and delay the proceeding.[29]

Assessment of Settlement

The Settlement Agreement is a stipulation signed by KPL and Tesoro, the only economically impacted parties in Dockets P-85-1, P-91-2, and P-93-2. Thus, all economically impacted

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[27]The Commission has not completed its adjudication of rates for the period August 1, 1993, through March 31, 1995.

[28]Apparently, Shell was not a shipper after May 31, 1991.

[29]If the Commission were to determine that the public interest required the proceeding to continue, the Commission would reconsider its denial of the petitions to intervene. As discussed below, the Commission has determined that the public interest does not require continuation of the proceeding.

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parties have signed a stipulation as required by 3 AAC 48.-090(d)(2). The Commission can accept the Settlement Agreement unless the public interest requires the proceedings to be continued. The Commission will consider the filings of Shell and the State in that public interest determination even though they have been not been permitted to intervene as parties.

Shell and the State in effect argue that the Commission should continue these proceedings solely for their benefit and to the detriment of KPL and Tesoro, the only parties to these proceedings, and ARCO and Chevron, the former owners of KPL. The public interest does not require that these proceedings be continued under the circumstances present at this point in the case.

Shell and the State are advocating their proprietary interests in this proceeding. Both are sophisticated entities that possess the knowledge and resources to adequately protect those proprietary interests in a timely fashion. Neither is in need of special protection or consideration by the Commission, and there is no public interest in granting them special protection or consideration.

On the other hand, there is a public interest in the regularity, dependability, and finality of Commission actions. The Commission should not waive its regulations, as would be necessary to continue this case, without good cause. In order to waive a regulation, the Commission must find that no legitimate public interest will be served by enforcing the requirement being

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waived. Here, with regard to late intervention, that finding cannot be made. Rather, enforcement of the requirement of timely intervention promotes the public interest in the regularity, dependability, and finality of Commission actions.

There is also a public interest in fostering settlements of costly and time-consuming, complex litigation. If the Commission continues these proceedings (and allows interventions) under the present circumstances, future settlements of such litigation could not be made by the parties to that litigation without involving all possibly economically impacted entities in the settlement process[30] or obtaining written promises not to intervene from those entities. Such a policy of the Commission would unduly complicate future pipeline settlements and should not be adopted.

In this case, continuation of the proceedings would result in what are, in effect, entirely new proceedings. None of the parties to the present proceedings would be actively participating in the new proceeding. To decide that new parties, who

[30]Involvement of such entities in the settlement process would be cumbersome, to say the least. Such entities would likely be unfamiliar with the litigation and therefore unable to properly assess the probable outcome of full adjudication.

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have not at any previous time been parties to the litigation,[31] should continue litigation already settled by the parties who pursued it for ten years, borders on the absurd.[32]

Tesoro volunteered to reduce rates to those found to be just and reasonable by the Commission in the last adjudicated rate case. That action was not an obligation of the settlement between KPL and Tesoro. In the Settlement Agreement, Paragraph 3.A., the parties agreed that the temporary rates in Docket P-93-2 should

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[31]Under the Stock Purchase Agreement, ARCO and Chevron have the following obligation, as Sellers under the agreement:

> Sellers further agree to indemnify Buyer and KPL for refunds, if any, that may become due shippers other than Buyer as a result of orders of the APUC in APUC Docket Nos. P-85-1/P-91-2 and in APUC Docket No. P-93-2.

If Shell and the State are allowed to intervene, the Commission must allow ARCO and Chevron, who are now the real parties in interest, to intervene, should they choose to intervene and defend those interests. (The Commission has no authority to compel ARCO and Chevron to participate since they are not pipeline carriers.) Just because Shell or the State are apparently willing to stand in the place of Tesoro in these proceedings does not mean that Chevron, the operator of KPL, and particularly ARCO, who was not involved in the direct management of KPL, would be willing to stand in the place of KPL. There is no assurance that those entities would even agree with each other on the issues before the Commission since one (Chevron) has an affiliated company that may be entitled to refunds while the other (ARCO) does not.

[32]These potential new parties are unfamiliar with the issues raised in these proceedings. This is lengthy record. There are conflicting filings. Further proceedings would be necessary to allow the new parties an opportunity to argue their positions, if not to submit further evidence. AS 42.05.181 forbids the Commission from entering an order without giving the interested party an opportunity to be heard.

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be made permanent thirty days after the closing of the Stock Purchase Agreement. It has now been more than thirty days since the closing of the Stock Purchase Agreement. Thus, the Commission will interpret Paragraph 3.A. of the Settlement Agreement to mean that the temporary rates in Docket P-93-2 should be made permanent for the entire locked-in period.

