



DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. PL23-1-000]

Oil Pipeline Affiliate Committed Service

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of proposed policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is withdrawing the proposed policy statement that proposed to revise the Commission's policy for evaluating whether contractual committed transportation service on oil pipelines complies with the Interstate Commerce Act where the only shipper to obtain the contractual committed service is the pipeline's affiliate.

DATES: The proposed policy statement published on December 22, 2022 (87 FR 78670) is withdrawn as of February 19, 2026.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. On December 16, 2022, the Commission issued a proposed policy statement to revise its policy for evaluating whether contractual committed transportation service on oil pipelines complies with the Interstate Commerce Act (ICA)¹ where the only shipper to agree to the service is the pipeline's affiliate (Affiliate-Only Committed Service).² For the reasons discussed below, we exercise our discretion to withdraw the Proposed Policy Statement and terminate this proceeding.

I. Background

2. Under the ICA, oil pipelines are common carriers that must provide transportation service to shippers on reasonable request.³ Historically, pipelines have offered transportation service on a walk-up basis without having contracts with shippers. Since the mid-1990s,⁴ however, the Commission has approved transportation rates and terms of service pursuant to long-term contracts with ship-or-pay obligations. Because committed contract shippers are not similarly situated to uncommitted shippers, they may receive service as defined by the contract (contractual committed service) that differs from uncommitted service.⁵

¹ 49 U.S.C. app. 1 *et seq.*

² *Oil Pipeline Affiliate Committed Serv.*, 87 FR 78670 (Dec. 22, 2022) 181 FERC ¶ 61,206 (2022) (Proposed Policy Statement).

³ 49 U.S.C. app. 1(4) (“It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor.”); *Magellan Midstream Partners, L.P.*, 161 FERC ¶ 61,219, at P 12 (2017) (*Magellan I*) (“By definition, a pipeline is a common carrier, and is bound by the ICA to ship product as long as a reasonable request for service is made by a shipper”), *order on reh’g & clarification*, 181 FERC ¶ 61,207 (2022).

⁴ See *Express Pipeline P’ship*, 76 FERC ¶ 61,245 (*Express I*), *reh’g denied*, 77 FERC ¶ 61,188 (1996) (*Express II*).

⁵ See *Express I*, 76 FERC at 62,254.

3. Contractual committed service complies with the ICA's common-carriage and nondiscrimination requirements when the same rates and terms are offered in a public open season where all interested shippers have an equal opportunity to obtain the committed service.⁶ When the open season results in an arm's-length agreement, the Commission presumes that the contractual committed service is just and reasonable and nondiscriminatory.⁷ In these circumstances, the presence of a nonaffiliated contracting shipper supports a presumption of reasonableness and nondiscrimination because the Commission assumes that nonaffiliated shippers are sophisticated parties that can be relied upon to protect their own interests from those of the pipeline.⁸

II. Proposed Policy Statement

4. In the Proposed Policy Statement, the Commission stated that where an open season results in an Affiliate-Only Committed Service, there may be no arm's-length

⁶ See, e.g., *Sea-Land Serv., Inc. v. Interstate Commerce Comm'n*, 738 F.2d 1311, 1317 (D.C. Cir. 1984) (“[C]ontract rates can be accommodated to the principle of nondiscrimination by requiring a carrier offering such rates to make them available to any shipper willing and able to meet the contract's terms.”); *Enter. Crude Pipeline LLC*, 166 FERC ¶ 61,224, at P 11 (2019) (“The vital element of the contracting arrangements . . . has been an open season that provided all shippers equal opportunity to avail themselves of the offered capacity.”); *Express II*, 77 FERC at 61,756.

⁷ E.g., *Tesoro High Plains Pipeline Co.*, 148 FERC ¶ 61,129, at P 23 (2014) (“The Commission honors the contract terms entered into by sophisticated parties that engage in arms-length negotiation.”); *Seaway Crude Pipeline Co.*, 146 FERC ¶ 61,151, at P 25 (2014) (“Absent a compelling reason, it would be improper to second guess the business and economic decisions made between sophisticated businesses when entering negotiated rate contracts.”).

