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STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU 99801

November 15, 1977

M E M O R A N D U M

TO: Interested Legislators

FROM: Milt Barker MB
Fiscal Analyst
Legislative Finance Division

SUBJECT: TAPS Tariffs

Protests of proposed Trans-Alaska Pipeline tariffs averaging $6.20 per barrel were filed with the ICC by the State, the U.S. Department of Justice's Antitrust Division, the Arctic Slope Regional Corporation, and the ICC's own staff.

After reviewing these protests, as well as the ICC's Order (now overruled by the Supreme Court) suspending the proposed tariffs, I am forwarding sections from the ICC staff protest which seem to provide the most comprehensive discussion of the proposed rates. Section 7 (pages 23-32) covers the rate of return decision, the determination of which will have the largest impact on the tariff.

Also included from the ICC staff report is section 9 (pages 38-40) regarding some possible anti-competitive aspects of the pipeline's operation. Of course, as argued in other protests, a high tariff in and of itself is the greatest threat to future competition for North Slope leases and production.

MBB:pw
Enclosures

Before the

INTERSTATE COMMERCE COMMISSION

Effective Dates:	June 20, 1977	June 20, 1977	June 20, 1977
Tariff References:	BP Pipelines, Inc. ICC Nos. 1&2	Mobil Alaska Pipeline Co., ICC Nos. 1&2	Sohio Pipeline Co. ICC No. 742
Rates per Barrel:	635¢	631¢	616¢
Nature of Proposals:	Initial tariffs on petroleum moving from Prudhoe Bay, Alaska, to Valdez, Alaska.		

Effective Dates:	June 30, 1977	June 30, 1977	July 1, 1977
Tariff References:	Arco Pipe Line Co. ICC No. 1030	Exxon Pipeline Co. ICC Nos. 124 & 125	Amerada Hess Pipeline Corp., ICC Nos. 1&2
Rates per Barrel:	604¢	627¢	644¢
Nature of Proposals:	Initial tariffs on petroleum moving from Prudhoe Bay, Alaska, to Valdez, Alaska.		

PROTEST AND PETITION

OF THE BUREAU OF INVESTIGATIONS AND ENFORCEMENT

FOR SUSPENSION AND INVESTIGATION

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5. Temporary Rates Ranging from $4.54 to $5.00 for Individual Carriers are Justified and Should be Permitted on One Day's Notice

In the "Background" section of this Protest, we suggested that consistent with the absence of antitrust immunity, the six tariffs separately present the question of the appropriate interim rates pending the investigation into the cost and valuation of the pipeline. We, therefore, propose to recommend a group of six rates ranging from $4.54 to $5 that the Commission should permit to become effective on one day's notice, and to serve as the basis for its investigation into the cost and valuation issues.

Even if the Commission accepts all the carrier's original construction cost figures in this interim period pending the investigation, it should not allow any rates higher than presently needed to cover the reasonably estimated costs plus fair return. Temporary or interim rates as high as we here recommend are likely to be found too high once the Commission has investigated, among other things, the numerous cost overruns. Rates ranging for the individual companies from $4.54 to $5, therefore, will necessitate the inclusion of a refund provision in any order authorizing their filing.

There are five basic elements of the pipeline rates that must be considered before the Commission can decide whether to suspend the published rates or any others that may be filed, namely,

(a) Operating costs.

(b) Depreciation.

(c) Removal costs.

(d) Return on valuation.

(e) Federal and State income taxes.

Let us then briefly consider each one.

Operating costs. The carriers have proposed operating costs that average 93 cents per barrel. This figure compares to the following projected figures used in other published studies:

Mortada study[16]	78¢
Drexel-Burnham[17]	51¢
Wainwright[18]	73¢

16/ "The Determination of Equitable Pricing Levels for North Slope Alaskan Crude Oil" prepared for FEA by Mortada International, Dallas, Texas (November 1, 1976). A copy of Chapter IV of this Study is attached hereto as Appendix E for the information of the Commission. See pp. IV-19 and IV-23 of that Study, which refers to 52¢ for operations and an additional 26¢ for property taxes.

