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Energy Practice
October 19, 2012

FERC Issues Notices of Proposed Rulemaking to Reduce Regulatory Reporting Burden on Natural Gas and Oil Pipelines

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On October 18, 2012, the Federal Energy Regulatory Commission ("FERC") issued three Notices of Proposed Rulemaking and a Staff Memorandum designed to ease the regulatory burdens on the natural gas and oil pipeline industries. Comments on the Notices of Proposed Rulemaking are due 30 days after publication in the Federal Register. Comments on the Staff Memorandum are due on November 19, 2012.

Natural Gas Act Pipelines (Docket No. RM12-14-000)

FERC proposes to amend its regulations at 18 C.F.R. § 154.402 to eliminate the Annual Charge Adjustment ("ACA") filing requirement and instead require natural gas pipelines utilizing an ACA tariff clause to incorporate the FERC-authorized annual charge unit rate by reference to that rate, as published on FERC's website. Pipelines that wish to continue utilizing an ACA tariff clause would be required to make a one-time tariff filing that incorporates the ACA unit charge published on the FERC website into the pipeline's tariff as the applicable ACA unit charge for the relevant fiscal year.

Oil Pipelines (Docket No. RM12-15-000)

FERC is proposing an overhaul of its oil pipeline regulations in 18 C.F.R. Part 341 governing the form, composition and filing of rates and charges by interstate oil pipelines for transportation in interstate commerce.

The proposed revisions include:

- Eliminating paper posting and the requirement to serve filings in paper;
- Eliminating the requirement that oil pipelines make a tariff filing setting forth an index of all effective tariffs to which it is a party and replacing such requirement with an obligation that oil pipelines post the index of tariffs on their public websites;
- Simplifying the information oil pipelines must include by requiring that the index of tariffs identify for each tariff: (1) the product being shipped and (2) the origin and destination points for that product. FERC further proposes that oil pipelines update the index of tariffs within 90 days of any change;
- Requiring only oil pipelines with more than two tariffs to maintain an index of tariffs on their public websites;
- Deleting the provision that allows an oil pipeline's tariff to be supplemented only once;
- Deleting requirements for maintenance of oil pipeline tariffs that are amended, canceled or reissued;
- Consolidating the instructions for cancellation of tariffs into Section 341.5 of the FERC regulations;
- Eliminating the filing requirements for oil pipeline suspension supplements required by Section 341.4(f) of the FERC regulations;
- Revising Section 341.4 of the regulations to treat all amendments to pending tariff records, whether ministerial or substantive, the same to allow an oil pipeline to file to amend or to modify a tariff record at any time during the pendency of FERC acting on such tariff record; and
- Consolidating the Adoption Notice filing and the filing to integrate the tariff records of the adopting carrier.

Intrastate Pipelines Performing Interstate Service Under Section 311 of the Natural Gas Policy Act and Hinshaw Pipelines (Docket No. RM12-17-000)

FERC is proposing a new streamlined optional notice procedure which intrastate pipelines may elect to use when filing proposed rates or operating conditions pursuant to 18 C.F.R. § 284.123 (Rates and Charges). Under the notice procedure (proposed as new 18 C.F.R. § 284.123(g)), if there is no protest by any person or Commission Staff to a filing made under Section 284.123, the filing would be deemed approved without a FERC order.

The proposed optional notice procedure would permit approval of uncontested filings without the need for any FERC order upon expiration of a 60-day notice period (or other period established by the FERC Secretary for a particular filing). If a protest is filed within the notice period, the proposed regulation provides for an additional 30-day reconciliation period to resolve contested filings without the need for parties to file a formal settlement offer and without the need for a FERC order on the proposal.

FERC is also proposing to add procedures to streamline the processing of Section 284.123 filings, including requiring the rejection of any filing within seven days of the filing date that patently fails to comply with the provisions of Section 284.123(e) or (f). The rejection would be without prejudice to the pipeline re-filing a complete application.

FERC is proposing to require that a NGPA Section 311 intrastate pipeline whose rates are deemed approved under the optional notice procedures file an application for rate approval under Section 284.123 on or before the date five years following the date it filed the application for approval of the rate under the optional notice procedures. Similarly, a Hinshaw pipeline whose rates are deemed approved under the optional notice procedures would be required to file either (1) cost and throughput data sufficient to allow FERC to determine whether any change to the pipeline's rates should be ordered pursuant to Section 5 of the Natural Gas Act or (2) a petition for rate approval pursuant to Section 284.123, on or before the date five years following the date it filed the application for approval of rates pursuant to the optional notice procedures.

Finally, FERC is proposing a new Section 284.123(h) to codify the procedures for Section 311 and Hinshaw pipelines to withdraw any filing under Section 284.123 in its entirety prior to its approval.

Staff Memorandum (Docket No. AD12-6-000)

FERC Staff issued a Memorandum pursuant to the November 8, 2011, Plan for Retrospective Analysis of Existing Rules prepared in response to Executive Order 13579, which requested that independent regulatory agencies issue plans for periodic retrospective analysis of their existing regulations. The Staff Memorandum proposes minor revisions to FERC's natural gas pipeline regulations that may be appropriate to remove reporting requirements that no longer may serve their intended purpose. For example, with respect to natural gas pipelines, Staff recommends that Section 157.14(a)(10) and (11) that require pipelines to submit gas supply and market data with NGA Section 7 applications be modified or removed because FERC no longer relies on such data to assess the viability of a proposed project. Staff also recommends that Section 157.216(a)(1)(i), regarding automatic authorization to abandon, be amended to correct a typographical error, which is an "or" should be an "and."

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact one of the authors:

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