

Public Version

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

Sinclair Oil Corporation)
v)
Rocky Mountain Pipeline System, LLC)
& BP Pipelines (North America), Inc.)

Docket No. OR02-6-000



**PREPARED DIRECT & ANSWERING TESTIMONY OF
PATRICK R. CROWLEY**

**WITNESS FOR THE STAFF OF THE
FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF ADMINISTRATIVE LITIGATION**

**Washington, DC
December 5, 2003**

**Prepared Direct & Answering Testimony of
Patrick R. Crowley**

Summary

Mr. Crowley addresses the attempt to test the justness and reasonableness of the tariff rates that were used for the transportation of crude oil on the Western Corridor during the period April 15, 2000 through April 15, 2002.

Mr. Crowley criticizes the existing rates as unsupported by cost information specific to the services for which the rates are intended.

Mr. Crowley describes the cost information necessary to develop a cost of service consistent with the Commission's Order 154-B requirements and the lack of such information forthcoming from BP Pipelines.

Mr. Crowley comments that there is a lack of information available to assess the validity of the initial rates.

Mr. Crowley calculates an alternative cost of service and derives approximate reparations due Sinclair assuming Sinclair paid the full tariff rate.

Mr. Crowley discusses the conflicting evidence regarding whether Sinclair in fact paid the stated tariff rate.

**United States of America
before the
Federal Energy Regulatory Commission**

Sinclair Oil Corporation)
v) Docket No. OR02-6-000
Rocky Mountain Pipeline System, LLC)
& BP Pipelines (North America), Inc.)

**Prepared Direct & Answering Testimony of
Patrick R. Crowley
Witness for the Trial Staff of the
Federal Energy Regulatory Commission**

1 **Q. Please state your name and business address.**

2 A. My name is Patrick R. Crowley. My business address is 888 First Street, N.E.,
3 Washington, D.C. 20426. I am employed by the Federal Energy Regulatory Commission
4 (FERC or Commission) as an Economist in the Office of Administrative Litigation.

5

6 **Qualifications**

7 **Q. Please summarize your qualifications.**

8 A. I graduated from DePaul University in Chicago, Illinois, in 1976 with a Bachelor
9 of Arts degree in Economics. In 1978, I received a Master of Arts degree in Economics
10 from DePaul University. I began work at the Commission in 1979 as an Industry

1 Economist in the Pipeline Rates Division of the Office of Pipeline Rates. As an expert
2 witness with the Staff litigation team from 1979 to 1992, I prepared pipeline depreciation
3 studies, long-term forecasts of natural gas reserves and production, mortality studies of
4 plant retirements, cost behavior studies for pipeline facilities, and Mcf/mile studies. From
5 1992 through 1994, I worked on two teams shepherding the restructuring of major gas
6 pipeline companies. From 1994 through 1998, I worked on the advisory side of the
7 Commission where I prepared reports for Commission orders regarding proposals for
8 revised tariff terms; new services, rate designs, and tariff rates; and a wide variety of
9 utility reports and cost studies. In 1998, I returned to the litigation side of the
10 Commission where I now work on electric utility, natural gas and oil pipeline rate cases
11 and complaint cases.

12 **Q. Have you previously filed testimony before the FERC?**

13 A. Yes, I filed testimony before the Commission in the following cases:

14 Black Marlin Pipeline Company, Docket No. RP81-67-000;
15 Tarpon Transmission Company, Docket No. RP84-82-000;
16 National Fuel Gas Supply Corporation, Docket No. RP86-136-000;
17 Pacific Gas Transmission Company, Docket No. RP87-62-000;
18 Sea Robin Pipeline Company, Docket No. RP88-181-000;
19 Natural Gas Pipeline Company of America, Docket No. RP88-209-000;
20 Paiute Pipeline Company, Docket No. RP88-227-000;
21 Southwest Gas Storage Company, Docket No. RP89-60-000;
22 Montana Power Company, Docket No. ER98-2382-000;
23 Big West Oil Co. & Chevron Products Co. v Anschutz Ranch East Pipeline Co.
24 & Express Pipeline Partnership, Docket No. OR02-1-000 & OR02-3-000;
25 Big West Oil Co. & Chevron Products Co. v Frontier Pipeline Inc.
26 & Express Pipeline Partnership, Docket No. OR02-2-000 & OR02-4-000;

1 Boston Edison Company, Docket No. ER01-890-000;
2 Avista Corporation & Avista Energy, Docket No. EL02-115-000;
3 Ameren Services Company, Docket No. ER02-929-000.
4

5 **Preliminary Matters**

6 **Q. What is the purpose of your testimony?**

7 A. The purpose of this testimony is to address my attempt to test and/or determine the
8 justness and reasonableness of the tariff rates that were used or should have been used for
9 the transportation of crude oil on the Western Corridor System (Western Corridor) during
10 the period April 15, 2000 through March 1, 2002, and the proper reparations to be paid
11 consequent thereto.