17/ "The North Slope: Paradise Lost? An Industry Analysis," Drexel Burnham & Co., Inc., April, 1976, Table II-B for 1978.

18/ "Petroleum Industry," Wainwright Securities, Inc., April 1, 1977, Table 10, or 40¢ for operations and 33¢ for property taxes.

The proposed operating costs per barrel assume a throughput of only 1.2 million barrels per day. Most studies we have seen reflect an increase to 1.6 million barrels by about 1980.[19/] Arco advises advises us that, (1) it uses a 4.3 year average flow for the initial tariff, and (2) it expects to attain 1.6 million barrels per day by mid-1980. For the first 4.3 years, Arco's average flow rate will be about 1.3 million barrels/day. Moreover, the carriers' average figure of 93¢/B requires investigation since it may reflect further cost overrun. For purposes of an interim rate only, we recommend that the Commission use the carriers' proposed figure of 1.2 million B/day, and operating expenses projected by each carrier.

Depreciation.[20/] The carriers propose average depreciation and amortization of 83¢ per barrel based on investment, excluding land, of $9.280 billion and a service life of 25 years. In later pages, we show that a 25-year life is too conservative, even for interim rates, and that the Commission should use not less than 27.5 years as the projected service life. For a service life of 27.5 years, the annual average depreciation and amortization is 77¢/barrel,[21/] which should then be apportioned to each carrier in accordance with its percentage of ownership.

19/ For example, see Mortada study, App. E hereto, at p. IV-20.

20/ Including amortization of overhead and capitalized interest during construction at 6 percent.

21/ ($9.280 billion ÷ 27.5 years) ÷ 438 million barrels.

Removal costs. The carriers report that they commissioned a study of the costs of removing the pipeline and restoring the surface. We have not seen this study, but it nevertheless raises certain conceptual questions that we later discuss. The carriers advise that the study projects a one-time cost, 25 years hence, of $1.049 billion, which some of them adjust for inflation. If amortized over 25 years, the annual average cost in 1977 dollars becomes 9.6¢ per/barrel. Consistent with our treatment of depreciation expense in this interim period, we recommend the use of a 27.5-year life, and hence amortize the removal costs in current dollars on the basis of 8.7¢/barrel,[22/] which also may be apportioned on the basis of percent ownership.

Return on valuation. The fair return on valuation standard to compensate both the debt and the equity holders in the pipeline carriers is now under review in Ex Parte No. 308 (Sub-No. 1). We recommend that those standards be explored as well in this proceeding in the context of the particular circumstances surrounding the construction of this pipeline.

We will later show that the very high rates exceeding $6 that are proposed here seem to reflect an irrational allowance of the entire return on valuation as a return solely for the stockholders. Only in this way can we understand the total returns of over $2 for equity and $1.59 for interest, which the carriers seem to propose.

22/ ($1.049 billion ÷ 27.5 years) ÷ 438 million barrels.

In the meantime, we recommend that the Commission employ a 10 percent return on valuation as it has historically been computed without prejudice to reconsidering the various elements of value that enter into the rate base computation. We recognize that the Commission has relied in the past on an 8 percent return on valuation for crude oil pipelines.[23] Use of that standard here, however, would limit the return on equity to less than 6 percent. A return on valuation of 10 percent comports with the results of recent studies we have seen on the TAPS initial tariff rates, as follows:[24]

	Tariff Rate (c/B) (1)	Returns for (¢/B) Debt (2)	Equity (3)	Total (4)	Implied Percent of Valuation (Col.4 ÷ 222.[25]
Mortada	450	157	72	229	10.3%
Drexel-Burnham	460	149	83	232	10.4
Wainwright	423	160	56	216	9.7

An original cost rate base would amount to about $9.205 billion, including $9.28 billion for improvements and $15 million for land, if we accept for present purposes the entire construction cost without adjustment for cost overruns. The

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[23] Minnelusa Oil Corp. v. Continental Pipe Line Co., 258 I.C.C. 41, 53-54 (1944).