The Settlement Agreement, as interpreted in the preceding paragraph, is accepted subject to the express condition that, for the purpose of determining rates in the future, no issue shall be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the Settlement Agreement. Final rates are set by this Order for the period December 4, 1985, through March 31, 1995, in accordance with the Settlement Agreement.[33]

Commission acceptance of the Settlement Agreement resolves all outstanding substantive matters in consolidated Dockets P-85-1 and P-91-2 and in Docket P-93-2. Additionally, the parties have agreed to move to dismiss the appeal of certain Orders in those Dockets and in Docket P-93-3, which is currently pending before the Superior Court.

The only remaining matter now before the Commission in these Dockets is the allocation of costs in accordance with

[33]This Order vacates the final rates that were previously set by the Commission for the period June 1, 1991, through July 31, 1993.

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currently applicable law. AS 42.06.610 and 3 AAC 48.157. Under AS 42.06.610 as it read prior to July 1, 1992, the Commission was required to allocate costs of a proceeding to the parties participating in the proceeding. An amendment to AS 42.06.610, which was effective July 1, 1992, made allocation of costs by the Commission discretionary. AS 42.06.610(a) and (b), as amended,[34] read as follows:

> (a) During a proceeding held under this chapter, the commission may [SHALL] allocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission shall consider the regulatory cost charge paid directly or indirectly under AS 42.06.285. The costs allocated may include the costs of any time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final.
>
> (b) After completion of a proceeding held under this chapter, the commission may reallocate the cost of the proceeding among the parties, including the commission, as is just under the circumstances. The costs which are reallocated may include the costs of time devoted to investigations or hearings by hired consultants, whether or not the consultants appear as witnesses or participants. The commission shall provide an opportunity for any person objecting to a reallocation to be heard before the reallocation becomes final. . . .

AS 42.06.285 also became effective on July 1, 1992. That statute authorizes the Commission to collect a regulatory

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[34]The amendments are noted in legislative drafting style, i.e., additions are underlined and deletions are in all capital letters and enclosed in brackets.

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cost charge (RCC) from jurisdictional pipeline carriers.[35] Since the beginning of fiscal year 1993, the Commission's budget has been recovered in large part from RCCs paid by regulated public utilities and pipeline carriers. The Commission understands the amendment to AS 42.06.610 to reflect the intent that pipeline carriers that have helped fund the Commission's budget through the RCC should not (in general, absent unusual circumstances) also be required to bear the cost of regulation through cost allocations pursuant to AS 42.06.610.

The allocable costs incurred in consolidated Dockets P-85-1 and P-91-2 prior to June 30, 1992, total $3,884.13 and consist of $1,904.13 for court reporting services and $1,980 for services of the Commission's Administrative Law Judge. The allocable costs incurred since July 1, 1992, total $81,348.70 and consist of $6,030.78 for court reporting services, $75,312 for the services of the Commission's Administrative Law Judge, and $5.92 for postage. The parties to consolidated Dockets P-85-1 and P-91-2, among whom the costs may be allocated, are KPL, Tesoro, and Staff.

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[35] *See* Order P-85-2(20), dated October 29, 1993, for a detailed discussion of these statutory amendments and Order R-95-6(1), dated July 21, 1995, for a detailed discussion of the revisions to the Commission's RCC statutes and regulations. Initially, the RCC provisions applying to pipeline carriers were set out in AS 42.06.285, but that statute expired on December 31, 1994. In 1995, the RCC statute applicable to pipeline carriers was enacted as AS 42.06.286 (ch. 1 SLA 1995 (SB 47 (efd fld))).

The allocable costs incurred in Docket P-93-2 total $8,042.42 and consist of $326.42 for court reporting services and $7,716 for services of the Commission's Administrative Law Judge. All of these costs were incurred after June 1, 1992. The parties among whom those costs may be allocated are KPL and Tesoro.

The allocable costs incurred in Docket P-93-3 total $7,872 for services of the Commission's Administrative Law Judge. All of these costs were incurred after July 1, 1992. The only party to Docket P-93-3 was KPL. If costs are allocated, they will be allocated to KPL.

Since some of the allocable costs in these Dockets were incurred prior to July 1, 1992, there could be a dispute as to whether the allocation of costs incurred prior to July 1, 1992, should be governed by the new statute, effective July 1, 1992, or the old statute, which was in effect at the time those costs were incurred. This question involves the difficult issue of prospective versus retroactive application of statutory provisions.

However, the Commission does not believe that is it actually necessary to resolve that question. Pursuant to the amended statutory provision, the Commission must consider the RCC paid by the pipeline carrier. The Commission believes that, pursuant to the amended statutory provision, the Commission has the authority to consider whether the costs being allocated were incurred before or after July 1, 1992, and to consider the fact that the pipeline carrier paid no RCC prior to July 1, 1992.