12 **Q. In addition to your written testimony in this case, are you sponsoring any**
13 **supporting exhibits?**

14 A. Yes. I am sponsoring Exhibit No. S-2, which is a set of data responses reflecting
15 the paucity of data made available by the respondent regarding cost of service data.

16 **Q. What issues did the Commission set for hearing in this case?**

17 A. The Commission's February 4, 2003 order (102 FERC ¶ 61,117) found that
18 Sinclair Oil Company (Sinclair) raised disputed and material issues concerning the
19 justness and reasonableness of the rates charged by BP Pipelines (North America) Inc.
20 (BP Pipelines) and Rocky Mountain Pipeline System LLP (Rocky Mountain), and
21 whether the pipeline's actions with respect to transportation on the Western Corridor

1 unlawfully conferred undue preference on other shippers or purchasers of crude oil. 102

2 FERC ¶ 61,117 at P 31

3 **Q. Does BP Pipelines still own a portion of the Western Corridor?**

4 A. No. BP Pipelines sold its interest in the Western Corridor to Rocky Mountain on
5 March 1, 2002. Prior to that, the Western Corridor had been owned in undivided interest
6 by Conoco Pipeline Company and Amoco Pipeline Company, which was acquired by BP
7 Pipelines on April 1, 2001.

8 **Q. Is the question of potential undue preference conferred by Amoco Pipeline
9 Company and/or BP Pipelines upon certain shippers still an issue in this case?**

10 A. This issue appears to have fallen by the wayside. Sinclair raised this issue in its
11 Complaint (P 10 at page 5), where Sinclair alleged that Amoco Pipeline Company and/or
12 BP pipelines “consistently established rates that benefited traffic to Billings, MT and
13 Guernsey, WY and discouraged traffic to Casper, WY.” However, no support was
14 provided in the original complaint to substantiate the allegations. Sinclair subsequently
15 filed an Amendment to Complaint on December 9, 2002 in which Sinclair alleged undue
16 preferential treatment by Rocky Mountain for certain shippers of Bow River heavy crude,
17 which allegedly is more costly to transport, by transporting that heavy crude at the same
18 rate as the rate for light crude. However, Sinclair and Rocky Mountain appear to have
19 settled their differences. Consequently, this discrimination issue no longer appears
20 relevant to this case at this time.

1 **Q. What is the time period relevant to the question of reparations in this case?**

2 A. Sinclair filed its Complaint on April 15, 2002 with respect to Amoco Pipeline
3 Company's tariff FERC 2519, BP Pipelines tariff FERC 42, and BP Pipelines tariff FERC
4 90. Interstate Commerce Act § 16(3)(b) permits a complaint challenging the justness and
5 reasonableness of a tariff rate to track back two years from the date of the filing for
6 calculation of possible damages. However, since BP Pipelines transferred its interest in
7 the Western Corridor to the current owner, Rocky Mountain, effective March 1, 2002, the
8 potential refund period here is April 15, 2000 through March 1, 2002.

9 **Q. What is the Western Corridor System?**

10 A. The Western Corridor System is a set of three connected crude oil pipelines that
11 carry crude oil from southern Alberta, Canada to destinations in Montana, Wyoming, and
12 Colorado, from which the oil is carried to refineries in Montana, Wyoming, Colorado,
13 Utah, and Illinois. Specifically, the Glacier Pipeline is a set of parallel lines running from
14 the Canadian Border to Billings, Montana. Big Horn Pipeline runs from Elk Basin,
15 Wyoming to Casper, Wyoming and Guernsey, Wyoming. Beartooth Pipeline, built in
16 1996, connects the Glacier pipeline with the Big Horn Pipeline.

17

1 **List of Entities**

2 **Q. Who are the entities that will be discussed in your testimony?**

3 A. There are a number of entities that will appear throughout my testimony, many
4 with similar names. They include three independent companies and numerous affiliates
5 of BP Pipelines:

6 Sinclair Oil Corporation (Sinclair), the complainant and a shipper on the Western
7 Corridor via the Amoco Production Company and BP Canada Trading Company Ltd;

8 Rocky Mountain Pipeline System LLC (Rocky Mountain), a respondent, owned by
9 Pacific Energy Group LLC with whom Sinclair has settled, acquired the Western Corridor
10 from BP Pipelines (North America) Inc. in 2002;

11 Conoco Pipeline Company (Conoco) owns and operates segments of the Western
12 Corridor in undivided interest;

13 Koch Oil Company, a major producer of Canadian crude oil in Alberta, signed a letter of
14 intent to use the Amoco Pipeline Company initial rates;

15 BP Pipelines Affiliates:

16 Western Corridor System (Western Corridor), a United States crude oil pipeline system
17 made up of three pipeline segments, Glacier, Beartooth, and Big Horn, owned in
18 undivided interest by BP Oil Pipeline Company and Conoco Pipeline Company;

