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Cost-of-Service Reporting and Filing Requirements for Oil Pipelines

Order No. 571-A

FERC Stats & Regs. [Regs. Preambles, 1991-1996] ¶ 31,012 (1994)
affirmed, Association of Oil Pipe Lines v. FERC,
83 F.3d 1424 (D.C. Cir. 1996)

In Order No. 571-A, the Commission affirmed its authority under Section 12 of the Interstate Commerce Act to require a pipeline to demonstrate that it meets the threshold test specified in Order No. 561 in order to charge cost-of-service rates. The Order also rejected a claim that it imposed unduly burdensome initial filing requirements for cost-of-service rates. The Commission further denied a claim that its requirements for page 700 of Form 6 were unduly burdensome. However, the depreciation study requirements were slightly altered so as to protect the confidentiality of certain types of shipper information.

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Order on Rehearing and Clarification
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ACTION: *Final rule; Order on rehearing* and clarification.

SUMMARY: The Federal Energy Regulatory Commission in ruling on a request *for rehearing is making a minor change to* its regulations that provide revised filing requirements for oil pipelines seeking to establish new or changed depreciation rates, and clarifying Order No. 571, issued October 26, 1994. The change is to ensure that the information provided is in a format that will protect individual shippers.

EFFECTIVE DATE: The amendment to the regulations is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

[¶ 31,012]

60 F.R. 356 (January 4, 1995)

18 CFR Part 347

[Docket No. RM94-2-001]

Cost-of-Service Reporting and Filing Requirements for Oil Pipelines; Order on Rehearing and Clarification

(Issued December 28, 1994)

AGENCY: Federal Energy Regulatory Commission.

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Order on Rehearing and Clarification

(Issued December 28, 1994)

On October 28, 1994, the Federal Energy Regulatory Commission (Commission) issued Order No. 571, in which it established filing requirements for cost-of-service rate filings for oil pipelines; filing requirements for oil pipelines seeking to establish new or changed depreciation rates; and new and revised pages of FERC Form No. 6, Annual Report for Oil Pipelines.[1] On November 28, 1994, the Association of Oil Pipe Lines (AOPL) filed a request for rehearing and clarification of Order No. 571. As discussed below, the Commission clarifies Order No. 571, and grants in part and denies in part AOPL's request for rehearing.

Discussion

A. AOPL argues that the Commission cannot prescribe initial filing requirements for cost-of-service rates in excess of requirements specified in Section 6 of the Interstate Commerce Act (ICA).[2] Section 6(3) provides that a carrier must file a notice of rate change "which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates ... will go into effect; and the proposed changes shall be shown by printing new schedules ...." These requirements of Section 6(3) are preserved intact in sections 346.1(a) and (b) of the regulations adopted by the Commission in Order No. 571.[3] Thus, AOPL's dispute is with section 346.1(c), which requires that an oil pipeline file statements and supporting workpapers to make an Opinion No. 154-B cost-of-service showing as set forth in section 346.2, on the basis that these requirements go beyond the limiting provisions of section 6(3).

As the Commission explained in Order No. 571, the requirement that a pipeline file these statements and workpapers is justified, not by the filing of information as a part of a notice of rate change, but by the requirement of Order No. 561[4] that the oil pipeline meet the threshold test of demonstrating a substantial divergence between rates at the indexed ceiling level and the pipeline's cost of service. Rather than a "filing requirement" for a notice of rate change, the statements and workpapers must be filed to demonstrate that the pipeline is entitled to change rates on a cost-of-service basis as an exception to changing rates under the indexing methodology. The Commission relied on section 12 of the ICA as the statutory authority for requiring a pipeline to demonstrate that it meets the threshold test specified in Order No. 561.[5] AOPL argues, however, that section 6 establishes initial filing requirements for a rate change and thus bars the Commission from requiring the threshold filings at issue here. The Commission disagrees.