[24] For references to the sources of these figures, see Appendix A hereto, p. 3.

[25] 2,225 ¢/B based on $9.747 billion ÷ 438 million B/yr.

valuation becomes $9.747 billion once reproduction cost and other elements of the valuation are included. Consequently, a 10 percent return is equivalent to an annual cost of 222¢/barrel.[26/]

Federal and State income taxes. For many years, the Commission has recognized only actual taxes, rather than imputed or "normalized" taxes in its rate cases. In the Williams case,[27/] it allowed normalized taxes. We recommend that the Commission use normalized taxes on an interim basis until the actual tax rates can be determined. The Commission should expressly recognize that such taxes will not be paid at least in the forseeable future. They, therefore, provide a substantial cushion in the interim rates that in themselves warrant the addition of a refund provision in the order.

"Normalized" taxes here refer to the statutory Federal rates of 48 percent and the State of Alaska rate of about 9.4 percent. Since the State tax is deductible for Federal purposes, the effective overall income tax rate on a normalized

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26/ ($9.747 billion x 10%) ÷ 438 million barrels. We do not mean to suggest that reproduction cost will increase the valuation once the original cost investigation has been concluded, or that the concept of reproduction cost will ultimately have any application here.

27/ Petroleum Products, Williams Brothers Pipe Line Co., Docket No. 35533, decided by the entire Commission on reconsideration December 3, 1976.

basis is 52.9 percent. The normalized tax computation follows:

1.	Return on valuation	222¢/B
2.	Less deductible interest	159
3.	Return for equity after taxes	63
4.	Equivalent percent (100% -52.9%)	47.1%
5.	Return for eguity.before taxes (line 3 ÷ line 4)	133.8¢/B
6.	Income taxes (line 5 - line 3)	70.8¢/B

Summary. Based on the foregoing, the average interim rate becomes $4.72 based on the following average costs:

Operating costs	93¢/B
Depreciation	77
Removal costs	9
Return on valuation	222
Income taxes	71
Avg. interim rate	432¢/B

The carriers have reported to the Bureau of Accounts that their interest costs in 1978 will be $695 million (see App. A hereto), or less than 159¢/B, leaving 63¢/B for equity. Since equity comprises less than 15 percent of capitalization, the equity component is about 318¢/B, [28] and the return for equity under the recommended interim rate will average a generous 20 percent after taxes.[29]

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[28] (15% x $9.295 billion) ÷ 438 barrels = 318¢/B.

[29] 63¢ ÷ 318¢ = 19.81%. The carriers' average cost of debt is 8.8 percent (i.e. $695 million ÷ (85%x$9.295 billion).

On the other hand, as we explained earlier, we do not recommend that the Commission employ an average interim rate. The maximum interim rates justified for the individual carriers are shown below:

Carrier	Percent Ownership (1)	Total Costs & Return [30] (2)	Max. Interim Rate (¢/B) (col. 2 ÷ col. 1) ÷ 438 mill.
Sohio	33.34%	$662.5	454
ARCO	21.00	446.3	485
Exxon	20.00	438.2	500
BP	15.84	318.5	459
Mobil	5.00	105.2	480
Union	1.66	36.3	499
Phillips	1.66	35.3	486
AmHess	1.50	30.2	460
Totals	100.00%	$2,072.5	473 [31]

Consequently, interim rates of $4.54 to $5.00 protect the carriers, prevents exorbitant returns in an interim period, and, when combined with a reasonable refund provision, also protects the shippers and other interests affected by the rates.

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[30] Appendix A, p. 1. Figures are in millions of dollars.

[31] Differs from $4.72 due to rounding.

6. Proposed Rates Exceeding $6.00 Should Be Suspended, Since the Carriers Greatly Overstate Costs

a. Carriers Overstate Depreciation

The carriers use a 25-year life to amortize the construction costs and capitalized interest associated with TAPS. For the original cost of $9.2 billion, including capitalized interest of $1.3 billion, the carriers project average depreciation and amortization expense of 84 cents per barrel.[32/] Since the carriers have understated the life of the pipeline by failing to use at least a 27.5-year life, they have overstated this expense.

