

157 FERC ¶ 61,055
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 26, 2016

In Reply Refer To:
ITC Pipeline Company, LLC
Docket No. OR16-20-000

Vinson & Elkins L.L.P.
1001 Fannin Street,
Suite 2500
Houston, TX 77002-6760

Attention: James E. Olson,
Attorney for ITC Pipeline Company, LLC

Reference: Waiver of 18 C.F.R. 342.4(c)

Dear Mr. Olson:

1. On July 14, 2016, ITC Pipeline Company, LLC (ITC Pipeline) filed a request for waiver of the requirement in 18 C.F.R. § 342.4(c) (2016)¹ that it submit a verified statement in support of (1) the incentive rates (Incentive Rates) agreed to by ITC Pipeline's current shippers, as opposed to its prospective shippers who will begin shipping once ITC Pipeline goes into service, and (2) any changes to the Incentive Rates

¹ Section 342.4(c) states:

A carrier may change a rate without regard to the ceiling level under § 342.3 if the proposed change has been agreed to, in writing, by each person who, on the day of the filing of the proposed rate change, is using the service covered by the rate. A filing pursuant to this section must contain a verified statement by the carrier that the proposed rate change has been agreed to by all current shippers.

that ITC Pipeline makes in a subsequent tariff filing with the Commission provided such changes are made in accordance with the written terms of the applicable dedication agreement (Dedication Agreement) described in the transmittal letter of ITC Pipeline's initial rules and rates tariff (FERC 1.0.0, hereinafter "Tariff").² For the reasons discussed below, the Commission grants the waiver requested by ITC Pipeline.

2. On July 14, 2016, concurrent with the instant filing, ITC Pipeline filed its initial tariff with the Commission, requesting that the Commission approve the overall tariff and the rate structure for a newly constructed pipeline system that will transport refined petroleum products (i.e., various grades of gasolines, diesel fuels and jet fuels) meeting the specifications set forth in the tariff.³ According to ITC Pipeline, the new pipeline system consists of (a) two thirty-six inch outside diameter pipelines that are approximately 1.7 miles long that will transport the aforementioned petroleum products from an affiliated terminal facility owned by Intercontinental Terminals Company LLC located in the City of Pasadena, Texas (the Terminal) to interconnections with Colonial Pipeline Company and Explorer Pipeline Company, also in the City of Pasadena, Texas (COLEX Pipeline); (b) a bi-directional sixteen-inch outside diameter pipeline approximately 3.76 miles long between the Terminal and an interconnection point near Witter Street in the City of Pasadena, Texas (Witter Pipeline); and (c) all other related equipment and appurtenances, including all check valves, isolation valves, meters, associated pipeline, fittings, and connectors.

3. ITC Pipeline states that it offered its Incentive Rates through a widely publicized Open Season that gave interested shippers notice and an opportunity to sign a Dedication Agreement in return for receiving the Incentive Rate. Based upon this fact, and consistent with the Commission's treatment of similar arrangements, ITC Pipeline asks that the Commission honor the rates set by contract between ITC Pipeline and the shippers that executed a Dedication Agreement, and treat such rates as settlement rates under section 342.4(c) of the Commission's regulations.

4. ITC Pipeline also requests waiver of the portion of the Commission's regulations at section 342.4(c) that would otherwise require ITC Pipeline to submit a verified statement confirming support of (1) current shippers, as opposed to ITC's *prospective shippers*, who will receive the Incentive Rates described in ITC Pipeline's tariff once the

² As filed in Docket No. IS16-605-000.

³ ITC Pipeline's initial tariff filing went into effect by operation of law on August 29, 2016.

pipeline goes into service⁴ and (2) any changes to the Incentive Rates that ITC Pipeline makes in a subsequent tariff filing with the Commission, provided that such changes are made in accordance with the terms of the shippers' previously-executed Dedication Agreements.⁵

5. ITC Pipeline submits that good cause exists to grant the waiver because the committed shippers receiving Incentive Rates have already agreed in writing, through execution of the Dedication Agreement, to both the initial Incentive Rates and the subsequent changes. ITC Pipeline states that its request is supported by the provisions in the Dedication Agreement, including the requirement that the Incentive Rates will be subject to an escalation based on the index listed in the Dedication Agreements. In addition, ITC Pipeline contends that the Commission has previously granted such a waiver under similar circumstances where the pipeline proposed to set its initial settlement rates and subsequent rate changes according to the provisions in executed contracts.⁶

6. Public notice of the filing was issued on September 8, 2016. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁷ Pursuant to Rule 214,⁸ all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

⁴ *Emphasis added.* Transmittal at 1 n.2 (citing *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,258-259 (1996) (granting waiver to adjust sworn statement language supporting settlement rates because new pipelines do not have "current shippers.")).

⁵ As described in the Transmittal Letter of ITC Pipeline's initial rules and rates Tariff (FERC Tariff No. 1.0.0) filed in Docket No. IS16-605-000.

⁶ See e.g., *Enable Bakken Crude Services, LLC*, 145 FERC ¶ 61,187, at P 7 (2013) (*Enable Bakken*); *TransCanada Keystone Pipeline, LP*, 135 FERC ¶ 61,259, at P 8 (2011) (*TransCanada*).

⁷ 18 C.F.R. § 154.210 (2016).

⁸ *Id.* § 385.214.

7. The Commission has held that the committed rates established as part of an open season and included in shipper contracts could be filed as settlement rates under section 342.4(c).⁹ Section 342.4(c) also requires the carrier to file a verified statement that any proposed rate change has been agreed to by all current shippers. The Commission has allowed pipelines to request waiver of this verified statement under the rationale that “all the committed shippers subject to the committed rate schedule have agreed to pay the associated rate over the period of their contracts.”¹⁰ Here, ITC Pipeline offered its Incentive Rates through a widely publicized Open Season which gave interested shippers, who are sophisticated parties capable of fully understanding the terms and rates offered, notice and an opportunity to sign a Dedication Agreement in return for receiving the Incentive Rate. Further, through the execution of the Dedication Agreement, committed shippers have agreed to the initial Incentive Rates and the subsequent changes, including the requirement that the Incentive Rates will be subject to an escalation based on the index listed in the Dedication Agreements.

8. Therefore, the Commission approves ITC Pipeline’s request to treat the Incentive Rates as settlement rates. In addition, for good cause shown, the Commission will grant ITC Pipeline’s requested waiver of the verified statement requirements of 18 C.F.R. § 342.4(c) (2016) with respect to its committed shippers, so long as any changes to the Incentive Rates that ITC Pipeline makes in a subsequent tariff filing with the Commission are made in accordance with the terms of the applicable Dedication Agreement. Consistent with the waivers granted in *Enable Bakken* and *TransCanada*, we direct ITC Pipeline to provide an explanation of any changes to the committed rates as

⁹ *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 18 (2013); see *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,180, at PP 19-21 (2012). See also *JBBR Pipeline LLC*, 150 FERC ¶ 61,012, at P 8(b) (2015) (granting the pipeline’s request to treat the rates established in the contracts as settlement rates pursuant to section 342.4(c) and confirming that “initial committed rates may be filed as settlement rates”); see *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048, at PP 9, 15 (2014) (granting applicant’s request to file the agreed-upon rates as a settlement rate that will be increased by an agreed-upon amount annually and will not be subject to the Commission’s indexing methodology).

¹⁰ *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 18-19; see *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

part of any submission of rate changes to the Commission, and to also include a reference to this order granting ITC Pipeline's waiver request.

By direction of the Commission.

Kimberly D. Bose,
Secretary.