Contrary to AOPL's contention, section 6(3) of the ICA is not a limitation on the Commission's authority to establish initial filing requirements but is rather no more than a specification of the form that a notice of a proposed change in rates must take. Thus, the Commission's requirements in section 346.1(c) are not contrary to the ICA. Moreover, the Commission here affirms its view that section 12(1) confers on the Commission broad powers to regulate the transportation of oil by pipeline, including those that AOPL claims are precluded by section 6(3), and thus authorizes the Commission to establish reasonable filing requirements for a cost-of-service rate change proposal.[6]

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[1] Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, 59 FR 59137 (November 16, 1994), *FERC Statutes and Regulations* ¶ 31,006 (1994).

[2] 49 App. U.S.C. 1 (1988).

[3] See 18 CFR 342.1(a) and (b), to be effective January 1, 1995.

[4] Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act, Order No. 561, 58 FR 58785 November 4, 1993), *FERC Statutes and Regulations* ¶ 30,985 (1993), order on reh'g and clarification, Order No. 561-A, 59 FR 40243 August 8, 1994), *FERC Statutes and Regulations* ¶ 31,000 (1994). These orders are jointly referred to as "Order No. 561," unless the text clearly specifies otherwise.

[5] Section 12 provides, in material part, that "The Commission may obtain from such carriers ... such information as the Commission deems necessary to carry out the provisions of this chapter.... The Commission is authorized and required to execute the provisions of this chapter....

[6] Section 12(1) of the ICA as it existed on October 1, 1977, governs the authority and duties of the Commission. See also 49 U.S.C. 10321(a) which by Public Law 95-473, Oct. 17, 1978, 92 Stat. 1337, codified and restated in

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Rehearing on this first specification error is therefore denied.

B. AOPL's second specification of error, that the Commission imposed unduly burdensome initial filing requirements for cost-of-service-based rates, is likewise without merit. AOPL claims that the Commission, by imposing any filing requirements, ignored its comments regarding the resulting burden that pipelines would have to bear. AOPL's position, however, is based on the premise, already rejected, that section 6(3) bars any initial filing requirements. Thus, the thrust of AOPL's argument is that any initial filing requirement other than a mere notice of the rate change proposed, regardless of what it might be, is too burdensome for pipelines to bear. The Commission disagrees. The Commission recognizes that there is a filing burden for pipelines that seek to opt out of indexing. However, because indexing is the Commission's prescribed, generally applicable ratemaking methodology, the Commission has concluded that a pipeline must as a threshold matter justify an exception to that methodology when it files for cost-of-service rates. As described earlier, it is well within the Commission's broad regulatory powers to determine how an oil pipeline is to secure permission to charge rates based on a method that deviates from the generally applicable method.

Contrary to AOPL's claims, the Commission has required only that data necessary for a pipeline to show whether there is a substantial divergence between its cost of service and revenues at the index ceiling rate and thus whether it warrants an exception to indexing. In fact, the Commission chose not to require certain other additional data. For example, it did not require a filing of individual point-to-point cost-of-service calculations in the initial filing of notices of rate change, recognizing that the burden of such a requirement would not be justified, particularly since the initial filing need only show that there is a substantial divergence between the costs of the pipeline, as reflected in Statement A, and the revenues that would be produced by the indexed ceiling rates, as reflected in Statement G.[7] Thus, the Commission was not arbitrary in its assessment of minimum filing needs but rather carefully balanced the need for threshold information against the burden that filing requirements could impose on pipelines.

Rehearing on this second specification of error is therefore denied.

C. AOPL's third specification of error, that the Commission erred in determining that new Page 700 of Form No. 6 would impose only a minimal burden on oil pipelines, is denied. In Order No. 571, the Commission explained in detail why it believed page 700 of Form No. 6 is necessary for carrying out its regulatory responsibilities under the ICA and the Energy Policy Act of 1992.[8] It described the benefits to the shippers of having this information available as an initial "substantial divergence" screen for pipeline rate filings, and as a means of testing the performance of the index when compared to individual indexed rates.[9] Nothing in AOPL's request for rehearing persuades the Commission to modify its requirements for page 700.