1 Glacier Pipeline System (Glacier), a pipeline segment of the Western Corridor running
2 from the Canadian Border to Billings, Montana owned by BP Oil Pipeline Company
3 (20%) and Conoco Pipeline Company (80%), and operated by Conoco Pipeline Company;
4 Beartooth Pipeline System (Beartooth), a pipeline segment of the Western Corridor
5 running from Billings, Montana to Elk Basin, Wyoming, owned by BP Oil Pipeline
6 Company (50%) and Conoco Pipeline Company (50%), and operated by BP Oil Pipeline
7 Company;
8 Big Horn Pipeline System (Big Horn), a pipeline segment of the Western Corridor
9 running from Elk Basin, Wyoming to Guernsey, Wyoming, owned by BP Oil Pipeline
10 Company (57.6%) and Conoco Pipeline Company (42.4%), and operated by BP Oil
11 Pipeline Company;
12 BP Pipelines (North America) Inc. (BP Pipelines), a Respondent whose subsidiary, BP
13 Oil Pipeline Company, owned and operated segments of the Western Corridor during a
14 portion of the time period in question in this case;
15 Amoco Pipeline Company owned and operated segments of the Western Corridor during
16 a portion of the time period in question in this case until it was acquired by BP Pipelines;
17 Amoco Production Company, a Tulsa, Oklahoma company, producer of crude oil which
18 produced and sold Canadian oil to Sinclair in Alberta, Canada;

1 BP Canada Trading Company Ltd (BP Canada), a producer of crude oil in Alberta,
2 Canada, successor to Amoco Production Company for Amoco's interests in Canadian
3 crude oil production;
4 Aurora Pipeline (Aurora), a pipeline owned by BP Canada Energy Resources Company at
5 the south end of the Rangeland Pipeline system transporting crude oil from the Rangeland
6 system in Canada to the U.S. Border, the only entry point into the Western Corridor;
7 Rangeland Pipeline System (Rangeland) is a "single shipper" private pipeline in Alberta,
8 Canada owned by Amoco Canada Petroleum Company Ltd., connecting several pipeline
9 systems to the Aurora Pipeline and thence to the U. S. market.

10

11 **Tariff Rates**

12 **Q. What were the Amoco Pipeline Company/BP Pipelines tariff rates during the**
13 **period in question?**

14 A. The Amoco Pipeline Company/BP Pipelines tariffs for transportation of crude oil
15 from the Canadian border to the refineries in Wyoming and Colorado were provided by
16 BP Pipelines in response to Sinclair Data Request No. 16. In general, the stated tariff
17 rates for local and proportional shipments to Casper and Billings, WY, and Guernsey, CO
18 were as shown on the table below.

19

1

Tariff	Effective date	Origin	Destination	Rate
FERC 2457 (Amoco)	Feb 16, 2000	Canadian Border 20% add for light sour	Casper, WY Billings, WY	\$1.7160/BBL
		“	Guernsey, WY	\$1.7680/BBL
FERC 2519 (Amoco) (BP) FERC 42 (BP) FERC 90	Jul 1, 2000	Canadian Border 20% add for light sour	Casper, WY Billings, WY	\$1.7290/BBL
		“	Guernsey, WY	\$1.7814/BBL
Cancellation	Mar 5, 2002			

2

3 **Q. How were the tariff rates for the Western Corridor established?**

4 A. BP Pipelines states ¹ that BP Pipelines (or its predecessor Amoco Pipeline
5 Company) filed its initial rates according to Part 342.2(b) of the Commission’s
6 regulations. Part 342.2 states:

7 A carrier must justify an initial rate for new service by:
8 (a) Filing cost, revenue and throughput data supporting such rate as
9 required by Part 346 of this chapter; or
10
11 (b) Filing a sworn affidavit that the rate is agreed to by at least one
12 non-affiliated person who intends to use the service in question,
13 *provided* that if a protest to the initial rate is filed, the carrier must
14 comply with paragraph (a) of this section.
15

¹ “Answer of BP Pipelines(North America) Inc. to Motion of Complainant Sinclair Oil Corporation for Summary Disposition,” filed August 20, 2003, (page 15-17).

1 Inasmuch as the initial rates were justified under part (b) of the regulations, there was no
2 cost, revenue, or throughput data submitted to support the rates.