⁸ E.g., *Targa NGL Pipeline Co.*, 181 FERC ¶ 61,210, at P 9 (2022) (citing *Sea-Land*, 738 F.2d at 1316-17; *Express I*, 76 FERC at 62,254) (“Where a nonaffiliated shipper agrees to a pipeline's contract rate, the Commission can presume that the agreement responds to competitive conditions.”).

transaction to support a presumption of reasonableness and nondiscrimination.⁹ The Commission observed that parties have raised concerns in various proceedings that pipelines may afford undue preferences to their affiliates in open seasons for committed capacity¹⁰ and expressed concern that the Commission's present policies may not adequately address these issues to ensure fairness to nonaffiliated shippers.¹¹

5. In light of these concerns, the Commission proposed to revise its policy for evaluating whether an open season resulting in Affiliate-Only Committed Service is just, reasonable, and not unduly discriminatory under the ICA. First, the Commission proposed a safe-harbor mechanism whereby pipelines could demonstrate that Affiliate-Only Committed Service rates are just, reasonable, and not unduly discriminatory by showing that the rate offered in the open season was at or below the cost of service over the full term of the agreement.¹² Second, the Commission proposed to evaluate the non-rate terms in Affiliate-Only Committed Service contracts,

⁹ Proposed Policy Statement, 181 FERC ¶ 61,206 at PP 5, 7.

¹⁰ *Id.* P 6 (citing, e.g., *Blue Racer NGL Pipelines, LLC*, 162 FERC ¶ 61,220, at P 16 (2018); *N.D. Pipeline Co.*, 147 FERC ¶ 61,121, at P 20 (2014)).

¹¹ *Id.* PP 5-6.

¹² *Id.* PP 12-18. The Commission proposed two ways of satisfying the safe harbor. First, a pipeline could (i) provide cost-of-service support for the initial rate, (ii) provide in the contract that adjustments to the rate over the term of the contract by the pipeline would be pursuant to the Commission's cost-of-service and indexing regulations, (iii) provide in the contract that the committed shipper has the right to directly challenge the committed rate on a cost-of-service basis during the term, and (iv) provide that whenever the rate is established or changed during the contract term on a cost-of-service basis, the cost of service will be set at a 100% load factor (or other reasonable limit). *Id.* P 14. Second, a pipeline could (i) provide cost-of-service estimates to support the contract rate for the entire contract term, (ii) provide in the contract that the committed shipper may have a one-time right to challenge the cost-of-service showing made in the pipeline's initial filing, and (iii) apply a 100% load factor (or other reasonable limit). *Id.* P 15.

such as minimum volume commitments, minimum term-length requirements, deficiency provisions, and duty-to-support clauses, to determine whether the terms were structured to unduly discriminate against nonaffiliates.¹³ Third, the Commission proposed to adopt a rebuttable presumption that Affiliate-Only Committed Service is unduly discriminatory and not just and reasonable where the affiliate, before or shortly after the contract service begins, remarkets the capacity to nonaffiliated shippers (Remarketing Presumption).¹⁴

The Commission requested comment on these proposals.¹⁵

III. Comments

6. There were nine comments filed in response to the Proposed Policy Statement.¹⁶

Pipelines oppose the Commission's proposals and request that the Commission withdraw the Proposed Policy Statement, while Shippers support the proposals and urge the Commission to expand the proposed guidance.

¹³ *Id.* P 22. The Commission proposed to consider multiple factors in evaluating non-rate terms, including whether the term departs from industry standards, imposes excessive burdens or risk on nonaffiliates, or does not appear reasonably tailored to further legitimate business objectives. *Id.*

¹⁴ *Id.* PP 23-24. The Commission stated that where a nonaffiliate purchases remarketed capacity after an open season, the fact that no nonaffiliate contracted with the pipeline for the same capacity in the open season suggests that the contract terms were not competitive. *Id.* P 23.

¹⁵ *Id.* PP 2, 19-20, 25-27.

