

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE GENERAL COUNSEL

June 29, 2020

Dominic Mancini
Deputy Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Request for Emergency Processing of the FERC-6(PL) Information Collection

Dear Mr. Mancini,

Under the Paperwork Reduction Act (PRA) and OMB's implementing regulations at 5 C.F.R. § 1320.13, the Federal Energy Regulatory Commission (Commission or FERC) is requesting emergency processing for FERC-6(PL) (One-Time Refiling of Page 700 of Form 6 (Annual Report of Oil Pipeline Companies)). The Commission will be withdrawing the package under OMB Control No. 1902-0022 submitted to OMB on May 27, 2020. Commission staff has discussed requesting emergency processing for FERC-6(PL) with the Commission's OMB Desk Officer. The Commission requests that OMB issue its decision on this emergency processing request for FERC-6(PL) by July 6, 2020.

FERC-6(PL) encourages interstate oil pipelines to voluntarily refile, on a one-time basis, page 700 of their 2019 FERC Form No. 6 in order to reflect the Commission's recent Policy Statement on Determining Return on Equity for Natural Gas and Oil Pipelines (ROE Policy Statement). The ROE Policy Statement establishes a revised methodology for determining the return on equity (ROE) used to calculate oil pipelines' Annual Cost of Service on page 700 of FERC Form No. 6. The refiled page 700 data requested in FERC-6(PL) will be highly useful to the Commission for conducting the five-year review of the oil pipeline index in 2020.

In the Energy Policy Act of 1992,¹ Congress required the Commission to develop a simplified method for changing oil pipeline rates. In response, the Commission established an indexing methodology that allows oil pipelines to change rates every July

¹ Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 3010 (Oct. 24, 1992).

1 based upon an annual industry-wide index that the Commission publishes in May.² The Commission reviews the index level every five-years to ensure that the index level continues to reflect annual industry-wide cost changes.³ In the five-year review, the Commission determines the differences over the prior five-year period between changes in costs reported on page 700 and changes in the Producer Price Index for Finished Goods. In the 2020 five-year review, the Commission will measure pipeline cost changes over the period from 2014-2019 in order to establish the index level that pipelines will use to adjust their rates during the five-year period from 2021-2026. The Commission initiated the 2020 five-year review on June 18, 2020, and invited interested persons to file initial comments on the Commission's proposal by August 17, 2020.⁴

Emergency processing of FERC-6(PL) is important to the Commission fulfilling its statutory responsibilities. Approximately 81 percent of oil pipeline rate filings that the Commission receives are submitted pursuant to the indexing methodology. Accordingly, the index level established in the 2020 five-year review will affect a significant majority of oil pipeline rate filings between 2021-2026, making it the Commission's most impactful oil pipeline ratemaking proceeding. Moreover, as discussed above, the five-year review is a complex proceeding that requires analysis of page 700 cost data, including ROE, to measure industry-wide cost changes. In light of the Commission's adoption of a revised methodology for determining oil pipeline ROEs, it is imperative that the Commission receive updated page 700 data reflecting this revised methodology so that the Commission can determine whether, and if so how, to reflect the effects of this policy change in the calculation of the index level in the 2020 five-year review.

Public harm is reasonably likely to result if the Commission does not receive this updated data in a timely manner. First, it is critical that the parties in the five-year review have an opportunity to fully evaluate and consider the updated data before filing comments in that proceeding on August 17, 2020. Allowing the parties to address this data in their comments will strengthen the record on which the Commission will determine the index level. Second, it is in the public interest for the Commission to conclude the five-year review and establish the new index level before it publishes the annual index in May 2021 that pipelines will use in index rate filings to be effective July 1, 2021. In the two most recent five-year reviews, the Commission issued an order

² *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,947 (1993), *order on reh'g*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd*, *Ass'n of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

³ *Id.*

⁴ *Five-Year Review of the Oil Pipeline Index*, 171 FERC ¶ 61,239, at P 12 (2020).

establishing the index level in December of the review year.⁵ Timely issuance of the order establishing the index level provides the Commission with sufficient time to address any requests for rehearing before the Commission publishes the annual index in May 2021.⁶ Failure to conclude the five-year review before publishing the annual index would cause significant rate uncertainty across the oil pipeline industry and potentially lead to 2021 annual index increases that are not just and reasonable.

The Commission received five public comments in response to the ROE Policy Statement. Four of these comments address issues related to electric utilities and do not reference this information collection for oil pipelines. As discussed below, the fifth submission addresses the information collection, but does not weigh against granting this request for emergency processing.

On June 11, 2020, Liquids Shippers Group filed a motion for reconsideration of the ROE Policy Statement and a request for expedited action (Motion). The Motion asserts that the voluntary information collection improperly gives pipelines discretion to file ROEs that are higher, which would increase the index level, while refraining from filing ROEs that are lower, which would decrease the index level. Thus, the Motion states that the information collection will bias the record in the five-year review proceeding.

The full Commission will address the Motion in due course. However, the Motion should not affect this request for OMB's emergency processing and approval of the FERC-6(PL). First, the Motion does not reference the PRA or the burdens this information collection would impose. Second, the Motion addresses the information collection from the perspective of shippers, rather than pipelines that will be subject to the information collection. Third, the Motion seeks to convert this voluntary information collection into a mandatory one and implementing a mandatory collection at this time would likely delay the five-year review. Fourth, the Commission will address the merits of Liquids Shippers Group's claims regarding the calculation of the index level in the five-year review proceeding itself, where the Commission has requested comments on that issue.⁷ The effect of this data on the Commission's analysis in the five-year review will depend upon how many pipelines file updated page 700 data and the comments that the Commission receives.

⁵ *Five-Year Review of the Oil Pipeline Index*, 153 FERC ¶ 61,312 (2015); *Five-Year Review of Oil Pipeline Pricing Index*, 133 FERC ¶ 61,228 (2010).

⁶ *See Five-Year Review of Oil Pipeline Pricing Index*, 135 FERC ¶ 61,172 (2011) (denying requests for rehearing of 2010 order establishing index level).

⁷ *Five-Year Review of the Oil Pipeline Index*, 171 FERC ¶ 61,239 at PP 2, 8.

We are available to assist if you have any questions with respect to this request. If your staff need any additional information, please contact Ellen Brown (202-502-8663) of FERC staff.

Sincerely,

David L. Morenoff
Acting General Counsel
Federal Energy Regulatory Commission

cc: Sofie Miller, OMB
Mittal Desai, FERC CIO
Jolinda Murray, FERC ITPRM