3 **Q. After the initial rates were established, was the rate increases incorporated in**
4 **Amoco Pipeline Company's tariff FERC 2457 supported by a cost of service**
5 **consistent with the requirements of Part 342.4 of the Commission's regulations?**

6 A. No. Part 342.4(a) requires that a "cost of service rate" (which is what Amoco
7 Pipeline Company was seeking at the time) be supported by a study based on the cost of
8 operating the specific service covered by the tariff. Part 342.4(a) states:

9 (a) *Cost-of-service rates.* A carrier may change a rate pursuant to this
10 section if it shows that there is a substantial divergence between the actual
11 costs experienced by the carrier and the rate resulting from application of
12 the index such that the rate at the ceiling would preclude the carrier from
13 being able to charge a just and reasonable rate within the meaning of the
14 Interstate Commerce Act. A carrier must substantiate the costs incurred by
15 filing the data required by Part 346 of this chapter. A carrier that makes
16 such a showing may change the rate in question, *based upon the cost of*
17 *providing the service covered by the rate*, without regard to the applicable
18 ceiling under §342.3. [Emphasis added]
19

20 Nevertheless, the Amoco Pipeline Company submission in Docket IS99-268-000 in 1999
21 to support the rate increase was a corporate wide analysis of revenue requirements, which
22 was then simply allocated down to most of its tariffs on file in order to justify an across-
23 the-board increase in all its indexed rates. Therefore, to my knowledge, there has never
24 been a cost of service study, *based upon the costs of providing the service covered by the*
25 *tariffs* for the Western Corridor, either performed or filed in support of tariff rates for the

1 Western Corridor. The 1999 total-company cost of service study noted above contained
2 no information that was specific to the Western Corridor costs of operation, depreciation
3 life expectancies, rate of return risk characteristics, or the trended original cost of the
4 investments specific to the Western Corridor interests. The 1999 study simply calculated
5 a nationwide revenue requirement for Amoco Pipeline Company and allocated that cost
6 increase among 65 Amoco Pipeline Company tariffs without regard to the costs specific
7 to each service underlying the various tariffs. Consequently, the rates in tariff FERC
8 2457 cannot be said to represent *cost of service rates* developed under Part 342.4 of the
9 Commission's regulations.

10

11

Just & Reasonable Rates

12

Cost of Service

13

**Q. What elements are necessary for the development of a cost of service that
14 comports with the Commission's Order 154-B requirements?**

15

A. An oil pipeline cost of service is composed of four major components: 1) a return
16 on the trended equity rate base, 2) a return of the rate base through depreciation, 3)
17 operating expenses, and 4) taxes. As noted above, these elements should correspond to
18 the specific facilities and operations for which the tariff is designed.

19

20

Equity Rate Base

1 **Q. How do you determine the return on equity rate base component?**

2 A. The return on equity rate base component is developed through a complex
3 calculation that builds a rate base composed solely of the equity portion of the net plant in
4 service. The methodology requires that the “starting rate base” (*i.e.*, generally the initial
5 investment in the facilities) is written-up according to a formula. Specifically, the starting
6 rate base is multiplied by an equity ratio and then multiplied by the inflation factor. The
7 product of that computation is the adjustment for the following year's rate base to reflect
8 the write-up of that equity rate base. It is referred to as "deferred income," and represents
9 the value of the inflationary portion of the return component that ultimately should be
10 recovered by the equity holders. This deferred income is amortized over the remaining
11 life of the pipeline and each year's amortization is added to the amortizations of the prior
12 years' deferred incomes, and included in the cost of service.

13 **Q. Were you able to calculate the starting rate base and deferred incomes for the**
14 **Western Corridor?**

15 A. No. The detailed information on plant-in-service and equity rate base necessary to
16 develop the trended original cost rate base for a Commission mandated Order 154-B cost
17 of service for the Western Corridor segments owned by Amoco Pipeline Company and
18 BP Pipelines was not provided by BP Pipelines.

19 **Q. Have you sought to obtain such information from BP Pipelines?**

1 A. Yes. Both Sinclair and FERC Trial Staff have attempted, without success, to
2 obtain the rudimentary information needed to develop a standard Order 154-B oil pipeline
3 trended-original-cost rate base – elements that are absolutely necessary to develop the
4 cost of service consistent with the Commission’s Order 154-B. For example, in Data
5 Request FERC-13,² FERC Staff sought data specific to the starting rate base, annual plant
6 additions, annual plant retirements, and accumulated depreciation specific to the Western
7 Corridor operations. A pipeline’s starting rate base is its investment in plant and
8 equipment in the pipeline segment in question, as adjusted by the valuation processes up
9 through 1983. In this case the starting rate base would be needed for three pipeline
10 segments: the Glacier, Beartooth, and Big Horn systems. BP Pipelines’ response was
11 that the requested information does not exist for the Western Corridor. It is simply
12 unfathomable that Amoco/BP does not have records capable of showing its investments
13 in these systems, especially since it appears that BP Pipelines does maintain cost
14 information specific to cost centers and profit centers designated as “Beartooth,” “Big
15 Horn,” and “Glacier.”³ BP Pipelines sold its interests in the three lines just one year ago
16 to Rocky Mountain – surely some estimate of the cost of these lines must have been

² See, Exhibit No. S-2, page 2 and 3 of 33, Response to Data Request FERC-13.

