

**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 ANSWERING & REBUTTAL TESTIMONY OF
PATRICK R. CROWLEY**

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

**Washington, DC
March 26, 2004**

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

Summary

Mr. Crowley addresses elements of Dr. Schink's testimony regarding the pricing activities of marketing affiliates of BP Pipelines (North America) Inc. (BP Pipelines) on the Western Corridor System and the implications for the lawfulness of BP Pipelines' activities on the Western Corridor. Mr. Crowley also addresses elements of Mr. Ouzts' Reply Testimony regarding Sinclair Oil Corporation's (Sinclair) attempts to secure transportation services on the Western Corridor System and the implications of his testimony regarding BP Pipelines' compliance with the Interstate Commerce Act.

Mr. Crowley argues that BP Pipelines (then BP Pipelines Company) acted, through affiliate transactions, in such a way as to fail in BP Pipelines' duty under the Interstate Commerce Act to act as a common carrier. Mr. Crowley also argues that BP Pipelines, acting through the then Amoco Corporate umbrella, provided rebates to its affiliate, BP America Production Company (then BP America Production Company), so as to provide BP America Production with a competitive advantage in the Casper oil markets in violation of the Interstate Commerce Act.

Mr. Crowley also argues that we do not have sufficient information to enable anyone to calculate a just and reasonable rate as required by Order No. 154-B. If we did have such information and if the resulting just and reasonable rate exceeded the

contributions by Sinclair, then he would recommend that Sinclair should not be awarded reparations since the actual payments by Sinclair would have been less than the just and reasonable rate that should have been applied. If, on the other hand, the resulting just and reasonable rate was less than the contributions by Sinclair, then he would recommend that Sinclair should be awarded reparations since the actual payments by Sinclair would have been more than the just and reasonable rate that should have been applied.

**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 Answering & Rebuttal 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 **Q. Are you the same Patrick R. Crowley that filed Direct & Answering
6 Testimony earlier in this case?**

7 A. Yes, I am.

8 **Q. What is the purpose of this testimony?**

9 A. The purpose of this testimony is to address elements of Dr. Schink's testimony
10 regarding the pricing activities of marketing affiliates of BP Pipelines (North America)

1 Inc. (BP Pipelines) on the Western Corridor System and the implications for the
2 lawfulness of BP Pipelines' activities on the Western Corridor. I also address elements of
3 Mr. Ouzts' Reply Testimony regarding Sinclair Oil Corporation's attempts to secure
4 transportation services on the Western Corridor System and the implications of his
5 testimony regarding BP Pipelines' compliance with the Interstate Commerce Act.

6 Based on the testimony of Dr. Schink and Mr. Ouzts, it is my conclusion that BP
7 Pipelines acted, through affiliates, in such a way as to fail in BP Pipelines' duty under the
8 Interstate Commerce Act to act as a common carrier. BP Pipelines affiliates' denial of
9 access forced Sinclair to become a downstream customer of BP America Production in
10 the Casper oil markets rather than a direct shipper under its own name. Rightfully,
11 Sinclair must be treated as if it were a direct shipper on the Western Corridor System
12 entitled to challenge the justness and reasonableness of the filed tariff rates and collect
13 any potential reparations derived from that challenge.

14 I also conclude that BP Pipelines, acting through the Amoco Corporate umbrella,
15 provided *de facto* rebates to its affiliate, BP America Production, so as to provide BP
16 America Production with a competitive advantage in the Casper oil markets in violation
17 of the Interstate Commerce Act. These *de facto* rebates were passed on to Sinclair in the
18 bundled commodity/transportation service by BP America Production and should be the
19 basis for calculating potential reparations to Sinclair.

1 Regarding the calculation of a just and reasonable rate for BP Pipelines for the
2 reparations period, I reiterate that we do not have sufficient information to enable anyone
3 to calculate a just and reasonable rate as required by Order No. 154-B. Dr. Ashton’s
4 criticism of my “fall back” rate calculations, although rather harsh in tone, echoes my
5 own reluctance to use such a “back of the envelope” rate analysis. I concur with Dr.
6 Ashton, that my rate calculation contains virtually no relationship to any cost factors or
7 allocation factors related to the Western Corridor – a consequence of BP Pipelines’
8 nationwide rate calculation methodology and inability to provide the relevant data.

