

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Indexing Policies and Page 700 of FERC  
Form No. 6

Docket No. RM17-1-000

Petition for a Rulemaking of the Liquids Shippers  
Group, Airlines for America, and the National Propane  
Gas Association

RM15-19-000

(Issued February 20, 2020)

GLICK, Commissioner, *dissenting*:

I am dissenting from today's order withdrawing the Advance Notice of Proposed Rulemaking (ANOPR) and denying shippers' petition for rulemaking, because the Commission must do more to ensure shippers and the Commission have the information necessary to protect against unjust and reasonable oil pipeline rates.<sup>1</sup> It is especially critical to provide shippers with adequate transparency into pipeline costs, given that the Commission has chosen to rely solely on shippers to ensure that pipeline rates are just and reasonable, as required by the Interstate Commerce Act (ICA).<sup>2</sup> The Commission has the statutory authority to initiate its own cost-of-service investigations into pipeline rates but has for decades chosen not to do so.<sup>3</sup> Instead of summarily terminating this proceeding, the Commission should have proceeded with a Notice of Proposed Rulemaking aimed at enhancing pipelines' data reporting requirements, so that the information available to shippers and the public is useful both in the evaluation of index filings and for cost-of-service rate challenges.

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<sup>1</sup> *Revisions to Indexing Policies and Page 700 of FERC Form No. 6*, 170 FERC ¶ 61,134 (2020) (Withdrawal Order).

<sup>2</sup> 49 App. U.S.C. § 1(5) (1988).

<sup>3</sup> As the Commission explained in Order No. 561, the Commission retains the responsibility to ensure rates are just and reasonable under the ICA, and for this reason it "will not promulgate an explicit bar to Commission-initiated rate investigations." *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,967 (1993). Nonetheless, the Commission explained that, while it "believes it is advisable to retain the authority to investigate a rate on its own motion, it should make clear that it does not contemplate invoking such authority except in the most unusual circumstances." *Id.*

The Commission is responsible for ensuring that the rates oil pipelines charge are just and reasonable. Through the ANOPR, the Commission sought to enhance the transparency of information reported on FERC Form No. 6, page 700, to ensure the public can effectively assess the reasonableness of oil pipeline rates and so that the Commission can “better fulfill its statutory obligations under the ICA.”<sup>4</sup> As the Commission explained, a pipeline’s costs associated with providing one service may be “fundamentally different” from the costs of providing another service.<sup>5</sup> Because the Commission’s regulations only require pipelines to report company-wide data, the information currently available to shippers is at best, a rough approximation of the costs underlying a particular shipper’s rates.

In the ANOPR, the Commission proposed to require pipelines to report more granular data, so that shippers could use the information to compare the rate they are being charged “with costs that are more closely associated with that particular rate.”<sup>6</sup> The Commission stated that this information “would be useful both in the evaluation of index filings . . . and for cost-of-service rate challenges to oil pipeline rates.”<sup>7</sup> However, in today’s order, the Commission does a complete about-face, withdrawing its proposal on grounds that it is “unnecessary and inconsistent” with the purposes of a “preliminary screen.”<sup>8</sup> The Commission fails to explain how the information currently available to shippers is adequate for purposes of monitoring and challenging the justness and reasonableness of oil pipeline rates, except to say that shippers can use “their knowledge of the pipeline system (such as when the pipeline was constructed) to support any cost-of-service complaints.”<sup>9</sup> Moreover, while the Commission notes the potential cost impact this ANOPR proposal may have on oil pipeline companies, it appears to give scant consideration to the benefit this additional information would have for ratepayers and the public. Absent greater transparency into the costs underlying a specific rate, shippers are

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<sup>4</sup> *Revisions to Indexing Policies and Page 700 of FERC Form No. 6*, 157 FERC ¶ 61,047, at P 5 (2016) (ANOPR Order).

<sup>5</sup> *Id.* P 27.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Withdrawal Order, 170 FERC ¶ 61,134 at P 6.

<sup>9</sup> *Id.* P 7.

left with no more than a pitiable choice between the rate charged and a costly fishing expedition to obtain the information they need to challenge the rate in the first place.

In light of the Commission's historic practice of relying on shippers to challenge rates rather than initiate its own investigations where the rates charged may no longer be just and reasonable, it is imperative that the Commission ensure shippers have access to the information they need to carry out this essential check. In today's order, the Commission fails to fulfill its last remaining responsibility to ensure oil pipeline rates remain just and reasonable.

For these reasons, I respectfully dissent.

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Richard Glick  
Commissioner