³ See, Exhibit No. S-2, Page 4 of 33, Response to Data Request FERC-8 and Page 5 through 8 of 33, Response to Data Request FERC-9.

1 factored into the sales price. Sinclair received a similar response to its Data Request No.
2 56,⁴ which requested the starting rate base for the Western Corridor.

3

4 **Depreciation**

5 **Q. Have you calculated a depreciation component for the cost of service for**
6 **Amoco and BP Pipelines' interest in the Western Corridor?**

7 A. No. The depreciation components of a cost of service relevant to the specific
8 conditions of the Western Corridor were not provided by BP Pipelines.

9 **Q. Have you sought to obtain such information from BP Pipelines?**

10 A. Yes, but to no avail. The depreciation components of a cost of service relevant to
11 the specific conditions of the Western Corridor require a breakout of the plant in service
12 and accumulated depreciation for the specific facilities in question to ensure that the
13 depreciation rates are, as mandated by Section 9 of the Interstate Commerce Act, "proper
14 and adequate." In Data Requests FERC-31 and FERC-32,⁵ FERC Staff sought plant
15 balances, accumulated depreciation balances, and annual plant additions and retirements.
16 BP Pipeline's response was to refer to the FERC Forms 6 for the relevant years, which
17 lump the entire nationwide BP Pipeline system into one undifferentiated grouping. BP

⁴ See, SIN Exhibit No. 2, Page 66 of 93, Response to Sinclair Data Request No. 56.

⁵ See, Exhibit No. S-2, Page 9 and 10 of 33, Response to Data Request FERC-31 and Page 11 of 33, Response to Data Request, FERC-32 (FERC Forms 6 not included).

1 Pipeline well knows that the FERC Form 6 is not designed or able to answer questions
2 related to individual segments of its nationwide pipeline operations.

3

4 **Operating Costs**

5 **Q. Have you calculated the operating costs component for the cost of service for**
6 **Amoco Pipeline Company and BP Pipelines' interest in the Western Corridor?**

7 A. No. The detailed information on operating costs was not provided by BP
8 pipelines in a manner conducive to developing an Order No. 154-B cost of service.

9 **Q. Have you sought to obtain such information from BP Pipelines?**

10 A. Yes, but again to no avail. FERC Staff sought cost data relevant to Amoco
11 Pipeline Company and/or BP pipeline's interest in the Western Corridor through a
12 number of data requests. For example, in Data Request No. FERC-25,⁶ FERC Staff
13 sought workpapers that could support a cost of service for the Amoco Pipeline Company
14 /BP Pipelines interest in the Western Corridor. BP Pipeline's response was a reference to
15 Sinclair Data Request No. 73, which sought cost justification for the BP Pipeline system
16 from the Canadian border to Rangely Colorado – a collection of lines longer than the
17 Western Corridor. In Data Request No. FERC-20,⁷ FERC Staff sought operation and

⁶ See, Exhibit No. S-2, Page 13 of 33, Response to Data Request FERC-25.

⁷ See, Exhibit No. S-2, Page 14 of 33, Response to Data Request FERC-20 (spreadsheets omitted).

1 maintenance expenses relevant to the Western Corridor by cost center. Here, BP
2 Pipelines was responsive, providing 44 pages of operation and maintenance account
3 records for the twenty-four month period for the Western Corridor cost centers.
4 However, it is not clear how these account entries correspond to FERC accounts
5 necessary to develop an Order 154-B cost of service.

6 In Data Request No. FERC-28,⁸ FERC Staff sought Amoco Pipeline Company
7 and/or BP Pipelines' annual accumulated deferred income taxes related to the Western
8 Corridor or profit center(s) during the relevant period. BP Pipelines responded that
9 "Amoco/BP did not and does not maintain the requested information on an individual
10 segment basis; it is maintained on a total company basis only." Similarly, in Data
11 Request No. FERC-29,⁹ FERC Staff sought Amoco Pipeline Company and/or BP
12 pipelines' working capital, prepayments, oil inventory, and taxes related to the Western
13 Corridor. BP Pipelines' response was a reference to Data Request No. FERC-28. In Data
14 Request FERC-23,¹⁰ FERC Staff sought accounting methods or reports to track inter-
15 company shared services costs. BP Pipelines' responded that "neither Amoco nor BP
16 tracked inter-company costs or shared services related to the Western Corridor."
17

⁸ See, Exhibit No. S-2, Page 15 of 33, Response to Data Request FERC-28.

⁹ See, Exhibit No. S-2, Page 16 of 33, Response to Data Request FERC-29.

1 **Taxes**

2 **Q. Have you calculated a tax component for the cost of service for Amoco**
3 **Pipeline Company and BP Pipelines' interest in the Western Corridor?**

4 A. No. The tax component of a cost of service requires first that the other three
5 components noted above be calculated. Thus, tax calculations are a function of projected
6 income, which relies on the calculation of the return component on the trended rate equity
7 rate base, which, as discussed above, cannot be calculated because BP Pipelines has
8 refused to provide the data required to make the calculations.