9 **Q. As a preliminary matter, who are the parties you will be referring to?**

10 A. During the reparations period covered by this docket, Amoco Corporation merged
11 with BP America Inc, which began a series of name changes throughout the organization,
12 including the pipeline and production and marketing affiliates involved in the instant
13 complaint. There appear to have been four Amoco Oil Company (now BP America, Inc)
14 affiliates involved in the Sinclair transactions: a Canadian production/marketing affiliate
15 that obtained the Rangeland Sweet Crude, a Canadian pipeline affiliate (Rangeland
16 Pipeline) that transported the oil from its production source to the U.S. border, a United
17 States production/marketing affiliate that took title to the oil at the border and sold the oil
18 to Sinclair at Casper, and BP Pipelines that transported the oil from the border to Casper,
19 Wyoming. For the sake of consistency, in the text below I will refer to BP Pipelines

1 Company, which was Amoco Pipeline Company, and BP America Production Company,
2 which was Amoco Production Company.

3 **Q. Please summarize the parties' arguments, as they pertain to this**
4 **rebuttal testimony.**

5 A. Sinclair has argued that it was denied direct customer access by BP Pipelines and
6 its affiliates to the Western Corridor System and forced to ship under third party status
7 through affiliates of BP Pipelines.

8 Sinclair has further argued that the BP Pipelines stated tariff rate for transportation
9 of crude oil from the U.S. border to Casper, which Sinclair claims to have paid as the
10 ultimate customer, is unjust and unreasonable, and that the rate should have been
11 substantially less than the stated tariff rate. However, a calculation of a just and
12 reasonable rate has been hampered by BP Pipelines' claim that it no longer has the data
13 sufficient to create and calculate an Order No. 154-B trended-original-cost cost-of-service
14 rate. Sinclair argues, in Exhibit No. SIN-4, pages 26 – 46, and Exhibit No. SIN-28, pages
15 5 – 7, that BP Pipelines' inability to support its tariff rates justifies a reparation payment
16 equal to the full tariff rate presumed to have been incorporated into the BP America
17 Production charge to Sinclair, or alternatively the full tariff rate less the marginal cost of
18 operating the Western Corridor System.

19 Sinclair has further argued that the initial rates established by BP Pipelines were
20 not lawfully established because Koch Oil had no real intent to use the Western Corridor

1 System, and therefore the current rates continue to be unlawful. Because Sinclair views
2 the BP Pipelines rates as not simply unjust and unreasonable but unlawful, Sinclair is
3 seeking reparations in the alternative equal to the stated tariff rate presumed to be
4 incorporated into the BP America Production charge to Sinclair, or the full tariff less the
5 marginal cost of operating the Western Corridor System.

6 BP Pipelines argues that Sinclair is not entitled to reparations for three reasons.
7 First, BP Pipelines argues that Sinclair was not a customer of BP Pipelines and never paid
8 the stated tariff rate; rather, Sinclair was a customer of BP America Production, which
9 sold a bundled as-delivered commodity to Sinclair at Casper, Wyoming. Second, BP
10 Pipelines argues that if, in fact, any party denied Sinclair access to the system, it was a
11 Canadian affiliate over which BP Pipelines had no control and over which FERC has no
12 jurisdiction. Third, BP Pipelines asserts that the amount actually paid by Sinclair to BP
13 America Production for transportation services was substantially less than BP Pipelines'
14 stated tariff rate. Consequently, BP Pipelines argues that Sinclair is not entitled to any
15 reparations.

16 A pertinent issue between the parties is whether the stated pipeline tariff rate,
17 which BP Pipelines charged to BP America Production, was passed along in full to
18 Sinclair in the bundled commodity-transportation service. Sinclair argues that it was; BP
19 Pipelines argues that it was not.

1 **Q. With whom did Sinclair have a contract for the acquisition of Rangeland**
2 **Sweet Crude?**

3 A. Sinclair's contract was with BP America Production Company (then Amoco
4 Production Company) for Rangeland Sweet Crude Oil produced in Alberta, Canada, for
5 delivery in Casper, Wyoming. Upon BP's merger with Amoco, Amoco Production
6 Company transferred the contract on November 15, 2001 to BP America Production
7 Company effective January 1, 2002.¹ Then on November 20, 2001, the contract was
8 again transferred to BP Canada Energy Marketing Corp. effective January 1, 2002.²
9 (However, the invoices show the company name as Amoco Production Company for
10 December 2001 and January 2002, and as BP Canada Trading Company, Ltd for February
11 2002 and March 2002.³) The contract was cancelled by BP Canada Energy Marketing
12 Corp. on February 27, 2002, effective April 1, 2002.⁴

13 **Q. BP Pipeline has argued that Sinclair's assertion of denial of access, if true,**
14 **involved a Canadian affiliate. What is your understanding of this situation?**

¹ See, Exhibit No. S-4, page 1 of 5; November 15, 2001 letter from William Irwin, of Amoco Production Company to Ernie Coker of Sinclair Oil Company

² See, Exhibit No. S-4, page 3 of 5; November 20, 2001 letter from Mike Foley, of Amoco Production Company to H. C. Ouzts of Sinclair Oil

³ See, Exhibit No. SIN-1, pages 68 and 70 of 77

⁴ See, Exhibit No. S-4, page 5 of 5; February 27, 2002 letter from Bob Carlson of BP Canada Energy Marketing Corp to Mr. H. C. Ouzts of Sinclair Oil Company