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Thus, in considering the allocation of costs incurred prior to July 1, 1992, the Commission will not give "credit" to the pipeline carrier for any RCCs paid under AS 42.06.285. With this interpretation, no difference in the allocation of costs would result from application of the amended statute than from application of the former statute for allocable costs incurred prior to July 1, 1992. To reiterate, the only relevant difference between the two versions of the statute is consideration of the RCC paid by a pipeline carrier, and for the time period prior to July 1, 1992, no RCC was paid; therefore, that factor is irrelevant.

The Commission further believes that this interpretation is consistent with the overall intent of both the present and former versions of AS 42.06.610. The intent of the former version of AS 42.06.610 was to recover, from pipeline carriers and other parties, a portion of the cost of regulation of pipeline carriers from those same parties. The intent of the new version of AS 42.06.610 is to recover the bulk of the cost of regulation from pipeline carriers through the RCC, beginning July 1, 1992.

If the Commission were to consider RCCs paid after July 1, 1992, as a factor to reduce allocation of costs incurred prior to July 1, 1992, then a greater portion of costs which the Commission incurred but did not allocate prior to July 1, 1992, would remain unrecovered and fall entirely on state government.

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There is no reason whatsoever to believe that the recent amendments were intended to transfer any cost recovery from pipeline carriers to state government. Indeed, the purpose was quite the opposite.

Thus, in summary, in allocating the portion of the costs in consolidated Dockets P-85-1 and P-91-2 incurred prior to July 1, 1992, the appropriate allocation is not affected by any RCC either paid or to be paid. In allocating the portion of costs in all these Dockets incurred after July 1, 1992, the RCC either paid or to be paid must be considered.

The Commission has determined that the costs incurred after July 1, 1992, in all these Dockets should not be allocated to the parties, considering the RCCs paid by KPL.

With respect to the costs incurred prior to July 1, 1992, in consolidated Dockets P-85-1 and P-91-2 the Commission will use the same guidelines used by it to allocate costs before the amendment of AS 42.06.610. The principal guideline used by the Commission was that the cost-causer should be the cost-payer.

The Commission has determined that 10 percent of the costs to be allocated in consolidated Dockets P-85-1 and P-91-2 should be allocated to Staff, 10 percent to Tesoro, and 80 percent to KPL. Considering the factors set out in AS 42.06.610 and 3 AAC 48.157, the Commission believes that this allocation is just and reasonable. Inasmuch as the Commission already has paid the allocable costs of these proceedings, the Commission should be

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reimbursed, and KPL and Tesoro should pay to the State of Alaska, through the Commission, the costs indicated above.

With this cost allocation, all outstanding substantive and procedural matters have been disposed of in these proceedings. Accordingly, these Dockets should be closed.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The motion filed by the State of Alaska on April 21, 1995, to allow it to respond to Tesoro Alaska Petroleum Company's and Kenai Pipe Line Company's comments on the State of Alaska's supplemental comments, is granted, and the comments of the State of Alaska filed April 21, 1995, are accepted.

2. The motion of Tesoro Alaska Petroleum Company filed May 19, 1995, to strike the comments of the State of Alaska filed April 21, 1995, is denied.

3. The petition to intervene filed by Shell Oil Company and Shell Western E&P Inc. on March 7, 1995, is denied.

4. The petition to intervene filed by the State of Alaska on February 15, 1995, is denied.

5. The Settlement Agreement dated December 29, 1994, signed by Kenai Pipe Line Company, Chevron Pipe Line Company, Tesoro Alaska Petroleum Company, and Atlantic Richfield Company, is accepted except as to Paragraph 3.A., which is contrary to Ordering Paragraph No. 4 of Order P-85-1(39)/P-91-2(31)/-P-93-2(15)/P-93-3(11)/P-94-8(5), dated February 27, 1995,

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directing Kenai Pipe Line Company to reduce the temporary rates set in Docket P-93-2 to the rates set by the Commission in Ordering Paragraph No. 1 of Order P-91-2(23)/P-85-1(31), dated October 29, 1993. Acceptance of the Settlement Agreement is subject to the express condition that for the purpose of determining rates in the future, no issue shall be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the Settlement Agreement.

6. For the period December 3, 1984, through November 19, 1987, 10¢ per barrel is accepted as the permanent intrastate tariff rate of Kenai Pipe Line Company for loading refined petroleum products aboard marine vessels. That rate is not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.410(b).

7. For the period November 20, 1987, through May 31, 1991, the following rates are accepted as the permanent intrastate tariff rates of Kenai Pipe Line Company, not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.410(b).