In the FPC Recommendation of May 1, 1977, that commission found, as follows (at p. III-19):

> Natural recovery mechanisms (without the injection of produced water) should result in recovery of from 32% to 35% of the original oil in place (OOIP). This oil recovery should be achieved over a period of 25 to 30 years. (emphasis added)

The FPC relied on, among others the Van Poolin study (see Appendix B hereto) which describes a similar range.

One of the basic studies of oil and gas production presented on that record was Exhibit EP-53, a three-dimensional computer model, sponsored by El Paso Alaska Company. That stud

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32/ ($9.2 billion ÷ 25 years) ÷ 438 million barrels per year. The latter figure assumes an average flow-rate of 1.2 million barrels per day.

as described by the administrative law judge, estimated deliverability of oil from the main area over a period of 28 years.[33/]

The range of 25 to 30 years also corresponds to the so-called "Mortada Study" prepared for the Federal Energy Administration in 1976. In that study, FEA's consultant assumed 26.5 years for the life of TAPS for tariff computation.[34/]

Other studies have relied on much longer periods of life for TAPS. For example, in a financial study of TAPS by Wainwright Securities, Inc.[35/] earlier this year, the operating life of 35 years was used (at p. 40) to compute a tariff rate of $4.23 and TAPS' potential earnings. None of these studies increase service life to account for production in fields adjacent to the main one for the purposes of the tariff computations.

The carriers, therefore, have chosen the lowest pipeline service life over which to depreciate and amortize costs. We believe the mid-figure (i.e. 27.5 years) of the conservative range found by the FPC is more reasonable for purposes of the present initial rates than the low end chosen by the carriers. There are definite indications that such mid-figure is a minimum figure; and that following investigation, a longer life will be shown for TAPS.

33/ See Initial Decision in El Paso Alaska Company, Docket No. CP 75-96, Feb. 1, 1977, p. 29.

34/ Appendix E hereto, p. IV-19. The FPC also relied on this study. See Recommendation, p. III-B-1.

35/ Wainwright study, supra, at p. 40.

b. Carriers Overstate Removal & Restoration Costs

The same problem of useful life inheres in the carriers' proposed annual accrual to cover the projected one-time cost of at least $1.049 billion to remove the pipeline and related facilities and to restore the surface to its former state at the end of the service life of the pipeline, or what has also been termed TAPS' "negative salvage value." Assuming a 25-year life, the carriers seek to recover the one-time future expense over a period of 25 years, and hence seek to charge the shippers at least $41.96 million per year or 9.6 cents per barrel per year.

On the other hand, the carriers differ among themselves over how much should be amortized with at least one carrier claiming total removal and restoration costs, including 25 years of compounded inflation, of over $4 billion. The differing estimates submitted by the carriers are set forth below:

	($ Millions) Annual Amount of Removal Costs Reported to Bur. of Accts.	Percent of Total	Total Cost Assumed by Carrier (Col. 1 - Col. 2) x 25 Years
Amerada Hess	$ .629	1.50%	$ 1,048
Phillips	.6965	1.66	1,049
Sohio	14.0	33.34	1,050
Union Alaska	.697	1.66	1,050
BP	7.178	15.84	1,133
Arco	13.2	21.00	1,571
Exxon	16.4	20.00	2,050
Mobil	8.513	5.00	4,257

At the outset, we have doubts that all these monies will be used even in 1977 dollars, or that it is fair to begin collecting such sums so early. Under the Agreement and Grant of Right-of-Way between the Department of the Interior and the carriers of January 23, 1974, the carriers are obligated to rehabilitate property or a natural resource that has been "seriously damaged or destroyed" (para. 13A), which is yet to be defined. The carriers are not obligated even on termination to rehabilitate any area affected by an act of war or negligence or willful misconduct of others using the property (Id.).

