the pipeline the specifics of the format to be used to provide such information.[12] Moreover, the Commission also suggested that the pipeline could request confidential treatment of the information it provides.[13]

It was the Commission's intent that the caveats expressed not be limited to section 347.1(e)(vi), but rather apply to all the Part 347 information that would be provided by pipelines. Therefore, the regulations will be modified to reflect that information required by Part 347 of the regulations, release of which would violate Section 15(13) of the ICA, must be provided in a format that will protect any individual shipper. Moreover, the general statement in Order No. 571 that the information provided will be publicly available unless specific confidential treatment is sought by the carrier is still applicable.[14]

E. Finally, AOPL seeks clarification regarding the use of new Page 700 of Form No. 6, in particular the significance of the statement that this schedule would ''permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate.'' [15] AOPL claims such a comparison appears to tell a shipper nothing concerning the justness and reasonableness of an individual rate.

The information reported on Page 700 will show how a pipeline's average barrel-mile rate changes from one year to the next. A shipper can then compare the yearly percentage change in the average barrel-mile rate with the yearly percentage change in the rate it is charged to determine whether there is a substantial divergence between the rate of change in the two figures such as to warrant a challenge to an indexed rate. Thus, the Page 700 information alone is not intended to show what a just and reasonable rate should be.

The Commission Orders

The request for rehearing and clarification is granted in part and denied in part, as reflected in the body of this order.

List of Subjects in 18 CFR part 347

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, Part 347, Chapter I, Title 18, Code of Federal Regulations, is amended, as set forth below.

PART 347—OIL PIPELINE DEPRECIATION STUDIES

1. The authority citation for Part 347 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 347.1, paragraph (e) introductory text and paragraph (e)(5)(vi) are revised to read as follows:

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

* * * * *

(e) *Information to be provided.* The information in paragraphs (e)(1) through (5) of this section must be provided as justification for depreciation changes. Modifications, additions, and deletions to these data elements should be made to reflect the individual circumstances of the carrier's properties and operations. Any information in paragraphs (e)(1) through (5) of this section, the release of which would violate Section 15(13) of the Interstate Commerce Act, must be provided in a format that will protect individual shippers.

* * * * *

(5) * * *

(vi) A list of shipments and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year.

* * * * *

[FR Doc. 95–117 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–P

[12] Order No. 571, mimeo at 34.

[13] Id.

[14] Order No. 571, mimeo at 34.

[15] Order No. 571, mimeo at 17.

---

18 CFR Part 348

[Docket No. RM94–1–001; Order No. 572–A]

Market-Based Ratemaking for Oil Pipelines

Issued December 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order denying the request for rehearing of Order No. 572, the final rule adopting filing requirements and procedures with respect to an application by an oil pipeline for a determination that it lacks significant market power in the markets in which it proposes to charge market-based rates. The final rule adopted procedural rules in order to implement the Commission's Order 561 market-based ratemaking policy.

EFFECTIVE DATE: This final rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of the formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Order Denying Rehearing

Issued December 28, 1994.

On October 28, 1994, the Federal Energy Regulatory Commission (Commission) issued Order No. 572 in which it adopted procedural rules governing an oil pipeline's application for a Commission finding that the oil pipeline lacks significant market power in the relevant markets.[1] On November 28, 1994, the Association of Oil Pipe Lines (AOPL) filed a request for rehearing of Order No. 572.[2] As discussed below, the Commission denies the AOPL's request for rehearing.

In Order No. 561, the Commission adopted section 342.4(b) of the regulations, which provides that: ''Until

[1] Market-Based Ratemaking for Oil Pipelines, Order No. 572, 59 FR 59148 (November 16, 1994), III Stats. & Regs. ¶ 31,007 (1994).

[2] Sinclair Oil Corporation's motion to file a brief in response to the AOPL's request for rehearing is denied.

the carrier establishes that it lacks market power, these rates will be subject to the applicable ceiling level under § 342.3.'' Order No. 572 built on that requirement by requiring an oil pipeline to file an application for a market power determination rather than a rate filing under the ICA. Only after the Commission concludes that the oil pipeline lacks significant market power in the markets in which it proposes to charge market-based rates may it file market-based rates.

