

138 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Buckeye Pipe Line Company, L.P.

Docket No. IS12-185-000

ORDER TO SHOW CAUSE AND REJECTING TARIFFS

(Issued March 30, 2012)

1. On March 1, 2012, Buckeye Pipe Line Company, L.P. (Buckeye) filed the tariffs listed in the Appendix to this order to be effective April 1, 2012. The tariffs, filed pursuant to the terms of an experimental rate program, propose to increase rates for the transportation of refined petroleum products, including gasoline and jet or aviation turbine fuel throughout the Northeast and Midwest regions of the United States. For the reasons discussed below, the Commission rejects the tariffs, and directs Buckeye to show cause why it should not be required to file its rates pursuant to the ratemaking methodologies contained in Part 342 of the Commission's regulations.

**Background**

2. Buckeye states that the proposed rate changes are permitted by Commission Opinion No. 360.<sup>1</sup> Opinion No. 360 authorized Buckeye to implement an experimental program for interstate rate regulation. The program consisted of two parts. In markets that were determined to be competitive, Buckeye was permitted to charge market-based rates. Such rates were limited to no more than a 15 percent real increase over any two-year period, and no individual rate increase in competitive markets could exceed the change in the GNP implicit price deflator plus two percent. In all other markets, an individual rate increase cannot exceed an index composed of the volume-weighted average price change in Buckeye's rates in the competitive markets since the individual rate was last increased. Any volume-weighted decrease in Buckeye's competitive markets was required to be accompanied by a corresponding decrease in the rates charged

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<sup>1</sup> *Buckeye Pipe Line Co., L.P.*, 53 FERC ¶ 61,473 (1990) (Opinion No. 360); *aff'd on reh'g*, 55 FERC ¶ 61,084 (1991) (Opinion No. 360-A).

in the other markets. The experimental program initially operated for three years, and after review, the Commission permitted Buckeye to continue the program beginning January 1, 1995, subject to reevaluation when the Commission conducted its five-year review of the indexing methodology for oil pipeline rates established in Order No. 561.<sup>2</sup>

3. Buckeye asserts that the proposed rate changes in markets where Buckeye has been found to lack significant market power reflect an average volume-weighted increase of 3.0799 percent. Buckeye submits that no individual rate increase in these markets exceeds the rate trigger or rate cap pursuant to the guidelines established in Buckeye's program of rate regulation. Buckeye submits that all changes in rates in markets where Buckeye has been found to have significant market power are less than the corresponding 3.0799 percent volume-weighted average of increases imposed in the competitive markets during the same period.

4. Buckeye also makes some corrections to its tariff. In FERC No. 445.4.0, the county for Aurora, Ohio, has been corrected to Portage County, Ohio. In FERC No. 448.3.0, Pennsylvania has been added to the cover page to reflect the fact that one of the origins, Coraopolis, is in Pennsylvania.

5. Finally, pursuant to 18 C.F.R. § 388.112 (2011), Buckeye requests that the information contained in the privileged version of its filing be withheld from public disclosure and exempted from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552 (2006). Buckeye asserts that non-public treatment of this data is warranted because section 15(13) of the Interstate Commerce Act (ICA) prohibits Buckeye from publishing individual rates (i.e., origin-destination) volume data and release of rate-specific volume information would cause Buckeye competitive harm.

### **Protests**

6. On March 16, 2012, Delta Air Lines, Inc. (Delta) filed a motion to intervene and protest. Delta asserts that it has a substantial economic interest that will be directly affected by the outcome of the proceeding. Delta submits that it is a past, current and future shipper on Buckeye's system, including a shipper under proposed FERC 440.4.0, where Buckeye is proposing to increase jet or aviation turbine fuel transportation rates to

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<sup>2</sup> *Buckeye Pipe Line Co., L.P.*, 69 FERC ¶ 61,302, at 62,163 (1994), *citing*, *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs., Regs. Preambles, January 1991-June 1996 ¶ 30,985 (1993); *order on reh'g*, Order No. 561-A, FERC Stats. & Regs., Regs. Preambles, January 1991- June 1996 ¶ 31,000 (1994), *aff'd*, *Assoc. of Oil Pipelines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

destinations in New York City (i.e., Newark International Airport, John F. Kennedy International Airport and LaGuardia Airport).

7. Delta states that the rates Buckeye is seeking to increase were filed pursuant to an experimental rate program authorized in Opinion No. 360. Delta states although the Commission stated that it would reevaluate Buckeye's program when it conducted the five year oil pipeline index review, the Commission has not done so nor has it determined whether the program is consistent with the Commission's index price mechanism or results in just and reasonable rate for non-competitive markets. Delta asserts that (1) the proposed rate increases associated with the referenced tariffs have not been justified; (2) the referenced rate increases are unlawfully discriminatory under Sections 2 and 3 of the ICA in that the subject rate increases appear to be directly subsidizing rates in competitive markets and are unduly preferential in comparison to the Commission's oil pipeline index price structure; and (3) the challenged rates have not been shown to be just and reasonable in that they do not appear to have any nexus with the actual costs underlying the referenced jet or aviation turbine fuel transportation service.

8. Delta asserts that rates for aviation or jet fuel to non-competitive markets, including the New York City airports, have been increased for almost two decades under Buckeye's experimental program. Delta submits that since 1992, Buckeye's rates to the New York City airports have increased by nearly 70 percent. In contrast, Delta asserts that since 1995, the escalation in rates under the Commission's oil pipeline price index methodology has resulted in an increase of rates based on changes in average industry costs of approximately 48.6 percent. Additionally, Delta states the in the last five years Buckeye's rates from Linden, New Jersey to the New York City airports have increased by almost 32 percent while rates under the index methodology have resulted in increases of 24.5 percent.