From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	15¢ per barrel
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	13¢ per barrel

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From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	5¢ per barrel
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	10¢ per barrel
Loading refined petroleum products aboard marine vessels	10¢ per barrel

8. The rates set by the Commission in Ordering Paragraph No. 1 of Order P-91-2(23)/P-85-1(31), dated October 29, 1993, for the period June 1, 1991, through July 31, 1993, are vacated.

9. For the period June 1, 1991, through October 31, 1991, the following rates are accepted as the permanent intrastate tariff rates of Kenai Pipe Line Company, not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.410(b).

From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	33¢ per barrel
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	28.5¢ per barrel
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	11¢ per barrel
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	22¢ per barrel

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Loading refined petroleum products aboard marine vessels	22¢ per barrel

10. For the period November 1, 1991, through February 11, 1993, the following rates are accepted as the permanent intrastate tariff rates of Kenai Pipe Line Company, not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.410(b).

From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	15¢ per barrel
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	13¢ per barrel
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	5¢ per barrel
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	10¢ per barrel
Loading refined petroleum products aboard marine vessels	10¢ per barrel

11. For the period February 12, 1993, through July 31, 1993, the following rates are accepted as the permanent intrastate tariff rates of Kenai Pipe Line Company, not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.410(b).

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From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	8.4¢ per barrel
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	7.3¢ per barrel
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	2.8¢ per barrel
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	5.6¢ per barrel
Loading refined petroleum products aboard marine vessels	5.6¢ per barrel

12. For the period August 1, 1993, through March 31, 1995, the following rates are accepted as the permanent intrastate tariff rates of Kenai Pipe Line Company, not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.410(b).

From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	11.3¢ per barrel
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	10.2¢ per barrel
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	5.7¢ per barrel

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Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	8.5¢ per barrel
Loading refined petroleum products aboard marine vessels	8.5¢ per barrel

13. For the period beginning April 1, 1995, the following rates, filed by Kenai Pipe Line Company pursuant to Ordering Paragraph No. 4 of Order P-85-1(39)/P-91-2(31)/P-93-2(15)/-P-93-3(11)/P-94-8(5), dated February 27, 1995, and approved by the Commission at its Tariff Action Meeting of April 14, 1995, are the permanent intrastate tariff rates of Kenai Pipe Line Company, not subject to refund in accordance with AS 42.06.400(b) or AS 42.06.-410(b).

From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	8.9¢ per barrel
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	7.7¢ per barrel
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	3.0¢ per barrel
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	5.9¢ per barrel
Loading refined petroleum products aboard marine vessels	5.9¢ per barrel

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14. The allocable costs incurred in consolidated Dockets P-85-1 and P-91-2 prior to July 1, 1992 ($3,884.13), are allocated as follows: $388.42 to the Commission Staff, $388.41 to Tesoro Alaska Petroleum Company, and $3,107.30 to Kenai Pipe Line Company.

15. The allocable costs incurred after July 1, 1992, in consolidated Dockets P-85-1 and P-91-2 ($81,348.70), Docket P-93-2 ($8,042.42), and Docket P-93-3 ($7,872), will be borne by the Commission.

16. By 4 p.m., January 2, 1996, Kenai Pipe Line Company shall remit the sum of $3,107.30 to the Commission or, in the alternative, submit a statement of opposition, supported with specific facts and argument, stating why this Order is unreasonable or otherwise should be set aside.

17. By 4 p.m., January 2, 1996, Tesoro Alaska Petroleum Company shall remit the sum of $388.41 to the Commission or, in the alternative, submit a statement of opposition, supported with specific facts and argument, stating why this Order is unreasonable or otherwise should be set aside.

18. Checks shall be made payable to: State of Alaska, Alaska Public Utilities Commission.

19. Consolidated Dockets P-85-1 and P-91-2 and Dockets P-93-2 and P-93-3 are closed subject to possible reopening upon

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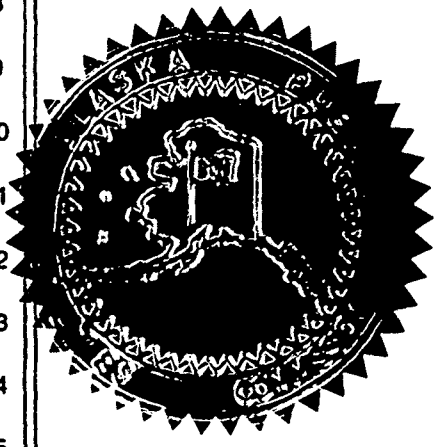
receipt by the Commission of a statement of opposition as provided for in Ordering Paragraph Nos. 16 and 17 above.