9

10 **General Data Problems**

11 **Q. Has Sinclair also sought to obtain the information necessary to develop a cost**
12 **of service for Amoco Pipeline Company and BP Pipelines' interest in the Western**
13 **Corridor?**

14 A. Yes. Sinclair made numerous requests for data sufficient to develop an Order
15 154-B cost of service, which FERC Staff had hoped to rely upon, but with no success.
16 For example, Sinclair Data Request No. 16 requested all documents that embody, discuss,
17 refer, or relate in any manner to rates for the Western Corridor. BP Pipeline's response

¹⁰ See, Exhibit No. S-2, Page 17 of 33, Response to Data Request FERC-23.

1 was nothing more than a set of tariffs for Western Corridor transportation.¹¹ In Sinclair
2 Data Request No. 17,¹² Sinclair sought documentation regarding profitability and costs
3 related to operating the Western Corridor. BP Pipelines' response was that it either has
4 no such documentation under its control or that all such documents had been transferred
5 to the Rocky Mountain when the sale took place. In Data Request Sinclair No. 21,¹³
6 Sinclair sought all documents in the possession of BP Pipelines or any affiliate of BP
7 Pipelines relating to the cost of transporting crude oil on the Western Corridor. BP
8 Pipelines objected that the question asked for information not within its possession,
9 custody, or control. Its only substantive response was to refer to Amoco Pipeline
10 Company and BP Pipeline's FERC Form 6 Reports for the relevant periods, which
11 provide no identifiable cost information relevant to the Western Corridor. Sinclair also
12 requested in Sinclair Data Request No. 44,¹⁴ a simplified cost of service, as reflected in
13 the FERC Form 6 Page 700 chart and applied to the Western Corridor. Again, BP

¹¹ See, SIN Exhibit No. 2, Page 29 of 93, Response to Sinclair Data Request No. 16, attached to the testimony of Mr. Peter Ashton.

¹² See, SIN Exhibit No. 2, Page 31 through 37 of 93, Response to Sinclair Data Request No. 17, attached to the testimony of Mr. Peter Ashton.

¹³ See, SIN Exhibit No. 2, Page 38 of 93, Response to Sinclair Data Request No. 21, attached to the testimony of Mr. Peter Ashton.

¹⁴ See, SIN Exhibit No. 2, Page 63 of 93, Response to Sinclair Data Request No. 44.

1 Pipelines responded that it does not keep its books on a segmented basis. Similar
2 responses were received for numerous other Sinclair data requests.¹⁵

3 **Q. Why is the FERC Form 6 inadequate to develop cost-of-service rates for BP**
4 **Pipelines' Western Corridor facilities?**

5 A. The FERC Forms 6 for both Amoco Pipeline Company and BP Pipelines maintain
6 oil pipeline cost data on a nationwide composite basis. Consequently, the elements
7 necessary to develop a cost of service for the Western Corridor segments of Amoco and
8 BP Pipeline's nationwide system cannot be identified or isolated. Although Amoco and
9 BP Pipeline file tariffs for each segment of their nationwide system, the FERC Form 6
10 contains no means of isolating costs relevant to each segment to verify that the stated
11 tariff rates for each segment are just and reasonable. For pipeline companies with more
12 than one segment of pipeline, the FERC Form 6 is woefully inadequate for developing
13 costs of service.

14 **Q. Does the sale of BP Pipelines interest in the Western Corridor to Rocky**
15 **Mountain have an impact on obtaining cost of service data?**

16 A. Yes. Attempts by both Sinclair and FERC Trial Staff to obtain adequate data from
17 BP Pipelines, upon which to build a cost of service to test the justness and reasonableness
18 of the stated rates in Amoco Pipeline Company and BP Pipelines' tariffs relevant to the

¹⁵ See, SIN Exhibit No. 2, Pages 64 through 71 of 93 pages.

1 Western Corridor, have been repeatedly rebuffed under the guise that all such information
2 was transferred to Rocky Mountain upon the sale of BP's interest in the Western Corridor
3 pipeline systems to Rocky Mountain in March 2002. The best BP Pipelines could offer
4 was the statement of its representative, Bernadette Zabransky, that:

5 "I have made extensive inquires into the contents of the data room that was
6 assembled and maintained in conjunction with the sale of BP Pipeline's
7 interest in the Western Corridor. As a result of those inquires, it is my
8 belief that materials available to perform a cost-of-service analysis for the
9 Western Corridor were provided to RMPS [Rocky Mountain] at the
10 conclusion of the sale to RMPS." ¹⁶

11
12 Virtually all requests for cost related data relevant to the Western Corridor have been
13 rebuffed on the basis that the requested information is not in the possession or control of
14 BP Pipelines.