It is correct that if viewed in isolation, the inclusion of Page 700 in the Form No. 6 would increase the reporting burden on oil pipelines. However, viewed as a whole, Order No. 571 will reduce the overall individual oil pipeline reporting burden, since it reduces or eliminates many of the other reporting requirements formerly in the Form No. 6.[10] Further, with the over-

(Footnote Continued)

comprehensive form, without substantive change, the material part of section 12(1). Section 10321(a) provides:

The Interstate Commerce Commission shall carry out this subtitle. Enumeration of a power of the Commission in this subtitle does not exclude another power the Commission may have in carrying out this subtitle. The Commission may prescribe regulations in carrying out this subtitle.

[7] Order No. 571, mimeo at p. 11.

[8] 42 U.S.C. 7172 note (West Supp. 1993).

[9] Order No. 571, mimeo at pp. 16-24.

[10] The Commission found, in Order No. 571, that "The final rule will reduce the existing reporting burden associated with Form No. 6 by an estimated 1,628 hours annually, or an average of 11 hours per response based on an estimated 148 responses. This estimate includes the addition of two new schedules, the elimination of several schedules, and increasing the reporting thresholds for which oil pipelines must analyze and report certain data." Order No. 571, mimeo at p. 4.

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all reduction in regulatory burden to be accomplished by the use of the indexing methodology, the addition of Page 700 as a safeguard should cause minimal additional burden.[11]

While the initial computation for some of the companies which have not performed the Opinion No. 154-B calculation may be somewhat lengthy and may result in an initial, one-time burden for these companies because of the need to bring the data forward from 1984 to the current year, any initial burden on making the calculations is outweighed by the benefits of having the information available to the Commission to carry out its regulatory responsibilities. In addition, for each year subsequent to the initial computation, it would only be necessary for a company to update the schedules for the most current year. Thus, the minimal burden imposed in preparing and filing new page 700 is entirely justified when compared to the benefits to shippers and the Commission of having the information called for by this new page.

D. The Commission grants rehearing as to AOPL's allegation that the Commission erred in retaining depreciation study requirements that could result in the disclosure of confidential shipper information in contravention of the ICA. In Order No. 571, the Commission required that an oil pipeline that desires to establish initial depreciation rates or to change its existing depreciation rates file certain information supporting such a rate. The Commission, in response to comments on the Notice of Proposed Rulemaking (NOPR) in this docket, recognized that certain information which had been proposed in the NOPR might lead to such disclosure, and therefore modified the information originally proposed, providing that the information required by section 347.1(e)(vi) of the regulations should be provided in a format that would prevent disclosure of information which would violate the ICA. It left to the pipeline the specifics of the format to be used to provide such information.[12] Moreover, the Commission also suggested that the pipeline could request confidential treatment of the information it provides.[13]

It was the Commission's intent that the caveats expressed not be limited to section 347.1(e)(vi), but rather apply to all the Part 347 information that would be provided by pipelines. Therefore, the regulations will be modified to reflect that information required by Part 347 of the regulations, release of which would violate Section 15(13) of the ICA, must be provided in a format that will protect any individual shipper. Moreover, the general statement in Order No. 571 that the information provided will be publicly available unless specific confidential treatment is sought by the carrier is still applicable.[14]

E. Finally, AOPL seeks clarification regarding the use of new Page 700 of Form No. 6, in particular the significance of the statement that this schedule would "permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate."[15] AOPL claims such a comparison appears to tell a shipper nothing concerning the justness and reasonableness of an individual rate. The information reported on Page 700 will show how a pipeline's average barrel-mile rate changes from one year to the next. A shipper can then compare the yearly percentage change in the average barrel-mile rate with the yearly percentage change in the rate it is charged to determine whether there is a substantial divergence between the rate of change in the two figures such as to warrant a challenge to an indexed rate. Thus, the Page 700 information alone is not intended to show what a just and reasonable rate should be.

The Commission orders:

The request for rehearing and clarification is granted in part and denied in part, as reflected in the body of this order.

List of Subjects in 18 CFR Part 347

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

[11] According to AOPL's own numbers, contained in Attachment A to AOPL's comments filed in this proceeding on September 8, 1994, the burden of producing page 700 shown by some companies is as small as four hours per year.

[12] Order No. 571, mimeo at p. 34.

[13] *Id.*

[14] Order No. 571, mimeo at p. 34.

[15] Order No. 571, mimeo at p. 17.

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Lois D. Cashell,
Secretary.