DATED AND EFFECTIVE at Anchorage, Alaska, this 9th day of November, 1995.

BY DIRECTION OF THE COMMISSION
(Commissioners Dwight D. Ornquist and
G. Nanette Thompson, not participating.)



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RECEIVED
JAN 05 1995
BRENA & McLAUGHLIN, P.C.

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 29th day of December, 1994 by the following parties: Kenai Pipe Line Company ("KPL") and its present stockholders, Chevron Pipeline Company ("Chevron") and Atlantic Richfield Company ("ARCO"), and Tesoro Alaska Petroleum Company ("Tesoro"). This Settlement Agreement is made by each of the parties on behalf of themselves, their assigns, successors, affiliates, personal representatives and shareholders.

RECITALS:

A. On December 3, 1984, KPL filed a tariff revision designated as TL4-306, to set forth a rate and rules for refined petroleum products. On September 12, 1988, KPL made a filing to comply with an order of the Alaska Public Utilities Commission ("APUC") to show the effect of the Tax Reform Act of 1986 on KPL's rates. Tesoro protested KPL's tariff filings in proceedings before the APUC designated as Docket No. P-85-1.

B. On May 1, 1991, KPL filed a tariff revision designated as TL7-306 for a rate increase and a rule change for its intrastate transportation of crude oil and petroleum products. Tesoro protested TL7-306 in proceedings before the APUC designated as Docket No. P-91-2.

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C. On July 20, 1993, KPL filed a tariff revision designated as Tariff Advice Letter TA-10. Tesoro protested that tariff filing and the APUC rejected KPL's tariff filing in proceedings designated as Docket No. P-93-3.

D. On July 29, 1993, KPL filed a request for emergency interim rate relief designated as Tariff Advice Letter TA-9. Tesoro protested that tariff filing in proceedings before the APUC designated as Docket No. P-93-2.

E. On November 19, 1993, KPL filed a notice of appeal in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, appealing various orders of the APUC in Docket Nos. P-85-1, P-91-2, P-93-2 and P-93-3. Tesoro intervened in that appeal, which is now pending in Superior Court and designated as Case No. 3AN-93-10645 Civil.

F. On March 1, 1994, KPL filed with the Federal Energy Regulatory Commission ("FERC") a tariff designated as Tariff No. 19, requesting an increase in tariff rates and regulation of services previously provided under a private dock agreement. Tesoro moved to intervene and protested the tariff filing. Proceedings involving KPL's FERC No. 19 and subsequent tariff revisions filed with FERC are pending in FERC Docket Nos. IS94-26-000, IS94-30-000 and IS94-35-000.

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G. On June 30, 1994, following receipt of notification that KPL and Tesoro were discussing the possibility of Tesoro's purchase of KPL, the APUC issued an order opening Docket No. P-94-8 to consider an application by Tesoro for authority to acquire KPL.

H. KPL, Chevron, ARCO and Tesoro mutually desire to resolve fully and finally, without the time, expense and inconvenience of further litigation, all issues in the proceedings identified above. The parties have entered into a Stock Purchase Agreement pursuant to which Tesoro shall acquire KPL.

THEREFORE, in consideration for the undertakings contained in this Settlement Agreement, and in the Stock Purchase Agreement, and for other good and valuable consideration, acknowledged by the parties to be satisfactory and adequate, it is agreed as follows:

1. This Settlement Agreement does not constitute, and shall not be construed to be, an admission by the parties concerning any question of fact or question of law in any proceeding listed above, nor is it an admission of liability or wrongdoing on the part of any party, or by any of their officers, directors, employees, agents, attorneys or contractors; or any party's parent, subsidiary or affiliate, or the officers,

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directors, employees, agents, attorneys or contractors of such parent, subsidiary or affiliate, without limitation.

2. The parties shall jointly seek approval of the Stock Purchase Agreement and Tesoro's application to acquire KPL.

3. Upon Tesoro's acquisition of KPL, the parties agree to dispose of the pending matters recited above as follows:

A. As to APUC Docket P-93-2, the parties shall stipulate to make the temporary rates permanent thirty days after the closing of the Stock Purchase Agreement.

B. As to APUC Docket Nos. P-85-1, P-91-2, P-93-3 and Superior Court Case No. 3AN-93-10645 Civil and FERC Docket Nos. IS94-26-000, IS94-30-000 and IS94-35-000, the relevant parties shall jointly request that the Commissions and the Court issue orders which shall finally dispose of all outstanding matters without refunds. Each party shall bear its own costs and attorney's fees.

C. Except as noted in Subparagraph D, below, the parties shall stipulate to dismiss all remaining outstanding matters with prejudice.