9. Delta requests that the Commission immediately suspend the operation of Buckeye's experimental rate program and accept, subject to refund, and suspend, for the full statutory period, Buckeye's proposed jet or aviation turbine fuel rates associated with the non-competitive markets and set these rates for full investigation and hearing.

### **Buckeye's Response**

10. On March 21, 2012, Buckeye filed a response to Delta's protests. Buckeye asserts that the Commission should dismiss the protest because it is based on arguments that may not be raised in a protest under section 15(7) of the ICA. Buckeye argues that the protest fails to allege, much less support, any reasonable grounds for the Commission to suspend and investigate Buckeye's rate increase to the New York Airports in the above-referenced docket. Buckeye disagrees with all of the protest's conclusions, and asserts that the Commission need not consider the merits of Delta's various cost-related arguments and figures. Buckeye submits that the key issue is whether Delta has shown that the challenged increase to F.E.R.C. No. 440.4.0 is unlawful under the applicable standards -

those established by the Commission in Opinion Nos. 360, et al. to govern Buckeye's competitive rate program. In contrast, Buckeye contends that the protest consists entirely of alleging defects in and unreasonable results of the Buckeye competitive rate program functioning as it was authorized. Buckeye asserts that these arguments can only be raised in a complaint under § 13(1) of the ICA. Buckeye contends that Delta's protest should be dismissed without prejudice to its filing a complaint in accordance with the Commission's regulations.

### **Discussion**

11. Buckeye has filed to increase its rates pursuant to an experimental rate program first authorized in Opinion No. 360. In its protest to Buckeye's filing, Delta has raised the issue of whether the continued operation of the program results in just and reasonable rates. Delta argues that the Commission has not reevaluated the program as promised by the Commission in its 1994 order permitting Buckeye to continue its rate program. Buckeye responds by arguing that the rates are filed consistent with the terms of its experimental program and that Delta's protest should be dismissed. Buckeye asserts that the issues raised by Delta can only be filed in a complaint where Delta bears the burden of proof.

12. In its 1994 order permitting Buckeye to continue its experimental program the Commission stated "[w]hen the Commission reviews the operation of the index established for oil pipelines generally as provided in Order No. 561, it will also reevaluate Buckeye's program. If at that time it appears that Buckeye should be required to cease operations under the experimental program, the Commission will so order."<sup>3</sup>

13. As stated by Delta, Buckeye's experimental program has not been subject to reevaluation by the Commission since 1994. Buckeye's experimental rate program arose from a market-based rate proceeding. It is a hybrid program consisting of elements of market-based rates and indexing that predated the alternative ratemaking methodologies either established or refined by the Commission in Order No. 561, which implemented Congress' mandate for more streamlined oil pipeline ratemaking methodologies. The continuation of the experimental program after its initial three year period was appropriate because it was supported by shippers, appeared to result in just and reasonable rates, and gave the Commission the opportunity to gain experience with alternative ratemaking methodologies. However, as Buckeye itself recognized at that time, the proposal was "novel" and was "not intended to be generically applicable to other oil pipelines."<sup>4</sup>

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<sup>3</sup> *Buckeye Pipe Line Co., L.P.*, 69 FERC ¶ 61,302, at 62,163 (1994).

<sup>4</sup> Opinion No. 360, 53 FERC ¶ 61,473 at 62,677.

14. Given that Commission-approved alternative ratemaking methodologies have been made available to all oil pipelines since Buckeye's program was first approved, and are widely used, the Commission questions whether it is appropriate to continue the experimental program. In light of this, the issues and concerns raised by Delta, and the fact that the Commission has never reevaluated Buckeye's experimental rate program, the Commission directs Buckeye to show cause why it should not be required to discontinue its experimental program and avail itself of the various ratemaking methodologies used by other oil pipelines in Part 342 of the Commission's regulations. The Commission's action is pursuant to the authority the Commission retained in the 1994 order to require Buckeye to cease operations of the program if so ordered. Accordingly, Buckeye is directed to show cause within 30 days of the date of this order why it should not be made to cease using this experimental rate program. Given this development in the proceeding, interested persons will be permitted to file comments on Buckeye's response 30 days thereafter.

15. Because the Commission has determined that it will review the continued efficacy of Buckeye's program in the show cause directed above, the Commission finds that it is appropriate to reject the tariffs filed by Buckeye.

The Commission orders:

(A) Buckeye's tariffs listed in the Appendix are rejected. All subscribers must be notified.

(B) Within 30 days of the date of this order, Buckeye is directed to show cause why the rates in its experimental program should not be rescinded and replaced with rates filed pursuant to the ratemaking methodologies contained in Part 342 of the Commission's regulations.

(C) Interested persons are permitted to file comments and interventions within 30 days after Buckeye's filing in response to this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**APPENDIX**  
**Rejected Tariffs**

FERC No. 437.4.0  
FERC No. 438.4.0  
FERC No. 439.3.0  
FERC No. 440.4.0  
FERC No. 441.3.0  
FERC No. 442.5.0  
FERC No. 443.3.0  
FERC No. 444.4.0  
FERC No. 445.4.0  
FERC No. 446.4.0  
FERC No. 447.3.0  
FERC No. 448.3.0  
FERC No. 449.4.0  
FERC No. 450.3.0  
FERC No. 452.3.0