15

16 **Validity of the Initial Rate**

17 **Q. Sinclair alleged that the initial rates established by Amoco Pipeline Company**
18 **for the Western Corridor were not validly established rates because Koch Oil**
19 **Company had no true intent to use the Western Corridor and therefore the tariff**
20 **rates are unlawful. Do you have an opinion as to the validity of the initial rates?**

¹⁶ "Declaration of Bernadette J. Zabransky," August 19, 2003, filed as Attachment B to the August 20, 2003 "Answer of BP Pipelines (North America) Inc. to Motion of Complainant Sinclair Oil Corporation for Summary Disposition" (Zabransky Declaration) See also SIN Exhibit No. 2, Page 92 of 93 pages

1 A. I do not know what Koch Oil Company's intent was at the time it signed an
2 affidavit signaling its intent to use the Western Corridor. Mr. Ouzts raises serious
3 questions regarding how Koch Oil Company could physically deliver its Rangeland Sweet
4 to the Western Corridor, given the configuration of pipelines in Alberta.¹⁷ Mr. Ouzts
5 also raises serious points in regard to his personal knowledge of the market for Rangeland
6 Sweet crude and Koch Oil Company's marketing efforts over the last 16 years. On the
7 other hand, it would certainly be to Koch Oil Company's competitive advantage to have
8 alternative routes available for the transportation of its crude oil, even if it never used
9 them. However, unless and until a representative of Koch Oil Company addresses this
10 issue, I cannot form an opinion on Koch Oil Company's intent nor on the validity of the
11 initial rates.

12

13

III - Reparations

14 **Q. How would you normally calculate damages or reparations?**

15 A. In general, reparations due for tariff rates in excess of just and reasonable (J&R)
16 rates would be measured by simply subtracting the J&R rate from the tariff rate, and
17 multiplying the difference by the volumes during the period in question. In this case, as
18 discussed later in my testimony, there is some ambiguity in the evidence concerning

¹⁷ Prepared Direct Testimony of H. C. Ouzts in Support of Complainant Sinclair Oil Corporation, SIN Exhibit No. 1, pages 4 through 7 of 77 pages.

1 whether the complainant paid an amount equivalent to the full stated tariff rates or some
2 amount that was below the filed tariff rate. If the rate Sinclair paid was less than a rate
3 equivalent to the stated tariff rate but more than the just and reasonable rate, a reparations
4 calculation should measure the J&R rates against what Sinclair actually paid for the
5 service.

6 **Q. In the event that the posted rates for the relevant period cannot be**
7 **determined to be just and reasonable, what rate should be used to calculate**
8 **reparations?**

9 A. Only because of the absence in the instant case of the ability to calculate a just and
10 reasonable rate for the relevant period based on the cost of service specific to the Western
11 Corridor or the absence of any obligation on the part of BP Pipelines to recreate a cost of
12 service for the Western Corridor in accordance with the Commission's Order 154-B, I
13 would suggest a fall back to developing rates for purposes of reparations using the cost of
14 service supporting Amoco Pipeline Company's 1999 rate increase. But, rather than
15 making an across the board adjustment the tariffs, I would suggest taking Amoco pipeline
16 Company's nationwide barrel-mile cost and applying that figure to the specific barrel-
17 miles generated on the Western Corridor. Although far from satisfactory, it would adjust
18 the Western Corridor rates with at least one element (barrel-miles) specific to the Western
19 Corridor operations. Amoco Pipeline Company's nationwide cost of service study

1 submitted in Docket No. IS99-268-000 ¹⁸ contains a nationwide 1999 cost of service of
2 \$234,057,069 and a barrel-mile throughput of 101,142,632, for a nationwide barrel-mile
3 cost of \$2.3141. Given that the total length of miles of the Western Corridor mileage is
4 approximately 699 miles of pipe ¹⁹ and a 2000 annual throughput of 20,069,784 bbls, ²⁰
5 the per-barrel cost is approximately \$1.6176 – approximately 10¢ below the approximate
6 rate during the period in question. Applied to the Sinclair Western Corridor movements
7 of approximately _____ BBL, ²¹ that suggests reparations of approximately \$_____.
8

9 **Q. Why not simply stay with the rates developed in Docket No. IS99-268-000?**

10 A. The problem with using a nationwide cost of service study as a basis for
11 developing rates for specific pipeline segments, as was done by Amoco Pipeline
12 Company, is that it raises serious problems with possible cross subsidization and cost
13 shifting among pipeline segments and distinct operating systems. For instance, shippers
14 using a low cost system that is rolled into an average nationwide rate will end up paying

¹⁸ See, Exhibit No. S-2, Pages 18 through 31 of 33 pages.

¹⁹ See, Rocky Mountain Pipeline 2002 FERC Form 6, page 602; and Exhibit No. S-2, Page 33 of 33 pages, Response to Staff Data Request FERC-1.