D. Pursuant to Sections 4.3 and 11.4.2.2 of the Stock Purchase Agreement, if the APUC fails to issue orders which

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finally dispose of all outstanding matters in pending dockets without refunds, the relevant parties shall cooperate with each other and take such steps as may be necessary or appropriate to ensure that Chevron and ARCO have the right to bring an appeal of any APUC orders requiring refunds or take such other reasonable actions to terminate such refund obligations, including, if necessary, the prosecution of any such appeal by Chevron and ARCO in the name of KPL, without prejudice to the right of Tesoro and KPL to intervene and participate in any such appeal as their interests may appear. The fees and costs of such appeals shall be paid by the party incurring such fees and costs. Chevron and ARCO agree to indemnify Tesoro and KPL for any liability for refunds, if any, that may become due shippers other than Tesoro as a result of any final, nonappealable orders of the APUC.

4. The parties acknowledge and agree that each of them was represented by counsel during the course of the negotiations leading up to this Settlement Agreement and the Stock Purchase Agreement, that each of them fully understands and is satisfied with both agreements, and has signed this Settlement Agreement and the Stock Purchase Agreement freely and voluntarily and not under any threat of coercion. Each party further acknowledges and agrees that any prior representations, promises or agreements between the parties other than those set forth in this Settlement Agreement and in the Stock Purchase Agreement are hereby extinguished; that there are no oral or written representations, promises or agreements among the parties

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concerning the subject matter of this Settlement Agreement and the Stock Purchase Agreement other than those set forth in those two documents and that this constitutes the entire and only Settlement Agreement with respect to the matters asserted in the proceedings referred to herein.

5. This Settlement Agreement shall be binding upon and inure to the benefit of the parties, their respective agents, representatives, attorneys, successors and assigns. This Settlement Agreement cannot be modified except by written agreement executed by the parties.

6. The parties acknowledge that this Settlement Agreement is a joint product and shall not be construed for or against any party on the ground of sole authorship.

7. The parties agree that in the event that any dispute arises under or relating to this Settlement Agreement, the law of Alaska shall apply to the resolution of such dispute.

8. This Settlement Agreement may be executed in one or more counterparts and by different parties on separate counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

2/9/94

KENAI PIPE LINE COMPANY

DATED: _____ By: R.W. Merson
Its: Vice President

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ day of _____, 1994, at _____, _____, before me personally appeared _____, whom I know; and _____ acknowledged to me that _____ executed the foregoing instrument for and on behalf of Kenai Pipe Line Company; that _____ is _____ _____ of said corporation, and is authorized to so execute; that _____ knew the contents thereof and that the same was the free and voluntary act of said corporation, by _____ performed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

_____
Notary Public in and for Alaska
My Commission Expires:_____

CHEVRON PIPE LINE COMPANY

DATED: _____ By: R.W. Merson
Its: Vice President

12/9/94 RV

State of California
County of Contra Costa Rosalia M. Susoeff
On 12/20/94, before me, Notary Public (here insert name and title of the officer), personally appeared R. W. Merson, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Rosalia M. Susoeff (Seal)

OFFICIAL SEAL
ROSALIA M. SUSOEFF
Notary Public-California
City and County of San Francisco
My Commission Expires July 21, 1995

This certificate is attached to: Stock Purchase Agreement concerning Kenai Pipe Line Co.
and signed by R. W. Merson.

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ day of _____, 1994, at _____, _____, before me personally appeared _____, whom I know; and _____ acknowledged to me that _____ executed the foregoing instrument for and on behalf of Chevron Pipe Line Company; that _____ is _____ _____ of said corporation, and is authorized to so execute; that _____ knew the contents thereof and that the same was the free and voluntary act of said corporation, by _____ performed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

_____
Notary Public in and for Alaska
My Commission Expires:_____

ATLANTIC RICHFIELD COMPANY

DATED: _____ By: _____
Its: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the ____ day of _____, 1994, at _____, _____, before me personally appeared _____, whom I know; and _____ acknowledged to me that _____ executed the foregoing instrument for and on behalf of Atlantic Richfield Company; that _____ is _____ _____ of said corporation, and is authorized to so execute; that _____ knew the contents thereof and that the same was the free and voluntary act of said corporation, by _____ performed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

_____
Notary Public in and for Alaska
My Commission Expires:_____

12/9/94

TESORO ALASKA PETROLEUM COMPANY

DATED: December 29, 1994 By: Gaylon H Simmons CSP

Gaylon H. Simmons
Executive Vice President

STATE OF TEXAS)
) ss:
COUNTY OF BEXAR)