1 A. BP Pipelines has argued in various motions that if there was a denial of access, it
2 was made by a Canadian affiliate of BP Pipelines, beyond the jurisdiction of FERC and
3 the Interstate Commerce Act. The mechanics of the actual transactions have remained
4 murky at best. The Rangeland Pipeline is a proprietary line that ships only its affiliates'
5 oil and is the only connection into the Western Corridor System at the U. S. Canadian
6 border. Presumably, the marketing affiliate of BP Pipelines sold a bundled commodity-
7 transportation service that brought Rangeland crude oil from the fields in Alberta through
8 the Rangeland Pipeline and Western Corridor System to Casper, Wyoming, where the oil
9 was then sold to Sinclair. Thus, the as-delivered nature of the arrangement denied
10 Sinclair the ability to purchase Rangeland crude so as to ship under its own name on the
11 Western Corridor System. I note, however, that Amoco Production and its successor, BP
12 Canada Energy Marketing Corp, are not Canadian entities; they are United States
13 corporations, as can be seen on their letterheads. ⁵

14 Until just recently, it was my understanding that the Canadian
15 production/marketing affiliate and the United States production/marketing affiliate were
16 one in the same: Amoco Production, *i.e.*, that Amoco Production obtained its crude
17 supply in Alberta and transported it through both the Rangeland System and the Western
18 Corridor System to Casper, Wyoming. However, it now appears, as shown below, that

⁵ See Exhibit No. S-4, page 4 of 5; February 14, 2002 letter from Bob Carlson of BP Canada Energy Marketing Corp. to H. C. Ouzts of Sinclair Oil Corporation

1 there was a separate Canadian production affiliate, possibly BP Canada Energy Resources
2 Company ⁶ that held title to the oil, which it brought to the border over the Rangeland
3 Pipeline, where it then sold the oil to BP Canada Energy Marketing Corp. As noted in the
4 January 12, 2004 filing by BP Canada Energy Marketing Corp and BP America
5 Production Company:

6 Under the contract with Sinclair, BP Production/Marketing [BP Canada
7 Energy Marketing Corp] agreed to sell, and Sinclair agreed to buy, crude
8 oil that had been produced in Canada, moved via Canadian pipelines to the
9 U.S. border, and *then sold to BP Production/Marketing* and transported to
10 Casper, Wyoming where it was sold to Sinclair on a delivered basis.
11 [Brackets and italics added.] [Answer of BP America Production
12 Company and BP Canada Energy Marketing Corp. to Request of Sinclair
13 Oil Corporation for Issuance of Subpoenas, filed January 12, 2004, p 3.]
14

15 Therefore, Sinclair's contract was not with the Canadian affiliate, BP Canada Energy
16 Resources (outside the purview of U.S. law), but a United States corporation, BP Canada
17 Energy Marketing, which took title to the oil at the border.

18 **Q. What part of Dr. Schink's Prepared Answering Testimony gives rise to your**
19 **concerns about BP America Production/BP Pipelines' pricing behavior?**

20 A. In his Prepared Answering Testimony, Exhibit No. BPP-1, Dr. Schink presents the
21 economic rational for why BP America Production Company allegedly did not pass
22 through the full BP Pipelines tariff rate to Sinclair. Dr. Schink testifies that BP America
23 Production, the shipper of record, viewed itself as Amoco Corporation and priced its

⁶ See, Exhibit No. SIN-1, page 12 of 77

1 services as if there were no corporate divisions separating the pipeline operations from
2 the marketing operation. Dr. Schink is quite explicit in arguing that BP America
3 Production made its pricing decisions not on the basis of its own cost incurrence, but on
4 that of both the Canadian and United States' pipeline division's operating conditions,
5 operating costs, and marketing operations. (See, Schink page 10, 32, 34, 35, 36, 59, and
6 60)

7 For example, Dr. Schink states:

8 If Amoco Production and Amoco Pipelines were not affiliated companies,
9 then economic theory would dictate that Amoco Production would pass
10 through to Sinclair the entire tariff charge it paid to Amoco Pipeline.
11 However, given that Amoco Production and Amoco Pipeline were
12 affiliated, (i.e., had a common parent, Amoco Corporation or Amoco),
13 economic theory dictates that Amoco Production should evaluate the
14 transaction with Sinclair by comparing its effects on corporate-wide
15 incremental revenues and corporate-wide incremental costs. Given that the
16 Western Corridor system was not fully utilized, the corporate-wide
17 incremental cost of Amoco Production using Amoco Pipeline's Western
18 Corridor system to transport crude oil from the Canadian border to Casper
19 was the incremental cost of transporting a barrel over this distance. As is
20 shown below, this incremental cost is much less than the Edmonton to
21 Casper location differential that Amoco Production charged Sinclair.
22 Therefore, corporate-wide profits would increase as a result of Amoco
23 Production selling crude to Sinclair in Casper at the Edmonton price plus
24 the locational difference even though this locational difference was
25 substantially less than the Amoco Pipeline tariff rate (i.e., it made
26 economic sense for Amoco Production to enter into this transaction with
27 Sinclair). [Schink, page 10]
28