The qualifications to the carriers' alleged liability to rehabilitate must obviously be taken into account in an investigation before shippers are required to provide full indemnity, and allowance must be made by the Commission for these important factors. In such matters, it would not be consistent with shipper interests to resolve all doubts in favor of higher tariff rates.[36] The interim rates in the meantime should reflect no greater amortization than the $1.049 billion over 27.5 years.

36/ See Bebchick v. Public Utilities Commission, 318 F.2d 187, 192-94 (D.C. Cir. 1963), cert. denied, 373 U.S. 913, involving a track removal and repaving obligation of a bus company.

7. Proposed Rates Exceeding $6.00 Should Be Suspended Since the Carriers Overstate Their Revenue Need

We have reproduced in Appendix A, p.2, hereto the expense figures supplied to us by each of the pipeline carriers. We have not received actual costs of equity figures. Nevertheless, we are convinced that in no case would the total expense column, including return, reach the over six-dollar tariff rates that are the subject of this protest.

We must surmise how the carriers reach such high tariff rates. We need not look long, however, for it seems the parent companies have represented to the FPC that this Commission will allow the carriers' equity holders to retain the entire return on valuation, and that interest expense must be accounted for separately as an "operating expense."

For example, the parent companies of these carriers represented to the FPC in the recently concluded gas pipeline case that the ICC would generously allow them 30 percent returns on equity, as follows:[37]

> The only comparable project of the size and complexity discussed herein that has received private financing is the Alyeska oil pipeline. If that line receives the usual ICC treatment

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37/ FPC Recommendation, supra, at p. XII-45. The FPC allowed 18% on equity, after taxes, which it reduced to 11% if cost overruns should become excessive.

> of allowing a 7-8 percent rate of return after taxes and interest on ICC valuation (i.e. total assets), and a 75/25 debt to equity ratio is assumed, the after-tax return on equity would be in the 28-32 percent range. (emphasis theirs).

The FPC refused to accept such an expectation as any reasonable estimate of the cost to attract capital to the pipeline industry:38/

> Since, however, the major consideration of the oil producers, who were the ones to finance the oil pipeline, was to get the oil to market, it is difficult to draw any conclusions regarding the rate of return on their pipeline investment they "required" in order to finance it.

The FPC considered instead the actual profitability and financial structure of the integrated petroleum companies. It found that in the 1966-1975 period on average the companies earned 11.8 percent after-tax on equity, and during the three-year period 1973-1975, earned an average after-tax return on equity of about 14:8 percent.39/

Aside from a bare table of figures in the recent Williams Brothers case, 40/ where the matter was not discussed, we fail to find any other reported pipeline rate case that awards the entire return on valuation to the equity holders of the pipeline. On the contrary, we find indications that "the usual ICC treatment" of this matter is to allow the return on valuation

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38/ Id.

39/ Id. We have attached as Appendix F hereto the Chase Manhattan Bank financial statistics for the group of 28 petroleum companies on which the FPC relied (i.e. App. XII-A of the Recommendation).

40/ Docket No. 35533, Petroleum Products, Williams Brothers Pipe Line Company, supra, esp. at p. 16.

to cover the pipeline's total cost of capital, that is, both long term interest and all payments to stockholders.

For example, in Reduced Pipe Line Rates and Gathering Charges, 243 I.C.C. 115 (1940), the Commission on its own motion entered into a general investigation in 1934, which, as subsequently broadened, included all the rates, rules and practices of 37 carriers by pipe line. The Commission served the respondents with a questionnaire requiring the submission of financial, property and rate data for a 5-year period; later years were added in the reopened proceeding.

For the year 1935, the last full year for which the Commission had data, it computed the excess earnings of the carriers over an 8 percent return on value in a seven-column appendix (at p. 148). The columns were headed as follows:

1. Transportation revenue
2. Transportation expense including depreciation and taxes.
3. Earnings or excess of revenue over expense.
4. Value of property used.
5. Return on value.
6. Earnings needed to return 8 percent on value.
7. Excess actual earnings over 8 percent return.

