

108 FERC ¶ 61, 210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 342

Docket No. RM93-11-002

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

(Issued August 27, 2004)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending a certain regulation following a judicial determination that the Commission acted properly in establishing the oil pipeline rate index.

EFFECTIVE DATE: The rule will become effective **[insert the date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Revisions to Oil Pipeline Regulations
Pursuant to the Energy Policy Act of 1992

Docket No. RM93-11-002

ORDER NO. 650

FINAL RULE

(Issued August 27, 2004)

1. The Federal Energy Regulatory Commission (Commission) is modifying a certain regulation pertaining to oil pipeline ratemaking following a judicial determination upholding the Commission's determination that the appropriate index for oil pipeline rate changes is the Producer Price Index, from and after July 2001.

BACKGROUND AND DISCUSSION

2. On October 22, 1993, in response to the requirements of Title XVIII of the Energy Policy Act of 1992,¹ the Commission issued Order No. 561,² in which the Commission comprehensively revised the Commission's regulation of the oil pipeline industry.

¹ 42 U.S.C.A. 7172 note (West Supp. 1993). References to the Energy Policy Act are to this note, indicating the section number of the statute.

² Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, FERC Stats. & Regs. (Regs. Preambles, 1991-1996), ¶ 30,985 (1993); order on reh'g., FERC Stats. & Regs. (Regs. Preambles, 1991-1996) ¶ 31,000; aff'd., Association of Oil Pipe Lines v. Federal Energy Regulatory Commission, 83 F.3d 1424 (D.C. Cir. 1996).

Among other things, Order No. 561 established a price cap for oil pipeline rates, to be adjusted annually based upon changes in the Producer Price Index for Finished Goods (published each May by the U.S. Department of Labor, Bureau of Labor Statistics) minus one percent (PPI-1). Order No. 561 recognized that its responsibilities under the Interstate Commerce Act,³ to both shippers and pipelines, required monitoring of the relationship between the change in the selected index and the actual cost changes experienced by the industry. Therefore, the Commission stated that it would review the choice of index every 5 years.⁴

3. On July 27, 2000, the Commission issued a notice of inquiry in Docket No. RM00-11-000 on its five-year review of the oil pricing index.⁵ After receiving and considering comments of numerous parties, the Commission affirmed that the PPI-1 index closely approximated the actual cost changes in the oil pipeline industry as reported in FERC Form No. 6, and concluded that this index continued to satisfy the mandates of the Energy Policy Act of 1992.⁶ Review of this order was sought by the Association of Oil Pipe Lines (AOPL), and on March 1, 2002, the U.S. Court of Appeals for the D.C. Circuit remanded the proceeding to the Commission for further review and explanation,

³ 49 U.S.C. app. 1 (1988).

⁴ Order No. 561, ¶ 30,985 at 30,952.

⁵ FERC Statutes & Regulations [Notices] ¶ 35,536 (2000).

⁶ 93 FERC ¶ 61,266 (2000).

particularly with respect to the choice of PPI-1 as the appropriate index for future oil pipeline rate changes.⁷

4. Two separate petitions for Commission action on the remand by the Court were filed, one by AOPL, and the other jointly by Sinclair Oil Corporation and Tesoro Refining and Marketing Company (Shippers). AOPL argued for the use of the PPI, while Shippers urged the Commission to reaffirm its decision to use PPI-1, as the appropriate index to measure cost changes in the oil pipeline industry. On February 24, 2003, the Commission issued its order on remand, determining after further cost data analysis that the appropriate oil pricing index for the current five year period should be the PPI.⁸ Review of this order was sought by the Shippers, and on April 9, 2004, the Court affirmed the Commission.⁹

5. In view of the Court's finding that the Commission had acted properly in establishing the PPI as the appropriate oil pricing index, the Commission amends 18 CFR Part 342, section 342.3(d)(2) by deleting “, and then subtracting 0.01” from the end of that section.

⁷ Association of Oil Pipe Lines v. FERC, 281 F.3d 239 (D.C. Cir. 2002).

⁸ 102 FERC ¶ 61,195 (2003).

⁹ Flying J Inc., et al. v. Federal Energy Regulatory Commission, 363 F. 3d 495 (D.C. Cir. 2004).

INFORMATION COLLECTION STATEMENT

6. There is no need for Office of Management and Budget review¹⁰ under Section 3507(d) of the Paperwork Reduction Act of 1995,¹¹ since this final rule does not affect information collection and recordkeeping requirements.

ENVIRONMENTAL ANALYSIS

7. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹² However, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.¹³ The clarifying and corrective nature of the change here promulgated qualifies for such an exclusion.¹⁴

¹⁰ 5 CFR 1320.11.

¹¹ 44 U.S.C. 3507(d).

¹² Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

¹³ 18 CFR 380.4.

¹⁴ 18 CFR 380.4(a)(2)(ii).

REGULATORY FLEXIBILITY ACT CERTIFICATION

8. The Regulatory Flexibility Act of 1980 (RFA)¹⁵ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Inasmuch as the change here promulgated reduces the complexity of oil pipeline ratemaking, the change will have no significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

DOCUMENT AVAILABILITY

9. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426. The full text of this document is available on the FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

¹⁵ 5 U.S.C. 601-612

10. User assistance is available for eLibrary and other aspects of the FERC's website during normal business hours. For assistance, contact FERC Online Support at FercOnlineSupport@ferc.gov, or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

EFFECTIVE DATE

11. These regulations are effective immediately, pursuant to 5 U.S.C. 533(b), upon the date of publication in the Federal Register. The Commission is issuing this as a final rule without a period for public comment, because under 5 U.S.C. 533(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice or where the agency finds notice and comment unnecessary. Inasmuch as the change promulgated in this proceeding is consistent with a court remand and subsequent affirmance of the Commission's order on remand, and because substantial public comments have already been made on the substance of the change, the Commission finds that further notice and comment are unnecessary. The provisions of 5 U.S.C. § 801 regarding Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

CONGRESSIONAL NOTIFICATION

12. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business

Regulatory Enforcement Fairness Act of 1996.¹⁶ The Commission will submit the Final Rule to both Houses of Congress and the General Accounting Office.¹⁷

List of subjects in 18 CFR Part

18 CFR Part 342

Reporting and record keeping requirements.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends Part 342, Chapter I, Title 18, Code of Federal Regulations, as follows:

**SUBCHAPTER P – REGULATIONS UNDER THE INTERSTATE COMMERCE
ACT**

1. Part 342, section 342.3(d)(2) is amended by deleting “, and then subtracting 0.01”.

¹⁶ See 5 U.S.C. 804(2)(2000).

¹⁷ See 5.S.C. 801(a)(1)(A)(2000).