29 The statements made by Dr. Schink, BP Pipelines' own witness, reveal that BP America
30 Production's market pricing decisions, and specifically the prices for transportation over

1 BP Pipelines, were based not on the filed tariff rates it ostensibly paid but on the marginal
2 operating cost of its affiliate's Western Corridor System and the upstream Rangeland
3 Pipeline, a Canadian affiliate. Dr. Schink shows us that BP America Production simply
4 incorporated the marginal costs of its Canadian pipeline affiliate to bring the oil to the
5 U.S. border and the United States pipeline affiliate to bring the oil to the Casper market.

6 **Q. What does this pricing strategy tell us about BP America Production's**
7 **relationship to BP Pipelines?**

8 A. Dr. Schink's testimony that BP America Production based its market pricing
9 decisions on its affiliates' marginal costs tells us that BP America Production relied on
10 the fact that as an affiliated company, it did not matter to the ultimate corporate parent
11 that the tariff charges went from one pocket to another as long as the corporate-wide
12 revenues exceeded the corporate-wide incremental costs. In other words, there was a
13 practice established by which BP America Production appears to have paid the full filed
14 tariff rate of \$1.71 per barrel, but it was a charge in name only. In fact, BP America
15 Production's pricing strategy reveals, because of its corporate affiliations, it really only
16 had to collect BP Pipelines' incremental costs, thereby effectively reaping the benefit of
17 an illegal rebate. Because non-affiliates would have had to pay the full file tariff rate and
18 then collect the full tariff rate from its customers, the potential competitors of Amoco
19 were competitively disadvantaged. Inasmuch as BP America Production was able to
20 discount the transportation portion of BP Pipelines' service below BP America

1 Production's own incremental cost for the use of the BP Pipelines system (i.e., the full
2 applied tariff), BP America Production, by not having to collect all of BP Pipelines' tariff
3 charges through its bundled oil sales contracts, effectively received *de facto* rebates from
4 BP Pipelines. BP America Production relied on these rebates to enable its lower prices to
5 Sinclair at Casper.

6 Clearly, BP America Production did not make its pricing decisions on the basis of
7 its own marginal costs but rather on the marginal costs of its affiliate, BP Pipelines. Ms.
8 Zabransky has testified that BP Pipelines charged its full tariff to its affiliate BP America
9 Production, so we know that BP America Production's true marginal cost would include
10 at least the full BP Pipelines tariff. Faced with an BP Pipelines tariff of \$1.71 per barrel
11 and an implicit recovery (as calculated by BP's own witness, Dr. Schink) from Sinclair of
12 only [____] per barrel for BP Pipelines' transportation services, BP America Production
13 failed to collect [____] per barrel for the transportation on the Western Corridor. The
14 only way BP America Production could service the Western Corridor below marginal
15 costs is if BP America Production's pipeline affiliate's tariff charges were, in effect,
16 rebated with the tacit approval of the ultimate corporate parent. I must conclude then that
17 BP Pipelines and BP America Production were acting as one entity under the leadership
18 of BP America Production, which calculated its bundled commodity/transportation
19 service using the pipeline's marginal cost as the floor for the transportation component,

1 taking care that the total transportation add-on amount would not make the sales price
2 non-competitive at Casper.

3 **Q. Does the Interstate Commerce Act prohibit special or preferential rates?**

4 A. Yes it does. Chapter 1, §§ 2 and 3 of the Interstate Commerce Act state:

5 § 2. Special rates and rebates prohibited

6 If any common carrier subject to the provisions of this chapter shall,
7 directly or indirectly, by any special rate, rebate, drawback, or other
8 device, charge, demand, collect, or receive from any person or persons a
9 greater or less compensation for any service rendered or to be rendered, in
10 the transportation of passengers or property, subject to the provisions of
11 this chapter, than it charges, demands, collects, or receives, from any other
12 person or persons for doing for him or them a like and contemporaneous
13 service in the transportation of a like kind of traffic under substantially
14 similar circumstances and conditions, such common carrier shall be
15 deemed guilty of unjust discrimination, which is prohibited and declared
16 to be unlawful.