THIS IS TO CERTIFY that on the 29th day of December, 1994, at San Antonio, Texas, Bexar County, before me personally appeared Gaylon H. Simmons, whom I know; and he acknowledged to me that he executed the foregoing instrument for and on behalf of Tesoro Alaska Petroleum Company; that he is Executive Vice President of said corporation, and is authorized to so execute; that he knew the contents thereof and that the same was the free and voluntary act of said corporation, by him performed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

PHYLLIS A. PACE
Notary Public, State of Texas
My Commission expires
SEPTEMBER 5, 1998

Phyllis A Pace

Notary Public in and for Texas
My Commission Expires: _____

/share.wplegsh.jcr.kpllri.ack/

ATLANTIC RICHFIELD COMPANY

DATED: 4 JAN 95

By: Marie L Knowles
Marie L. Knowles
Senior Vice President

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

THIS IS TO CERTIFY that on the 4th day of January, 1995, at Long Beach, California, Los Angeles County, before me personally appeared Marie L. Knowles, whom I know; and she acknowledged to me that she executed the foregoing instrument for and on behalf of Atlantic Richfield Company; that she is Senior Vice President of said corporation, and is authorized to so execute; that she knew the contents thereof and that the same was the free and voluntary act of said corporation, by her performed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

LINDA M. MENCKEN
COMM. #957556
Notary Public-California
LOS ANGELES COUNTY
My comm. expires FEB 27,1996

Linda M. Mencken
Notary Public in and for California
My Commission Expires: 02/27/96

This certificate is attached to: Settlement Agreement concerning Kenai Pipe Line Company.

KPL TRANSPORTATION SERVICE

SUSPENDED RATES FOR PERIOD
DECEMBER 3, 1984 through
NOVEMBER 19, 1987
(in cents per barrel)

	Filed Rate	Rate Collected	Final Rate Set By The Commission
From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal			
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal			
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska			
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others			
Loading Refined Petroleum Products aboard Marine Vessels	10¢	10¢	ND

Only the refined products rate was suspended during this period.

ND means that the Commission has not determined a rate for this period.

Final Rate Set by the Commission is the rate established at the conclusion of the proceeding as defined in AS 42.06.410(b).

KPL TRANSPORTATION SERVICE	SUSPENDED RATES FOR PERIOD NOVEMBER 20, 1987 through MAY 31, 1991 (in cents per barrel)		
	Filed Rate	Rate Collected	Final Rate Set By The Commission
From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	15¢	15¢	ND
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	13¢	13¢	ND
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	5¢	5¢	ND
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	10¢	10¢	ND
Loading Refined Petroleum Products aboard Marine Vessels	10¢	10¢	ND

ND means that the Commission has not determined a rate for this period.

Final Rate Set by the Commission is the rate established at the conclusion of the proceeding as defined in AS 42.06.410(b).

KPL TRANSPORTATION SERVICE	SUSPENDED RATES FOR PERIOD JUNE 1, 1991 through OCTOBER 31, 1991 (in cents per barrel)		
	Filed Rate	Rate Collected	Final Rate Set By The Commission
From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	33¢	33¢	8.9¢
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	28.5¢	28.5¢	7.7¢
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	11¢	11¢	3.0¢
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	22¢	22¢	5.9¢
Loading Refined Petroleum Products aboard Marine Vessels	22¢	22¢	5.9¢

Final Rate Set by the Commission is the rate established at the conclusion of the proceeding as defined in AS 42.06.410(b).

KPL TRANSPORTATION SERVICE	SUSPENDED RATES FOR PERIOD **NOVEMBER 1, 1991 through FEBRUARY 11, 1993** (in cents per barrel)		
	Filed Rate Filed Rate	Rate Collected Collected Rate	Final Rate Set By The Commission Adjudicated Rate
From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, **to pipelines** of others at Nikiski Marine Terminal	33¢	15¢	8.9¢
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, **to pipelines** of others at Nikiski Marine Terminal	28.5¢	13¢	7.7¢
From tank trucks, Nikiski, Alaska, **to pipelines** of others at Nikiski, Alaska	11¢	5¢	3.0¢
Receiving crude petroleum **from marine tankers**, storing it, and delivering it **to pipelines** of others	22¢	10¢	5.9¢
Loading Refined Petroleum Products aboard **Marine Vessels**	22¢	10¢	5.9¢

Final Rate Set by the Commission is the rate established at the conclusion of the proceeding as defined in AS 42.06.410(b).

