Attachment A

Historical Background of Oil Pipeline Ratemaking

A. Transfer of Jurisdiction

Commission jurisdiction over oil pipelines was transferred from the Interstate Commerce Commission (ICC) pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act), U.S.C. §7155 and §7172, and Executive Order No. 12009, 42 Fed. Reg. 46267 (September 15, 1977). Subsequently on July 5, 1994, Sections 306 and 402 of the DOE Act were repealed.[1] The Commission's jurisdiction over oil pipelines includes the authority to regulate their tariffs and rates and charges for the transportation of oil in interstate commerce. Section 705(a) of the DOE Act provides that the rules and regulations relating to functions transferred to the Commission will continue in effect until modified by the Commission.

B. Important Ratemaking Cases

In June 1985, the Commission issued a final opinion (Opinion No. 154-B) in the Williams Pipeline Company ratemaking case in Docket No. OR79-1-000, et al.) (31 FERC ¶61,377). The order provided for a new rate base methodology requiring a transition rate base and rates based on trended original cost (TOC) as compared to the valuation method the ICC used when it regulated the pipelines. The Commission clarified and codified this costing methodology in Order No. 571 (69 FERC ¶ 61,102).

In December 1990, the Commission issued Opinion No. 360 in Docket Nos. IS87-14-000, et al. and OR88-3-000 (Buckeye Pipe Line Company, L. P.) (53 FERC ¶61,473) and began moving toward lighter-handed regulation of oil pipeline rates. Market-based rates were determined to be a more appropriate and less intrusive method of regulation in that case. The Commission's Order No. 572, from November 1994, (59 FR 59148, FERC Statutes and Regulations ¶31,007) defined the parameters under which market-based rates can be applied for and the general limits against which they are judged.

[1] To Revise, Codify and Enact Without Substantive Change Certain General and Permanent Laws, Related to Transportation, as Subtitles II, III, and V-X of Title 49, U.S.C., "Transportation", and to Make Other Technical Improvements in the Code, 49 U.S.C. Sec. 60502 (July 5, 1994). This Act repealed Department of Energy Act Sections 306 and 402 under which the Interstate Commerce Commission transferred to, and vested, in the Commission all functions and authority over rates or charges for the transportation of oil by pipeline including the establishment of valuations of any such pipeline, Pub. L. 95-91 (August 4, 1977).

In the Energy Policy Act of 1992 (EPAct 1992) Congress mandated the Commission to establish a "simplified and generally applicable" ratemaking methodology for oil pipelines[2] that was consistent with the just and reasonable standard of the Interstate Commerce Act (ICA).[3]

As a response, the Commission issued Order No. 561 (65 FERC ¶ 61,109) in 1993. Among other things, this order established an indexing methodology so oil pipelines could change rates without making cost-of-service filings. The Commission reviews the index regularly. Since issuing Order No. 561, the Commission has reviewed the index three times.

In the subsequent 1994 order on rehearing for Order No. 561-A (59 FR 40243, FERC Statutes and Regulations ¶31,000) the Commission amended its regulations to modify the circumstances under which oil pipelines may use cost-of service methodology for changing rates. The changes allowed closer tracking of the standard for shipper protests to an indexed rate, as well as modification of the requirements for protests to oil pipeline tariff filings in order to require that a protestant file a verified statement to support its claim of a substantial interest in the proceeding.

In its index review from 2000, the Commission affirmed that the PPI-1 index closely approximated the actual cost changes in the oil pipeline industry as reported on the FERC Form No. 6, “Annual Report of Oil Pipeline Companies.” However, the Association of Oil Pipelines (AOPL) petitioned the U.S. Court of Appeals for review of the Commission’s determination. The Court remanded the order back to the Commission for further review and explanation. AOPL had argued for the use of PPI, while Sinclair Oil Corporation and Tesoro Refining and Marketing Company representing 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. In February 2003, the Commission issued its order on remand, determining after cost data analysis that the appropriate oil pricing index for the five-year period should be the PPI. Review of this order was sought by the Shippers but in April 2004, the Court affirmed the Commission’s determination.[4]

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[2] Pub. L. No. 102-486 § 1801(a), 106 Stat. 3010 (Oct. 24, 1992).

[3] 49 U.S.C. App. § 1 *et seq.* (1988).

[4]8 Flying J Inc., et al. v. Federal Energy Regulatory Commission, 363 F. 3d 495 (D.C. Cir. 2004).

In its second review of the index level the Commission found the index should be PPI+1.3 for the five-year period July 2006 through July 2011 (RM05-22). There were no rehearing requests. The Commission's third and most recent review of the oil pricing index (RM10-25) sets the index level of Producer Price Index for Finished Goods plus 2.65 percent (PPI-FG+2.65) for the five-year period beginning July 1, 2011. In May 2011, the Commission denied requests for rehearing of its Order on the oil pricing index.