17

18 § 3(1). Undue Preferences or prejudices prohibited

19 It shall be unlawful for any common carrier subject to the provisions of
20 this chapter to make, give, or cause any undue or unreasonable preference
21 or advantage to any particular person, company, firm, corporation,
22 association, locality, port, port district, gateway, transit point, region,
23 district, territory, or any particular description of traffic, in any respect
24 whatsoever; or to subject any particular person, company, firm,
25 corporation, association, locality, port, port district, gateway, transit point,
26 region, district, territory, or any particular description of traffic, to any
27 undue or unreasonable prejudice or disadvantage in any respect
28 whatsoever; Provided however, That this paragraph shall not be construed
29 to apply to discrimination, prejudice, or disadvantage to the traffic of any
30 other carrier of whatever description.

31

32 **Q. What about Ms. Zabransky's testimony that BP Pipelines charged its affiliate**
33 **the stated tariff rate?**

1 A. While Ms Zabransky filed no evidence to support her statement, I presently have
2 no reason to doubt that BP Pipelines did charge BP America Production the full tariff
3 rate. It would follow therefore, that BP America Production's incremental cost for the
4 transportation component of its bundled service was the full BP Pipelines tariff rate.
5 However, as Dr. Schink states, the actual tariff rates that BP America Production paid to
6 BP Pipelines were irrelevant from a corporate viewpoint:

7 The delivered-to-Casper price that Sinclair pays is not affected, in any
8 way, by BP Pipelines' tariff rate between the U.S.-Canadian border and
9 Casper. [Schink page 32]

10

11 **Q. What costs would BP America Production face if it had not been an affiliated**
12 **company of the pipeline?**

13 A. If it were a stand-alone company, not operating in conjunction with the other
14 affiliates of Amoco Corporation, BP America Production would have incurred the full
15 cost of oil delivered to it at the U.S.-Canadian border and the full cost of the BP Pipelines
16 tariff rates from the U.S. border to Casper. But, Dr. Schink testifies that BP America
17 Production needed only to consider to the incremental costs of its affiliates operations.
18 We should keep in mind that incremental costs do not include recovery of sunk costs,
19 such as depreciation and return on investment – major components in the derivation of
20 just and reasonable rates. The ability to discount down to the pipeline's incremental costs
21 would result in a rate far below a just and reasonable rate that included recovery of sunk
22 costs or the return on capital. Consequently, through the practice of BP Pipelines and BP

1 America Production operating in unity in marketing Canadian oil, BP America Production
2 could undercut any competitor that had to pay the full tariff rates to Casper.

3 **Q. If BP America Production did not receive the effective rebates through the**
4 **corporate umbrella, what impact would the BP Pipelines tariff have had on BP**
5 **America Production’s marketing activities in Casper?**

6 A. The contract between BP America Production and Sinclair establishes that the
7 difference in the value of similar crude oils between Edmonton and Casper was \$1.25.
8 This “locational difference” establishes the limit that BP America Production could mark
9 up crude oil supplies out of Rangeland and still be competitive in the Casper market.
10 Clearly, the \$1.25 is less than the BP Pipelines tariff of \$1.71 per barrel. Therefore,
11 assuming the Edmonton posted prices are reasonable approximations for the acquisition
12 costs of Rangeland crude at the origin point of BP Pipelines, BP America Production
13 could not be competitive in the Casper oil market if it passed on the full tariff to its
14 customers in Casper

15 **Q. What impact would a *de facto* rebate have on the market for crude oil in**
16 **Casper?**

17 A. It effectively turned BP America Production into the sole provider of cut-rate
18 pipeline transportation service between the U.S. border and Casper. Had the Western
19 Corridor been available to Rangeland shippers other than BP Pipelines affiliates, BP
20 Pipelines would have assured its oil marketing affiliate a competitive advantage over any

1 potential shipper, producer, or marketer wishing to transport or to sell oil in Casper. In
2 contrast to BP America Production, which could (and did) offer a transportation service
3 below the Western Corridor tariff rate, all other potential sellers of Rangeland Sweet
4 crude oil would have incurred the full Western Corridor tariff rate and would necessarily
5 have had to pass on that cost to their customers. Similarly, sellers of other oil supplies
6 into Casper would have faced a competitor that only needed to cover its own marginal
7 costs. No other users could rely on a *de facto* rebate from the pipeline to reduce their own
8 cost incurrence. Competitors of BP America Production thus would have been
9 disadvantaged or blocked from entering the market, even had the Western Corridor been
10 open to non-BP Pipelines affiliates.

11 The negative competitive impact of the *de facto* rebate is twofold. First, inasmuch as BP
12 America Production could use its affiliation with BP Pipelines to realize and possibly pass on an
13 illegal rebate, thus undercutting BP Pipelines' stated tariff rate, it could use that competitive
14 advantage to keep other producers from bidding on and developing other sources of oil that could
15 feed into the pipeline or into the Casper market. Other producers, whether using the pipeline
16 themselves to transport the oil or sell it to third party shippers, such as Sinclair, who might use
17 the pipeline, would always have been at a competitive disadvantage to BP America Production.
18 Other oil producers selling into the Casper market would have been disadvantaged by having a
19 competitor, BP America Production, that added supplies to the market, but which under normal
20 economic circumstances would not to be in the market because the locational difference would
21 not cover the full transportation costs.

