

Energy Regulatory Alert

FERC Issues New Oil Pipeline Rules Designed to Make It Easier to Track Jurisdictional Oil Pipeline Earnings

September 25, 2012

On September 20, 2012, the Federal Energy Regulatory Commission (FERC) issued a Notice of Proposed Rulemaking (NOPR¹ and a Final Rule² concerning oil pipeline rates. The goal of these two rulemaking dockets is to make it easier for the FERC and pipeline shippers to determine whether an oil or products pipeline is earning an excessive rate of return on its FERC-jurisdictional shipments.

In a prepared statement, FERC Commissioner John R. Norris indicated that the impetus for the NOPR is the shale gas revolution, which is fueling a dramatic increase in the production of oil and oil products.³ Commissioner Norris stated, “As industry looks to maintain and build out the infrastructure that brings these resources from production to market, it is critical to ensure that the rates which underwrite this infrastructure are just and reasonable.”⁴ Commissioner Norris declared that the NOPR “empowers shippers by allowing them to see important data regarding the rates they have to pay and provides them a reasonable level of self-protection.”⁵

NOPR Would Add Detail to FERC Form No. 6, Page 700

The NOPR proposes to modify the reporting requirements on Page 700 of FERC Form No. 6, which is the annual report of financial and operational information filed by oil and product pipelines. All oil and product pipelines, even those that are otherwise exempt from having to file FERC Form No. 6, must file Page 700.⁶ Page 700 provides a simplified presentation of an oil or product pipeline’s jurisdictional cost of service and is used by the FERC as a preliminary screening tool for determining whether a particular pipeline’s rates may be excessive.

The NOPR proposes to require oil and product pipelines to include additional information regarding rate base, rate of return, return on rate base and income taxes on Page 700 to more easily enable calculation of a pipeline’s actual rate of return on equity consistent with FERC oil pipeline ratemaking principles. The FERC stated that the actual rate of return on equity is particularly useful information when using Page 700 to evaluate whether a pipeline’s rates are just and reasonable, as required by the Interstate Commerce Act.⁷ The FERC proposes to implement the new reporting

¹ *Revisions to Page 700 of FERC Form No. 6*, 140 FERC ¶ 61,217 (2012) (hereafter, “NOPR”).

² *Revision to Form No. 6*, Order No. 767, 140 FERC ¶ 61,218 (2012) (hereafter, “Order No. 767”).

³ Press Release, Commissioner John R. Norris, Statement of Commissioner John R. Norris on Oil Pipeline Rulemakings (Sept. 20, 2012) [[here](#)].

⁴ *Id.*

⁵ *Id.*

⁶ 18 C.F.R. §357.2(a) (2012).

⁷ NOPR at P 5.



requirements for the reporting year ending December 31, 2013. The 2013 FERC Form No. 6 is due to be filed on or before April 18, 2014.⁸

The NOPR requests comments as to whether the proposed additional required information will be sufficient to accomplish the FERC's objectives.⁹ Comments on the NOPR are due 60 days after the date the NOPR is published in the *Federal Register*.¹⁰

Final Rule Requires Pipelines to Report Interstate-Only Barrel and Barrel-Mile Data

The FERC also issued a Final Rule on September 20, 2012, amending the instructions on Page 700 of FERC Form No. 6 to ensure that oil and product pipelines report only interstate barrel and barrel-mile data, and not a combination of interstate and intrastate data. The FERC has jurisdiction only over interstate movements of crude oil and oil products.

The FERC determined that the existing instructions to Page 700 may have inadvertently caused some pipelines to report combined interstate and intrastate data, and therefore required clarification.¹¹ The Final Rule requires pipelines that reported combined interstate and intrastate data on their 2010 or 2011 Form No. 6 Page 700 to file revised Page 700 data¹² for those years within 90 days of the date the Final Rule is published in the *Federal Register*.¹³

CONTACT INFORMATION

If you have any questions concerning this alert, please contact —

Julia E. Sullivan
jsullivan@akingump.com
202.887.4537
Washington, D.C.

Vera C. Neinast
vneinast@akingump.com
512.499.6224
Austin

⁸ *Id.* at P 18.

⁹ *Id.* at P 16.

¹⁰ *Id.* at P 28.

¹¹ Order No. 767 at P 3.

¹² Because Page 700 of the 2010 FERC Form No. 6 contains data for 2009 and 2010, and Page 700 of the 2011 FERC Form No. 6 contains data for 2010 and 2011, the affected pipelines would be filing interstate-only data for 2009, 2010 and 2011.

¹³ Order No. 767 at P 1.