¹⁶ Comments were filed by: Liquid Energy Pipeline Association (LEPA); Bridger Pipeline LLC, Energy Transfer LP, and Marathon Pipe Line LLC (together, Indicated Carriers); DCP Midstream, LP; Enterprise Products Operating LLC (Enterprise); TC Energy Corp. (TC Energy); Targa Resources Corp. (Targa); Energy Infrastructure Council (EIC) (collectively, Pipelines); Airlines for America and the National Propane Gas Association (together, Joint Commenters); and Shell Trading (US) Company (Shell) (together with Joint Commenters, Shippers).

7. Pipelines state that the fact that a pipeline's affiliate is the only shipper to agree to a contract does not demonstrate that the pipeline structured the contract to exclude nonaffiliates.¹⁷ Pipelines argue that the proposed guidance would conflict with the regulatory framework of the ICA, which is narrower in scope than the Federal Power Act (FPA) or Natural Gas Act (NGA).¹⁸ Pipelines maintain that adopting the proposed guidance would create regulatory uncertainty and inhibit infrastructure development by discouraging affiliate contracts used to support new pipeline projects.¹⁹ Pipelines further contend that the proposed guidance is unsupported by sufficient evidence of actual discrimination.²⁰ Moreover, Pipelines state that the Commission's existing policies adequately protect against affiliate preferences by allowing shippers to file protests or complaints.²¹

8. Pipelines contend that the proposed safe harbor would increase cost-of-service rate litigation in violation of the Energy Policy Act of 1992 (EPAct 1992) and interfere with

¹⁷ *E.g.*, Targa Initial Comments at 5-7, 10-11; DCP Midstream Initial Comments at 5-6; LEPA Initial Comments at 12-13; Indicated Carriers Initial Comments at 30-31.

¹⁸ LEPA Initial Comments at 7-9.

¹⁹ *E.g.*, *id.* at 6, 15; Indicated Carriers Initial Comments at 2, 10, 27, 38, 46; Enterprise Initial Comments at 4 & n.17; Targa Initial Comments at 15-16; TC Energy Initial Comments at 3-5; DCP Midstream Initial Comments at 2-3; EIC Initial Comments at 1, 3.

²⁰ LEPA Initial Comments at 18-20 (citing *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006)); Indicated Carriers Initial Comments at 12 (citing *Associated Gas Distribs. v. FERC*, 824 F.2d 981, 1019-20 (D.C. Cir. 1987)); LEPA Reply Comments at 3-5; Indicated Carriers Reply Comments at 5-12; Enterprise Reply Comments at 2-4.

²¹ *E.g.*, Indicated Carriers Initial Comments at 16-19; TC Energy Initial Comments at 3, 5-6; EIC Reply Comments at 5.

the contracting process by imposing specific contractual terms.²² Moreover, Pipelines claim that the Proposed Policy Statement does not provide meaningful guidance regarding how the Commission would evaluate non-rate terms.²³ In addition, Pipelines state that the Remarketing Presumption is unsupported because an affiliate's ability to remarket capacity shortly after an open season does not establish that the pipeline structured the contract for that capacity to exclude nonaffiliates.²⁴

9. Shippers contend that the proposed guidance accords with the ICA by ensuring that Affiliate-Only Committed Service is just, reasonable, and non-discriminatory. Additionally, Shippers state that the guidance conforms to EPAct 1992 because it is limited in scope and merely builds upon the Commission's existing policies.²⁵ Shippers dispute Pipelines' claims that the Commission lacks sufficient evidence to adopt the proposed guidance,²⁶ arguing that it is self-evident that the absence of arm's-length negotiations between pipelines and affiliated shippers can facilitate self-dealing.²⁷ Furthermore, Shippers maintain that the Commission's existing protest and complaint

²² *E.g.*, LEPA Initial Comments at 7-9, 11, 15-17, 24-27, 28-39; Indicated Carriers Initial Comments at 31-33; Enterprise Initial Comments at 8-9, 16, 23; TC Energy Initial Comments at 4; Targa Initial Comments at 16-17; EIC Reply Comments at 5.

²³ LEPA Initial Comments at 28-29; Targa Initial Comments at 17-18.