1 Second, the fact that Amoco affiliates owned all the production that currently feeds the
2 pipeline, as well as the only means of accessing the pipeline (through Rangeland Pipeline), gave
3 the Amoco Corporation the ability to virtually guarantee all the capacity it needed to transport its
4 own oil. Only after the Amoco companies had met their needs, and to the extent that space was
5 then available, would shippers such as Sinclair be able to obtain oil and capacity. Although
6 Sinclair apparently was able to obtain Rangeland oil via this pipeline commencing in 1999 as a
7 third party shipper, BP America Production could at any time, and at its sole discretion, choose to
8 completely fill the pipeline with its own oil, or refuse to sell oil to anyone else, thus shutting
9 Sinclair out from use of the Western Corridor, thereby effectively converting the pipeline from a
10 common carrier to a proprietary pipeline. In either case, because of the competitive advantage
11 BP America Production enjoyed through the *de facto* rebate, it was unlikely that any other
12 producer or shipper could do anything about it.

13 **Q. Was there a distinction between BP Pipelines, Rangeland pipeline, and BP**
14 **America Production?**

15 A. No. As Dr. Schink makes clear in his testimony, in addition to incorporating the
16 U.S. pipeline affiliate's internal costs in its decision, BP America Production's pricing
17 decisions were based in part on the incremental cost of transportation incurred by its
18 Canadian pipeline affiliate, Rangeland Pipeline, not on an as-delivered price at the border
19 from the Canadian production/marketing affiliate.

20 The cost of the crude oil to Amoco is the Edmonton price, which Amoco
21 Production passes through to Sinclair. The costs of the pipeline
22 transportation to Amoco are the incremental costs incurred on the

1 pipelines owned by Amoco Canada and Amoco Pipeline to transport the
2 crude from where Amoco Production obtains this crude to Casper instead
3 of transporting it from these receipt points to Edmonton. [Schink page 33]
4

5 In other words, BP America Production's pricing decisions were based on both the
6 upstream pipeline affiliate's incremental costs and its downstream pipeline affiliate's
7 incremental costs, not on the stated tariff of either pipeline. Thus there is no
8 differentiation between Rangeland Pipeline, BP America Production, and BP Pipelines
9 for the purposes of marketing Rangeland Sweet crude oil: they operate, in effect, as one
10 proprietary entity for the purposes of market pricing decisions. Access to the lines and
11 the pricing of the services were controlled by BP America Production for the benefit of
12 BP America Production. This is illustrated by the invoice records provided in response to
13 Sinclair Data Request No. 84,⁷ which show that only BP affiliates transported over the
14 Western Corridor System.

15 **Q. What crude oil costs were incurred by BP America Production in acquiring**
16 **the Rangeland Sweet Crude?**

17 A. Dr. Schink states that:

18 The cost of crude oil to Amoco is the Edmonton price which Amoco
19 Production passes on to Sinclair. [Schink, page 33]
20

21 The contract invoices submitted as part of Mr. Ouzts and Dr. Schink's testimonies
22 demonstrate that the cost of Rangeland Sweet crude oil to BP America Production at the

⁷ See, Exhibit No. SIN-2, page 76 to 90 of 93

1 U.S. border, where it took title, was in the range of [_____] per barrel, less a
2 quality equalization adjustment of approximately [____] per barrel (see Schink, page 26).

3 **Q. Sinclair argues that we cannot assume that all transportation costs are**
4 **incorporated only into the \$1.25 locational difference. Do you concur?**

5 A. No. Sinclair witnesses Dr. David and Dr. Stewart argue, in Exhibit No. SIN-28,
6 page 14 through 18 of 36, that Amoco either produced or controlled the production of
7 Rangeland crude oil, and therefore incurred costs significantly below the posted prices for
8 crude at Edmonton. BP America Production's Canadian counterpart may well have
9 earned significant profits on the spread between its production costs and its sales
10 benchmark price. Sinclair suggests that some of the full tariff rate, which was ultimately
11 paid by Sinclair, was absorbed into this spread, and we cannot assume that all
12 transportation costs are incorporated only into the \$1.25 locational difference.

13 Within its corporate umbrella, BP America Production could have absorbed the
14 transportation costs from Rangeland to Casper within the production cost/sales revenue
15 spread of its Canadian affiliate. However, Sinclair and BP America Production signed a
16 contract that established the benchmark for the value of Rangeland crude at the average
17 of four posted prices for Edmonton oil and then added a locational difference to account
18 for the spread in the value of oil between Edmonton and Casper. Occam's Razor suggests
19 that we accept the simplest explanation, *ie.*, that the posted prices at Edmonton represent
20 what the Rangeland oil could have sold for to other buyers in Alberta. Mr. Ouzts testifies

1 that he is an experience oil dealer in the Rocky Mountain and Canadian markets; I assume
2 he would not have signed such a contract if the posted Edmonton prices were not
3 representative of the value of the oil he wished to buy. The locational differential would
4 have to cover whatever costs the seller incurred to deliver its product to the Casper
5 market.

