

obviously be a much larger obstacle to financing than the Federal takeover possibility that Congress eliminated in 1953. Thus, as argued in the comments, the imposition of a decommissioning requirement would directly undermine and be contrary to the specific intent of Public Law No. 83-278.

Although the policy statement indicates that the Commission rarely expects to mandate project decommissioning, the decision to imply such authority has significant consequences. While this Commission may exercise that authority narrowly, parties and intervenors will continue to call for its broad application, including the imposition of trust funds at each project, as well as contributions to regional funds. Indeed, the policy statement concludes that, should later experience with decommissioning demonstrate a stronger need, the Commission can reassess the issue of establishing some type of industry-wide fund.

I question whether the Federal Power Act contemplates such a scheme. In addition, there will be social and economic consequences that flow from such decisions. Decommissioning funds, should they be required, are traditionally included in rates. The likely increase in electric rates for consumers in potentially large regions of the country and the possible negative impact on the financial viability of certain projects are issues not addressed by the policy statement.

In sum, there are major social consequences, in the broadest sense, that derive from the decision to imply authority here, and I am unwilling to assume lightly that authority. Sections 14 and 15 of the Federal Power Act outline the relicensing process to be implemented by the Commission. Many of the issues raised by the decommissioning debate are not solely FERC's to decide and I believe should be addressed in a broader forum.

Vicky A. Bailey,
Commissioner.

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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.

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:

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SUPPLEMENTARY INFORMATION:

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

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. 561⁴ 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,

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), III FERC Stats. & Regs. ¶ 30,985 (1993), order on reh'g and clarification, Order No. 561-A, 59 FR 40243 August 8, 1994), III FERC Stats. & Regs. ¶ 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

¹ Cost-of-Service Reporting and Filing Requirements for Oil Pipelines, Order No. 571, 59 FR 59137 (November 16, 1994), III Stats. & Regs. ¶ 31,006 (1994).