

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ONEOK Elk Creek Pipeline, L.L.C.

Docket No. IS19-689-000

JOINT STATEMENT OF COMMISSIONERS LaFLEUR AND GLICK

(Issued August 2, 2019)

1. Yesterday, the Commission allowed to become effective by operation of law ONEOK Elk Creek Pipeline, L.L.C.'s (ONEOK) proposed Committed Rates for new transportation movements on Elk Creek Pipeline originating at points of interconnection with ONEOK Bakken Pipeline, L.L.C. with a destination of Bushton, Kansas.¹ While the Commission has routinely allowed oil pipeline rates to go into effect by operation of law, this case is distinct. Barely over a month ago—on June 28, 2019—the Commission unanimously voted to reject ONEOK's proposed Committed Rates for the same service, finding that the rates did not meet the requirements for establishing initial rates set forth in 18 C.F.R. section 342.2.² The Committed Rates that the Commission allowed to go into effect by operation of law yesterday differ in no material respect from those that the Commission just rejected. For the same reasons that the Commission articulated with regard to the previously rejected Committed Rates, we strongly object to yesterday's outcome.

2. The same facts and the same law that caused the Commission to reject ONEOK's proposed Committed Rates a little over a month ago should not be ignored today. ONEOK failed to meet its burden of demonstrating that its proposed rates and charges are just and reasonable. The Commission's initial rate regulation is clear that a carrier must justify an initial rate for new service, like ONEOK proposes here, by either filing a cost-of-service rate or a sworn affidavit that the rate is agreed to by at least one non-affiliated shipper who intends to use the service in question.³ The second method—filing a sworn affidavit from a non-affiliated shipper—will only suffice if no protest is filed; otherwise, the carrier must file a cost-of-service rate.⁴ Like the Committed Rates that the Commission rejected last month, ONEOK's proposed Committed Rates still failed to

¹ ONEOK Elk Creek Pipeline, L.L.C., Tariff Filing, Docket No. IS19-689-000 (filed July 2, 2019).

² *ONEOK Elk Creek Pipeline, L.L.C.*, 167 FERC ¶ 61,277, at P 3 (2019).

³ 18 C.F.R. § 342.2 (2018).

⁴ *Id.* § 342.2(b).

meet the requirements of the Commission's regulations, and therefore of the Interstate Commerce Act, and should have been rejected anew.

Cheryl A. LaFleur
Commissioner

Richard Glick
Commissioner