It is significant here that "transportation expense" (col. 2)

excluded interest, which was to be covered by "earnings or excess of revenue over expense" (col. 3) and hence by the return on value (col. 5). To show that this was in fact the Commission's method of calculation, we have recomputed the "transportation expense" figures in the Reduced Rates table for 5 carriers from reported figures for 1935 that are known to exclude interest.[41] They equal the expense figures that the Commission relied on in Appendix D.

Pipeline Co.	Interest on long-term debt	Transp. Expense[42] (excluding interest)			Transp. Exp. in App. D
		Operating	Taxes	Total	
(1)	(2)	(3)	(4)	(5)	(6)
Arkansas Pipe Line Co.	24	219	120	339	339
Gulf Pipe Line Co. of Pa.	133	971	760	1,731	1,731
Pure Transportation Co.	1,086	1,443	621	2,064	2,064
Shell Pipe Line Corp.	1,208	7,157	1,876	9,003	9,034
Tide-Water Pipe	10	486	181	667	667

Accordingly, the long-standing practice of the Commission in fact has been to include interest as an element of the return on valuation for pipelines.

It cannot logically be otherwise. The rate base includes the entire investment in used and useful property; and the rate of return is developed from the costs of the entire capital devoted to the enterprise. The "capital costs of the business...

41/ See Tranport Statistics, 1935, p. S-161. The figures for three other carriers are impossible to reconcile with the Appendix D data; the figures of at best one other carrier include interest.

42/ Id.

include service on the debt and dividends on the stock."[43] As Prof. Westmeyer has succinctly stated:[44]

> In other words, a fair return must be sufficient to enable the railroad industry [or other mode of carriers] to maintain its credit by making regular payments at acceptable rates of interest on its fixed obligations, and if there is any expectation of financing improvements by the sale of stock, an acceptable rate of dividends must be paid as well.

It appears that TAPS will be capitalized with about 15 percent equity and 85 percent debt. Since a 10 percent return on valuation is equivalent to 222¢/B, and 15 percent of the original cost is equivalent to 318¢/B,[45] the allowance of the entire return on valuation to the stockholders means an effective return on equity of 70 percent.[46]

It is true that in 1941 most of the owning companies signed a consent decree with the Department of Justice placing a restriction on dividends of 7 percent of valuation.[47] In 1957 the Department of Justice brought a suit contending that the carriers' payment of 7 percent of valuation to their stockholders did not result in a "fair" dividend. The Supreme Court held that, nevertheless, the parties to the decree

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43/ Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944).

44/ Westmeyer, Russell E., Economics of Transportation, Prentice-Hall, Inc., p. 208 (1956).

45/ (15% x 9.295 billion) ÷ 438 million B/yr.

46/ 222¢ ÷ 318¢ = 69.8%

47/ United States v. Atlantic Refining Co., C.A. No. 14060, D.D.C. decided December 23, 1941.

had so agreed, and the Court could not read the decree differently,[48/]

> simply because another reading might seem more consistent with the Government's reason for entering into the agreement in the first place.

As we next show, (1) the dividend restriction was worded the way it was apparently because the pipeline industry in 1940 had virtually no long term debt, and (2) that with so much debt capital having replaced the equity capital of the carriers, a dividend restriction now provides no standard for a fair return.

In Appendix G hereto we have reproduced Table 6 from the Verified Statement of David L. Jones, an economist and witness for this Bureau in Ex Parte No. 308, Valuation of Common Carrier Pipelines. The last column of that table shows that in 1940, the funded debt of the oil pipeline industry was merely 10 percent of total capitalization. Consequently, in 1941, the Department no doubt believed that in those circumstances a dividend restriction of 7 percent of valuation provided an effective limitation on both earnings and payout, although worded only in the form of a restriction on payout. It apparently took the industry about five years to discover that a higher debt/equity ratio would permit their lawfully circumventing the decree.

48/ United States v. Atlantic Refining Co., 360 U.S. 19, 24 (1959).

Appendix G shows that by the mid-forties the industry began to shift from a low debt/equity ratio to a high one. In this way, the oil companies could reduce equity investment and convert an overall 7 percent return, that resulted from the payout restriction, to a much higher return on equity.