²⁴ *E.g.*, LEPA Initial Comments at 30-32; Indicated Carriers Initial Comments at 43-44; DCP Midstream Initial Comments at 7; Enterprise Initial Comments at 20-21. For instance, Pipelines state that an affiliated shipper may not intend to remarket capacity when it participates in an open season but later decide to remarket based on changes in market conditions. LEPA Initial Comments at 30-32.

²⁵ Joint Commenters Reply Comments at 6-7, 13-14, 21-22; Shell Reply Comments at 5-6.

²⁶ Joint Commenters Reply Comments at 12-16.

²⁷ Shell Reply Comments at 12-13.

procedures are insufficient because nonaffiliated shippers lack insight into pipelines' dealings with their affiliates.²⁸

10. Shippers argue that Pipelines' opposition to the safe harbor and the Remarketing Presumption is misplaced. Shippers contend that the safe harbor would not interfere with the contracting process because pipelines would remain free to justify Affiliate-Only Committed Service rates using other methods.²⁹ Shippers urge the Commission to expand the safe harbor to apply to all contract rates, including those with nonaffiliates.³⁰ In addition, Shippers argue that the Remarketing Presumption is logical because a nonaffiliated shipper's decision to obtain capacity from the pipeline's affiliate, rather than directly from the pipeline in the open season, raises questions regarding the integrity of the open season.³¹

IV. Discussion

11. Upon review of the comments, we are not persuaded to adopt the Proposed Policy Statement. Accordingly, we withdraw the Proposed Policy Statement and terminate this proceeding.

12. As reinforced by the record developed in this proceeding, we find that the issues discussed in the Proposed Policy Statement are best considered on a case-by-case basis, rather than through an industry-wide policy statement.³² The record contains insufficient

²⁸ Joint Commenters Reply Comments at 4, 16-17; Shell Reply Comments at 10-11.

²⁹ Shell Reply Comments at 19-20.

³⁰ Joint Commenters Initial Comments at 2, 17, 19-24.

³¹ Joint Commenters Reply Comments at 26; Shell Reply Comments at 17, 19-21.

³² See LEPA Initial Comments at 6, 15; Indicated Carriers Initial Comments at 9, 19; Enterprise Initial Comments at 6-8; EIC Reply Comments at 5.

specific examples of discriminatory open season terms and conditions to merit an industry-wide policy statement. Moreover, each open season for committed capacity presents unique circumstances, and there are likely different ways for pipelines to demonstrate that open seasons that result in committed service with Affiliate-Only contracts comply with the ICA. Accordingly, we find it unnecessary to issue an industry-wide policy statement to provide generic guidance regarding the information sufficient to demonstrate that Affiliate-Only Committed Service is just, reasonable, and not unduly discriminatory or preferential. Although we decline to address this matter on a generic basis, a non-affiliated shipper may demonstrate in an individual proceeding that a pipeline's open season terms and conditions result in undue discrimination, such as through a demonstration of overly burdensome terms, whereby only affiliated shippers could contract for the service. The Commission will address issues related to Affiliate-Only Committed Service if they arise in individual proceedings. We reiterate that pipelines proposing to implement Affiliate-Only Committed Service have the burden to include sufficient information to support a finding that the Affiliate-Only Committed Service complies with the ICA.³³

13. For these reasons, based on the existing record, we conclude that issues related to Affiliate-Only Committed Services can be addressed on a case-by-case basis, rather than through a generic policy statement. We therefore exercise our discretion to withdraw the Proposed Policy Statement and terminate this proceeding.

The Commission orders:

³³ *E.g.*, *ONEOK Elk Creek Pipeline, L.L.C.*, 167 FERC ¶ 61,277, at P 4 (2019) (“An oil pipeline bears the burden of demonstrating that proposed rates and changes to its tariff are just and reasonable.”).

The Proposed Policy Statement is hereby withdrawn and Docket No. PL23-1-000
is hereby terminated.

By the Commission.
Issued: February 19, 2026.

Debbie-Anne A. Reese,

Secretary.

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