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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. PL20-6-000

Commission Action to Address Effects of COVID-19 on Oil Pipelines

(Issued May 8, 2020)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: In this policy statement, the Federal Energy Regulatory Commission provides guidance regarding the Commission's response to the effects of the national emergency caused by COVID-19 on oil pipelines.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Commission Action to Address Effects of COVID-19
on Oil Pipelines

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POLICY STATEMENT

(Issued May 8, 2020)

1. On March 13, 2020, the President issued a proclamation declaring a National Emergency concerning COVID-19. Measures to mitigate or slow the transmission of COVID-19 have substantially reduced travel and commercial activity, and U.S. consumption of petroleum products has dropped sharply as a result. Consequently, oil pipelines are facing unanticipated circumstances, including diminished demand for service and radically altered market conditions. In light of these circumstances, we offer the following guidance to oil pipelines.

2. We are committed to assisting oil pipelines in addressing the unprecedented impacts of COVID-19, particularly where such pipelines are encountering regulatory hurdles that may impede or delay attempts to respond to changing market dynamics during this difficult time. For example, an oil pipeline may be unable to comply with regulatory requirements or may require an extension due to steps it has taken to meet the emergency conditions, such as measures taken to protect the health and safety of its employees. We further recognize that due to the circumstances arising from COVID-19,

an oil pipeline might seek to temporarily alter routes, reconfigure existing systems, or change flow direction to provide shippers access to storage. In addition, an oil pipeline that has not previously provided service subject to the Commission's jurisdiction might seek to temporarily provide service in interstate commerce, as opposed to intrastate commerce, to respond to current market demands, but may have difficulty meeting the Commission's regulatory requirements to begin providing interstate service for the first time. In these and other instances, oil pipelines may request temporary waivers of or extensions of time to comply with the following regulations where necessary and appropriate to address the unforeseen circumstances resulting from COVID-19:

- Cost-of-service filing requirements (18 CFR 342.2(a); Part 346);
- Reporting requirements (Part 357);
- Record-keeping requirements (Part 356);
- Accounting regulations (Part 352); and
- Depreciation studies (18 CFR 347.1).

We will review and act on such requests as expeditiously as possible based upon the circumstances and justification described in the pipeline's waiver or extension request.¹

¹ See also *Extension of Non-Statutory Deadlines*, Supplemental Notice Granting Extension of Time for Non-Statutory Deadlines, Waiving Regulations, and Shortening Answer Period, Docket No. AD20-11-000 (Apr. 2, 2020) ("Entities may seek waiver of Commission orders, regulations, tariffs, rate schedules, and service agreements, as appropriate, to address needs resulting from steps they take in response to the emergency conditions caused by COVID-19. Action on all such motions will be taken as expeditiously as possible.").

3. Moreover, to facilitate changes to operations and services on an expedited basis, oil pipelines may request a waiver for tariffs to become effective on less than 30 days' notice pursuant to § 341.14 of the Commission's regulations.² Such requests for waiver of prior notice made concurrently with tariff filings will be deemed conditionally granted subject to refund, and will also be deemed automatically granted at the conclusion of the 30-day notice period unless the Commission issues an order denying the request.³

4. We also recognize that oil pipelines' existing tariff rates and rules may be inadequate to address the drastic and unforeseen impacts of COVID-19. Oil pipelines are allowed to file changes to their rates and rules and regulations tariffs at any time. Under the Commission's regulations, pipelines with indexed rates can change their rates at any time so long as they remain at or below the ceiling level.⁴ A pipeline may change a rate without regard to the ceiling level if the change is agreed to by each shipper using the service.⁵ If a pipeline's costs substantially diverge from its indexed rates, it can file a cost-of-service rate change.⁶ In addition, pipelines with market-based rate authority have the flexibility to respond to changes in market conditions by filing a tariff to change their

² 18 CFR 341.14.

³ *Id.*

⁴ 18 CFR 342.3(a).

⁵ 18 CFR 342.4(c).

⁶ 18 CFR 342.4(a).

rates at any time without regard to the indexed ceiling level.⁷ Any pipeline that does not currently have market-based rate authority and serves sufficiently competitive markets may file an application at any time under Part 348 of the Commission's regulation to establish that it lacks significant market power.⁸

5. We understand that there could be instances where the above regulations for establishing and changing rates might not provide an appropriate means to address the current emergency circumstances, which may be drastic but only temporary.⁹ If oil pipelines submit other proposals for temporary rate relief to address the emergency circumstances caused by COVID-19, we will give such proposals their due consideration on a case-by-case basis. Although any such proposals must be fully supported and consistent with the Interstate Commerce Act,¹⁰ we recognize that these unprecedented circumstances might require unusual solutions. We will assess the appropriateness of any temporary rate relief proposals based on the facts and circumstances presented, including any issues raised in comments or protests from affected shippers.¹¹

⁷ 18 CFR 342.4(b).

⁸ 18 CFR pt. 348.

⁹ To the extent there are lasting changes that impact a pipeline's ability to recover its costs, such issues are appropriately addressed via the rate changing methodologies in Part 342 of the Commission's regulations.

¹⁰ 49 U.S.C. app. 1 *et seq.* (1988).

¹¹ This policy statement is merely guidance, and we emphasize that nothing in this policy statement is intended to establish a binding rule or determination, or to alter shippers' rights to file complaints or protests in individual cases. 18 CFR 343.2, 343.3.

6. We acknowledge that in certain situations, oil pipelines may need to temporarily curtail jurisdictional transportation service due to the circumstances caused by COVID-19.

In such instances, affected oil pipelines may file notices of temporary embargo.¹²

7. We recognize there may be oil pipelines facing disputes with shippers as a result of the unprecedented circumstances caused by COVID-19 and that they may want to explore the potential for a negotiated or mediated resolution. We encourage oil pipelines in that situation to consider using the Commission's alternative dispute resolution process.¹³ We appreciate oil pipelines' efforts to pursue agreements with shippers to resolve issues where possible.

8. We encourage oil pipelines to contact the Commission with any concerns or issues related to the impacts of COVID-19. Oil pipelines may notify the Commission of any regulatory or compliance issues they are encountering in attempting to respond to the changed circumstances. We note that oil pipelines may use the Commission's pre-filing review process to informally submit tariffs or related material to Commission staff for

In addition, we strongly encourage pipelines to communicate with their customers and to attempt to reach a consensus regarding any temporary rate proposals where possible.

¹² Notices of embargo may be submitted through the eTariff portal using Type of Filing Code 840.

¹³ The contact information for the alternative dispute resolution helpline is as follows:

Toll-free: 1-844-238-1560

FAX: 202-219-3289

Email: ferc.adr@ferc.gov

suggestions.¹⁴ We are sensitive to oil pipelines' needs for feedback on an expedited basis given the emergency conditions.

9. We commend the industry's efforts to adapt to these unprecedented circumstances while continuing to uphold their common carrier duties under the Interstate Commerce Act.

Document Availability

10. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning COVID-19, issued by the President on March 13, 2020.

11. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

12. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676), via email at ferconlinesupport@ferc.gov, or from the Public

¹⁴ 18 CFR 341.12.

Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.