For example, let us assume that in 1940 the valuation was equal to capitalization. The changes that occurred in the debt/equity ratio over the years produced the following increases in the return on equity in the absence of any effective protests or complaints before this Commission:

	Capitalization		Effective Return on
Year	Percent Debt	Percent Equity	Equity at 7% of Valuation
1940	10%	90%	7.7%
1950	64	36	19.4
1960	73	27	25.9
1970	82	18	38.9
1975	93	7	100.0

The consent decree has been treated as purely a dividend restriction by the pipeline companies, and exploited to produce large returns on equity. The consent decree payout limitation is clearly no standard for just and reasonable earnings on equity, and should not be followed by this Commission in this proceeding.

The Commission should not accept, even on a temporary basis, rates like those proposed in the subject tariffs that are premised on granting the entire return on valuation to the carriers' equity holders.

9. Rules and Regulations in the Proposed Tariff May Be Unreasonable and Anti-Competitive

Several of the rules and regulations in the proposed tariffs may violate prior holdings of this Commission, or are otherwise unlawful, and should be investigated.

Minimum Tender. The BP tariff requires the tender of at least 30,000 barrels over a thirty-day period from one shipper consigned to one consignee and one destination (Rule 6). The Amerada Hess tariff requires a minimum tender of 5,000 barrels (Rule 4); and the Sohio tariff, 10,000 barrels (Rule 25). The minimum of 10,000 barrels may be met by two or more shippers to a common consignee under the Mobil Alaska tariff (Rule 19).

In Reduced Pipe Line Rates and Gathering Charges, 243 I.C.C. 115, 136 (1940), the entire Commission found that a 10,000-barrel lot is as large as it could find reasonable to serve as a minimum tender, and that any higher minimum would be unreasonable.[56/] The Commission noted that the large refiners can meet a large minimum-tender requirement "without difficulty" (Id.); but smaller refiners could have difficulty.[57/]

56/ Cf. Restrictions on Service by Motor Common Carriers, 126 M.C.C. 303, 324-25 (1977), proscribing unreasonable minimum weight requirements.

57/ The decision on this point was later affirmed on further hearing (272 I.C.C. 375, 382-83 (1948).

Minimum Delivery. Unlike the other pipelines, the ARCO tariff (ICC No. 1030) provides: "Carrier will not make a delivery of less than 100,000 Barrels of Petroleum at destination point on its Pipeline except when necessitated by dispatching contingencies." The provision excludes using a smaller vessel, if the larger one in unavailable. The Commission in the Reduced Rates case characterized a similar rule as just another form of minimum shipment (272 I.C.C. at 382).

Carriers' Liability. All the carriers proposed rules limiting their liability for, among other things, loss of petroleum and failure to receive or deliver petroleum.[58/] These provisions seem inconsistent with the requirements of Section 20(11) of the Act, 49 U.S.C. §20(11), rendering a common carrier liable for full actual loss, damage or injury and declaring any limitation of liability "unlawful and void."

Penalty Provisions. Rule 45 of Sohio's ICC No. 742, provides a series of penalties for the shipper's violation of the carrier's rules for efficient scheduling and use of the Valdez Terminal. For example, in paragraph (E), the rule imposes a 20-cent per barrel penalty on those barrels

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58/ Amerada-Hess, ICC No. 2, Rules 15-17; BP's ICC No. 1, Rules 16-18; ARCO's ICC No. 1030, Rules 14-15; Sohio's ICC No. 742, Rules 60, 65 and 70; Mobil Alaska's ICC No. 1, Rules 11-13.

"by which Carrier's Working Inventory exceeds the Carrier's Working Capacity." Then in paragraphs (G) and (H) 5-cent penalties are provided. The others have similar provisions.[59/]

Demurrage. BP's ICC No. 1, Item 11, provides for heavy demurrage charges ($2,000 per hour) for vessels operating at Valdez; the same provision is found in Amerada Hess' ICC No. 2, Item 8.

These rules and others should be included in the investigation order.