155 FERC ¶ 61,052
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 21, 2016

In Reply Refer To:
Buckeye Pipe Line Company, L.P.
Docket No. OR13-3-000

Post & Schell, P.C.
607 14th Street, N.W.
Washington, DC 20005

Attention: Christopher J. Barr

Reference: Joint Motion for Waiver of Initial Decision

Dear Mr. Barr:

1. On February 11, 2016, pursuant to Rule 710 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.710 (2015), Buckeye Pipe Line Company, L.P. (Buckeye) and the Commission Trial Staff (Trial Staff), the only active participants in the proceeding, requested waiver of an initial decision and issuance of a final decision by the Commission on Buckeye's revised application for market-based rates. The revised application is supported by Trial Staff and Buckeye as reflected in: (1) the supplemental testimony of Dr. George Schink supporting the revised application; and (2) the answer of Trial Staff in support of Buckeye's revised request for market-based rate authority and the supporting affidavit. Since the joint motion for waiver of the initial decision was not denied within ten days after its filing, it is granted pursuant to Rule 710. Further, as discussed below, the Commission grants Buckeye's revised application for market-based rates.

2. Buckeye provides transportation of refined petroleum products through its Long Island System from Linden, New Jersey to the three New York City Airports (JFK, LaGuardia, and Newark) as well as to two other destinations in New York City, Inwood and Long Island City. On October 15, 2012, Buckeye filed in Docket OR13-3-000 an application for authority to charge market-based rates in the market defined in the application as the New York City Market. Various airlines challenged the portion of Buckeye's market-based rate application related to jet fuel service. On February 28, 2013, the Commission issued an order setting for hearing Buckeye's application to

charge market-based rates for the transportation of refined petroleum products on the Long Island System.[1]

3. Buckeye reached a settlement with the protesting airlines addressing issues in this docket as well as several other related dockets. On June 19, 2015, Buckeye filed an offer of settlement in which, among other things, Buckeye agreed to withdraw the portion of its application for market-based rates related to jet fuel service from Linden to the New York City Airports as well as the Inwood and Long Island City destinations, and not to file for market-based rates for those services during the period established by the settlement. The settlement permitted Buckeye to seek approval for market-based rates for non-jet fuel service to the Inwood and Long Island City destinations, and the airlines agreed not to oppose such a request. The Commission issued a letter order approving the settlement on September 29, 2015.[2] On October 5, 2015, Buckeye filed a notice which partially withdrew its application for market-based rates with respect to jet fuel transportation.

4. Buckeye provided additional data to Trial Staff, and after conducting its own analysis, Trial Staff has concluded that it does not have concerns that Buckeye has significant market power for its non-jet fuel transportation service from Linden to Inwood and Long Island City. Buckeye and Trial Staff agree that that approach used in *Sunoco Pipeline L.P.*, 118 FERC ¶ 61,266 (2007) (*Sunoco)* would be appropriate for resolution of this proceeding. In *Sunoco,* the Commission granted market-based rate authority based upon a joint motion for waiver of initial decision and Trial Staff's support of Sunoco's renewed application for authority to charge market-based rates. Buckeye and Trial Staff are the only remaining active participants and neither desires briefing or oral argument. Buckeye and Trial Staff assert that it is in the public interest, as well as in the interest of the active participants, to conserve Commission resources and expedite resolution of this matter by proceeding directly to a final decision on the revised application.

5. Trial Staff and Buckeye arrived at the same conclusion independently, each through its own mode of analysis, without necessarily agreeing with the methodology or data used by the other, and neither party is seeking Commission approval of its methodology for that conclusion.

6. Trial Staff found that Buckeye lacks significant market power for both its origin market, which includes its Linden, New Jersey receipt point, and its destination market, which includes its Inwood and Long Island City, New York delivery points. Trial Staff found that the appropriate product market in this case is the transportation of gasoline and distillates. Trial Staff states that even though Buckeye's witness, Dr. Schink, does not

[1] *Buckeye Pipe Line Company, L.P.*, 142 FERC ¶ 61,162 (2013).

[2] *Buckeye Pipe Line Company, L.P.*, 152 FERC ¶ 61,242 (2015).

agree with this product market definition, this difference is not material in this case, as his analysis excludes jet fuel and, thus, both Buckeye's and Trial Staff's analyses effectively focus on the same products, i.e., the transportation of gasoline and distillates.

7. Trial Staff states that Dr. Schink defines the origin market as including the entire New York City BEA (Economic Area). Trial Staff agrees with Dr. Schink's statement that his origin market analysis focused on alternatives available in and around Linden, New Jersey and that the origin market is competitive. Trial Staff states that while the entire New York City BEA might be an overly broad definition of the origin market, it does not materially affect the conclusions in this case. Both Trial Staff's and Buckeye's analyses effectively focus on alternatives available to shippers in and around Linden, New Jersey. In addition, both Trial Staff and Buckeye conclude that Buckeye lacks significant market power for the origin market, however defined, which contains its Linden, New Jersey origin point.

8. Trial Staff states that for the Linden, New Jersey origin market, Buckeye has a capacity-based market share of approximately 33.3 percent, and the Herfindahl-Hirschman Index (HHI) is 1,108, indicating an unconcentrated market and that Buckeye lacks significant market power in its origin market. Trial Staff states that for the destination markets Buckeye's capacity-based market share is 39.7 percent and the HHI is 1,579. Trial Staff states that these results indicate that Buckeye does not have significant market power over its Inwood and Long Island City, New York delivery points for gasoline or distillates.

9. The Commission finds that Buckeye's revised application for market-based rates is uncontested. On this basis, and on the basis of Trial Staff's market power analysis of the markets set for hearing, the Commission grants Buckeye authority to implement market-based rates for non-jet fuel service in both its origin market, which includes its Linden, New Jersey receipt point, and its destination market, which includes its Inwood and Long Island City, New York delivery points.

10. The Commission's acceptance of Buckeye's revised application does not constitute precedent or settled practice regarding any principle or issue in this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.