6 **Q. What transportation costs were incorporated into BP America Production's**
7 **pricing decision?**

8 A. The Canadian portion of the transportation costs incorporated into BP America
9 Production's market pricing decisions was based on the Rangeland Pipeline's incremental
10 costs. But because Rangeland Pipeline is a proprietary line, we cannot know what its full
11 tariff would be, if it had one. However, Dr. Schink, in Exhibit No. BPP-1, page 36,
12 provides an estimate of Rangeland Pipeline's incremental costs, which BP America
13 Production incorporated into its charge to Sinclair. Rangeland Pipeline's incremental cost
14 of transportation from the production areas to the Canadian-U.S. border was stated to be
15 [____] per barrel.

16 The U.S. portion of the transportation costs incorporated into BP America
17 Production's market pricing decisions was based on BP Pipelines' incremental costs.
18 Sinclair estimated the incremental cost to transport oil over the Western Corridor System
19 at approximately \$0.10 per barrel. Dr. Schink did not challenge this estimate; in fact he
20 agreed that it was a reasonable estimate. Consequently, the incremental transportation

1 cost incorporated into BP America Production's pricing decisions was a total of [____]
2 per barrel, and therefore BP America Production would find it economically attractive to
3 enter into a contract with Sinclair that included transportation revenue above [____] per
4 barrel.

5 **Q. How much of BP America Production's direct U. S. transportation costs were**
6 **recovered by the charges to Sinclair?**

7 A. The \$1.25 per barrel locational difference in the Sinclair/BP America Production
8 contract is not a transportation charge, per say, but does represent the ceiling on
9 transportation cost recovery for oil transported to Casper. It would ideally be sufficient to
10 recover the pipeline line losses and line fill, plus the Canadian and U.S. pipeline
11 transportation costs. To the extent it did not recover those costs, BP America Production
12 would suffered a loss. Dr. Schink calculated BP America Production's implicit tariff for
13 U.S. transportation by deduction from the \$1.25 per barrel locational difference: \$1.25
14 less the Canadian incremental transportation cost of [____] per barrel, less line loss and
15 shrinkage costs of [____] per barrel, less line fill costs of [____] per barrel, for an
16 implicit tariff for transportation over the BP Pipelines from the U.S. border to Casper of
17 [____] per barrel. (See Schink page 36/37)

18 **Q. Would you recommend the [____] per barrel as the appropriate just and**
19 **reasonable rate for transportation on the Western Corridor System?**

1 A. No, the [_____] per barrel rate is the implicit charge for transportation over the
2 Western Corridor embedded within the \$1.25 locational difference, not a just and
3 reasonable rate as required by the Commission's Order 154-B. We should keep in mind
4 that marginal or incremental costs do not include recovery of fixed costs such as
5 depreciation or return on investment. Dr. Schink's and Mr. Ouzts' respective estimates of
6 marginal costs do not allow for recovery of the full cost of service, as would an Order No.
7 154-B calculation.

8 The [_____] per barrel is a measure of what Sinclair contributed toward BP
9 America Production's incremental costs (the \$1.71 BP Pipelines tariff plus the Canadian
10 transportation costs). Both Dr. Schink's estimated implicit charge of [_____] per barrel
11 and the [_____] postulated in Sinclair's initial April 15, 2002 Complaint (page 17) are
12 estimates of the actual contributions of Sinclair toward total cost recovery, neither are
13 calculations of just and reasonable rates.

14 **Q. What about BP Pipelines' assertion that Sinclair was not a customer and that**
15 **BP America Production, as a non-jurisdictional customer, can charge whatever it**
16 **likes for the bundled service it offered to Sinclair?**

17 A. I have viewed this case for some time as a case in which Sinclair was a third party
18 customer of the pipeline, and I have attempted to establish the amount Sinclair did pay for
19 transportation services and what Sinclair should have paid for transportation services. I
20 am now of the belief that BP Pipelines and its affiliates' actions were not so much aimed at

1 control of the transportation services along the Western Corridor System, but rather were
2 to use BP Pipelines as a tool by which to gain a competitive advantage for BP America
3 Production in the Casper market. The whole point was to effectively use discounted
4 transportation rates as a means by which to capture market share in Casper.
5 BP America Production's marketing decisions heavily relied on using the marginal costs
6 of its pipeline affiliate to stay competitive in Casper. In doing so, BP America Production
7 received a *de facto* rebate from BP Pipelines. As previously indicated, the Interstate
8 Commerce Act prohibits a common carrier, such as BP Pipelines, from "directly or
9 indirectly" charging one customer a special rate.