²⁰ See, BP Pipelines (North America) Inc., 2000 FERC Form 6, Page 601, barrels received in Montana, as proxy for Western Corridor throughput.

²¹ See, April 15, 2002 Complaint, Exhibit F, “Affidavit of H. C. Ouzts in Support of Complaint,” page 6.

1 rates in excess of what the costs for their system truly are. Similarly, shippers using a
2 high-cost line will have some portion of their costs shifted to shippers on other lines. It
3 would only be by sheer coincidence if the rates developed by a nationwide cost of service
4 approximated the costs of any particular system, like the Western Corridor.

5 While the adjustment to the 1999 study I outlined above ameliorates some of the
6 disadvantages of a nationwide cost of service, a far better solution would be for BP
7 Pipelines to reacquire or recreate the data, if it is not presently in its possession, and
8 perform a cost of service specific to the costs of operating the Western Corridor.

9

10 **Sinclair Actual Payments**

11 **Q. There appears to be conflicting evidence regarding the transportation rate**
12 **actually paid by Sinclair for transportation over the Western Corridor. Can you**
13 **summarize these differences?**

14 A. In his testimony, Sinclair witness Mr. H. C. Ouzts includes a series of invoices
15 from Amoco Production Company (which became BP Canada Trading) that include a
16 line item labeled “_____” Attached to each invoice is a
17 calculation chart drawn up by Sinclair with a line item labeled “_____” and
18 column headings “_____” and “_____.”²²

²² Prepared Direct Testimony of H. C. Ouzts in Support of Complainant Sinclair Oil Corporation, SIN Exhibit No. 1, Pages 13 through 71 of 77 pages.

1 Both columns list \$____. Although Mr. Ouzts does not state that the \$____ is the actual
2 incurred transportation cost on the Western Corridor, these invoices suggest that Sinclair
3 paid Amoco Production Company and BP Canada Trading \$____ for transportation within
4 the bundled charge for oil delivered to Casper, Wyoming. This suggestion is further
5 supported by Mr. Ouzts' explanation that the price of Rangeland Sweet crude charged to
6 Sinclair is the average of four posted prices in Edmonton. That average price is reflected
7 in the commodity price shown on each invoice, suggesting no discounting of the
8 commodity price.²³

9 Further clouding the issue, in response to the suggestion that Amoco Pipeline
10 Company/BP Pipelines may have charged its affiliate Amoco Production Company/BP
11 Canada Trading a discounted rate, BP Pipelines representative Bernadette Zabransky
12 stated:

13 "Throughout the period during which APC (Amoco Pipeline Company)
14 and BP Pipelines owned an undivided joint interest in the Western Corridor,
15 APC and BP Pipelines charged all shippers the published tariff rate,
16 regardless of whether or not they were affiliated with APC or BP
17 Pipelines." (Zabransky Declaration)
18

19 Ms. Zabransky's sworn statement therefore suggests that Amoco Pipeline Company and
20 BP Pipelines charged its affiliate the full stated tariff rate for shipments over the Western

²³ See, April 15, 2002 Complaint, Exhibit F, "Affidavit of H. C. Ouzts in Support of Complaint," page 4.

1 Corridor, consistent with the Interstate Commerce Act's §2 prohibition against special
2 rates and rebates.

3 Finally, Sinclair witness John P. Moore testified that in his experience "the firm
4 that ships the crude oil will most typically pass through all its shipping costs on a dollar
5 for dollar basis to the firm on whose behalf the shipments were made."²⁴

6 **Q. What do you make of these conflicting statements?**

7 A. Although logic and economic theory leads us to the conclusion that businesses do
8 pass on their variable costs, which would include all paid transportation costs, in this
9 instance the invoice evidence suggests that BP Canada may not have passed on all its
10 Western Corridor transportation costs. Unless and until both Sinclair and BP Canada
11 come forward with more conclusive evidence than simple speculation regarding how
12 specific bundled charge to Sinclair was developed, I can form no opinion on what rate
13 Sinclair actually paid for the transportation service over the Western Corridor.

14

15 **Q. Does this complete your prepared direct testimony?**

16 A. Yes, it does.

²⁴ Prepared Direct Testimony of John P. Moore in Support of Complainant Sinclair oil Company, SIN Exhibit No. 3, page 2 of 5 pages.

United States of America
before the
Federal Energy Regulatory Commission

Sinclair Oil Corporation)
v) Docket No. OR02-6-000
Rocky Mountain Pipeline system, LLC)
& BP Pipelines (North America), Inc.)

AFFIDAVIT OF Patrick R. Crowley

I, Patrick R. Crowley, do hereby declare that under penalty of perjury that I am the author of the foregoing affidavit, that the facts set forth herein are true and correct to the best of my knowledge.

2003

December 5,