KPL TRANSPORTATION SERVICE	SUSPENDED RATES FOR PERIOD FEBRUARY 12, 1993 through JULY 31, 1993 (in cents per barrel)		
	Filed Rate	Rate Collected	Final Rate Set By The Commission
From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, to pipelines of others at Nikiski Marine Terminal	33¢	8.4¢	8.9¢
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, to pipelines of others at Nikiski Marine Terminal	28.5¢	7.3¢	7.7¢
From tank trucks, Nikiski, Alaska, to pipelines of others at Nikiski, Alaska	11¢	2.8¢	3.0¢
Receiving crude petroleum from marine tankers, storing it, and delivering it to pipelines of others	22¢	5.6¢	5.9¢
Loading Refined Petroleum Products aboard Marine Vessels	22¢	5.6¢	5.9¢

Final Rate Set by the Commission is the rate established at the conclusion of the proceeding as defined in AS 42.06.410(b).

KPL TRANSPORTATION SERVICE	SUSPENDED RATES FOR PERIOD **AUGUST 1, 1993 through MARCH 31, 1995** (in cents per barrel)		
	Filed Rate	Rate Collected	Final Rate Set By The Commission
From Swanson River Unit and Soldotna Creek Unit, Kenai Peninsula, **to pipelines** of others at Nikiski Marine Terminal	11.3¢	11.3¢	ND
From plants near Section 34, Township 8 North, Range 12 West, Nikishka Bay, Cook Inlet, **to pipelines** of others at Nikiski Marine Terminal	10.2¢	10.2¢	ND
From tank trucks, Nikiski, Alaska, **to pipelines** of others at Nikiski, Alaska	5.7¢	5.7¢	ND
Receiving crude petroleum **from marine tankers**, storing it, and delivering it **to pipelines** of others	8.5¢	8.5¢	ND
Loading Refined Petroleum Products aboard **Marine Vessels**	8.5¢	8.5¢	ND

ND means that the Commission has not determined a rate for this period.

Final Rate Set by the Commission is the rate established at the conclusion of the proceeding as defined in AS 42.06.410(b).

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Don Schröer, Chairman
James E. Carter, Sr.
Alyce A. Hanley
Dwight D. Ornquist
G. Nanette Thompson

In the Matter of the Tariff Revision, Designated as TL4-306, Filed by KENAI PIPE LINE COMPANY To Set Forth a Rate and Rules for Refined Petroleum Products and Its Filing in Compliance with Order P-85-1(5) To Show the Effect of the Tax Reform Act of 1986 on Rates	P-85-1
In the Matter of the Tariff Revision, Designated as TL7-306, Filed by KENAI PIPE LINE COMPANY for a Rate Increase and a Rule Change	P-91-2
In the Matter of the Tariff Revision, Filed July 29, 1993, by KENAI PIPE LINE COMPANY for an Emergency Rate Increase	P-93-2
In the Matter of the Tariff Revision, Designated as TL9-306, Filed by KENAI PIPE LINE COMPANY for a Rate Increase and a Rate Redesign	P-93-3

CERTIFICATION OF MAILING[1]

I, Joyce McGowan, certify as follows:

I am Administrative Clerk II in the offices of the Alaska Public Utilities Commission, 1016 West Sixth Avenue, Suite 400, Anchorage, Alaska 99501.

Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

On December 1, 1995, I mailed copies of

ORDER NOS. 42, 34, 18, and 14, respectively, entitled:

ORDER GRANTING MOTION TO RESPOND; DENYING MOTION TO STRIKE; DENYING INTERVENTION TO SHELL OIL COMPANY, SHELL WESTERN E&P INC., AND THE STATE OF ALASKA; ACCEPTING SETTLEMENT SUBJECT TO CONDITION; VACATING FINAL RATES PREVIOUSLY SET; SETTING FINAL RATES FOR DECEMBER 4, 1984, THROUGH MARCH 31, 1995; AND ALLOCATING COSTS IN AND CLOSING DOCKETS
(Issued November 9, 1995)

in the proceeding identified above to the persons indicated on the attached service list.

DATED at Anchorage, Alaska, this 1st day of December, 1995.

Joyce Mackinnon

Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

ENDNOTES

1. The entities listed on the "Service List" portion of the attached list are parties to the proceeding and must be served with all filings and Commission orders in this proceeding.

Entities on the "Courtesy List" are those who have expressed an interest in the proceeding but are not parties for the purpose of document service. The Commission sends copies of its decisions to the entities on the "Courtesy List" to keep them apprised of the progress of the proceeding.

Budget constraints limit the courtesy service of an order to one copy per entity/address. Please make copies of the order for other persons in your organization who might be interested in it. Additional copies may be purchased from the Commission at the rate established in its fee schedule. For further information, please contact the Commission's Records and Filings section by calling (907)276-6222 or by writing to: Alaska Public Utilities Commission, ATTN: Records & Filings, 1016 West Sixth Avenue, Suite 400, Anchorage, Alaska 99501.

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