10 **Q. Was Sinclair the beneficiary of BP America Production's ability to discount**
11 **the BP Pipelines tariff, and thus better off taking advantage of BP America**
12 **Production's rates, than if it had contracted directly with BP Pipelines?**

13 A. At first glance, it would appear that Sinclair was better off taking advantage of BP
14 America Production's rebate-enhanced transportation charges; however, as a derivative
15 shipper, Sinclair has a more difficult path to trudge in challenging the implicit
16 transportation rates charged by BP America Production. Moreover, as discussed earlier,
17 access to pipeline capacity by Sinclair or any other potential producer and/or shipper was
18 totally at the whim of BP America Production.

19 **Q. Dr. Schink denies that Sinclair was denied access to the Western Corridor**
20 **System as a primary shipper. Do you concur?**

1 A. No, I believe that BP America Production/BP Pipelines did deny access to the
2 pipeline's services as a direct customer. Amoco denied access in two ways: one, by
3 establishing a daisy chain of transactions so that at each turn a potential competitor such
4 as Sinclair would be told that some other entity is responsible for providing the service
5 Sinclair sought; and two, by establishing a rebate-enhanced transportation rate that could
6 not be undercut by any competitors, thereby economically blocking competitors' access to
7 the system. BP Pipelines' assertion that it was theoretically possible for an entity to
8 purchase Canadian crude oil at the border and then transport that oil through the Western
9 Corridor System does not stand the test of its own actions and correspondence. BP
10 Pipelines, through its corporate affiliates, established a daisy chain of transactions that
11 denied access to other shippers of crude except under conditions favorable to BP
12 Pipelines' corporate parent. As can be seen in the letters produced by Sinclair,⁸ its
13 attempts to obtain information that would lead to securing transportation service as a
14 direct customer of the pipeline were rebuffed.

15 Furthermore, the fact that BP America Production acquired the oil at the border
16 from its Canadian affiliate rather than directly from producers in Alberta, as noted earlier,

⁸ SIN Exhibit No. 1, Page 12 of 77 (Rangeland response to Sinclair request for information); SIN Exhibit No. 2, Page 44 of 93 (Sinclair request to Rangeland for information on becoming a shipper); SIN Exhibit No. 2, Page 45 of 93 (BP Pipelines response to Sinclair request for information on becoming a shipper on Rangeland Pipeline); SIN Exhibit No. 2, Page 46 of 93 (Sinclair request for information from BP Pipelines on becoming a shipper on Rangeland Pipeline)

1 raises concern over BP Pipelines' insistence that Sinclair had to contract through a
2 Canadian affiliate to acquire its Rangeland crude oil. The Canadian affiliate, now BP
3 Canada Energy Resources, did not sell a bundled service to Casper and could have sold
4 Rangeland oil to Sinclair at the border but refused to do so. The American affiliate, BP
5 America Production, did not sell a bundled service from Alberta to Casper and could have
6 sold Rangeland oil to Sinclair at the border but refused to do so.

7 **Q. Does the denial of access impact of the question of potential reparations?**

8 A. Yes. If Sinclair had been granted access to the Western Corridor System as a
9 direct shipper, it would have been in good standing as a shipper to challenge the filed
10 tariff rate. However, because it was denied access by BP Pipelines' affiliates' actions and
11 was not a direct shipper in its own name, BP Pipelines now challenges Sinclair's right to
12 protest the justness and reasonableness of the tariff. The fact that it was forced into third-
13 party status is pivotal to the question of its right to challenge the rates. BP Pipelines had
14 an obligation under the Interstate Commerce Act to provide service as a common carrier
15 to all who requested service. Acting through its affiliates, BP Pipelines failed in that
16 responsibility and consequently, Sinclair must be treated as if it were a direct customer,
17 placing it in the same position it would have been in but for the failure of BP Pipelines to
18 comply with the Interstate Commerce Act.

19 **Q. What reparation should Sinclair be entitled to recover?**

1 **A.** As noted in my direct testimony, we do not have sufficient information to enable
2 anyone to calculate a just and reasonable rate as required by Order No. 154-B. If we did
3 have such information and if the resulting just and reasonable rate exceeded the
4 contributions by Sinclair, then I would recommend that Sinclair should not be awarded
5 reparations since the actual payments by Sinclair would have been less than the just and
6 reasonable rate that should have been applied. If, on the other hand, the resulting just and
7 reasonable rate was less than the contributions by Sinclair, then I would recommend that
8 Sinclair should be awarded reparations since the actual payments by Sinclair would have
9 been more than what the just and reasonable rate that should have been applied.

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

11 **A.** Yes, it does.

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.

2004

March 26,