The Commission rejected as collateral attacks on Order No. 561 the argument that it had overstepped its authority under the ICA by precluding an oil pipeline from charging market-based rates until the Commission has determined that the oil pipeline lacks significant market power in the relevant markets.

The AOPL maintains that its objection does not constitute a collateral attack on Order No. 561 because its objection does not fall within the definition of collateral attack as ''an improper challenge to a prior judgement attempted through a proceeding that has an independent purpose.'' [3] It avers that it did not object to Order No. 561's framework. Rather, it claims that it raised its objection to an entirely new subject: ''the detailed market power application filing requirements proposed by the NOPR.'' [4] It concludes: ''When two proposed rules [Order Nos. 561 and 572], addressing different topics [framework and application], share a fundamental flaw, and a commenting party contests that flaw in each rulemaking, the party's objection in the second rulemaking does not constitute a collateral attack on the first rulemaking.'' [5]

The Commission denies the AOPL's request for rehearing on the collateral attack issue. It was in Order No. 561 that the Commission adopted section 342.4(b) of its regulations which prohibits an oil pipeline from charging market-based rates until the Commission determines that it lacks significant market power in the relevant markets. This was not an issue in the present rulemaking proceeding, which adopted procedural requirements relating to that determination. Indeed, the different purpose of the rulemakings is shown by the fact that if there were no Order No. 572, Order No. 561's requirement, codified in section 342.4(b), about the effectiveness of market-based rates would still govern. Nonetheless, the Commission, as in Order No. 572, will address below the AOPL's contentions on the merits.

On the merits, the AOPL maintains that the Commission has mischaracterized Order No. 561 as a permissible waiver procedure when it is an improper attempt to modify the ICA's rate change scheme where the oil pipeline files a new rate pursuant to Section 6(3), which is subject to Commission review under Section 15(7). The AOPL adds that the application constitutes a rate filing because the application is inextricably linked to an oil pipeline's ability to charge market-based rates. The AOPL further maintains that the Commission's inconsistent treatment of cost-based and market-based rates is not justified because shippers are protected by the ICA's refund provisions, oil pipelines might have an expanded period of lost revenues if the application process lasts beyond the statutory seven-month suspension period, and the Commission has offered no reason why shippers need greater protection from presumed market forces than the statutory protection from potentially monopolistic rates.

The Commission denies the AOPL's request for rehearing with respect to the Commission's statutory authority. An oil pipeline has no right to charge market-based rates. Rather, an oil pipeline must present empirical proof that it is not a monopoly so that the Commission can ensure that *presumed* market forces are not the basis of effective rates for the transportation of oil.[6] The Commission has adopted the market-based ratemaking process as the procedure that will enable oil pipelines to prove that they lack significant market power in the relevant markets and are thus entitled to an exception to, that is waiver from, the generally applicable indexing method and the maximum just and reasonable rate allowed thereunder.[7] That the market power determination will affect the oil pipeline's ability to charge market-based rates does not as the AOPL argues, convert the application into a rate filing. It merely can lead to such a filing.[8] Importantly, the Commission has not precluded an oil pipeline from making rate filings to recover its costs under either the indexing method or a cost-of-service filing.

It is appropriate that the Commission has treated cost-based rates and market-based rates in a different manner by allowing an oil pipeline to file for cost-based rates under Section 6(3) of the ICA but requiring an oil pipeline to obtain a market power determination before it can charge market-based rates. It is true that both constitute exceptions to the Commission's generally applicable ratemaking method (that is, indexing) for oil pipelines. However it is within the Commission's authority to determine how an oil pipeline is to secure permission to charge rates based on a method that deviates from the generally applicable method. And the difference between cost-based rates, where the cost-of-service method is a known quantity, and market-based rates where the Commission must make a market power determination, justifies the Commission's approach of ensuring that presumed market forces will not be the basis of effective rates for the transportation of oil when an oil pipeline's application (*i.e.*, its waiver request) is under consideration.[9]

The AOPL maintains further that the Commission erred by adopting rules for market-based rates that do not comport with the Act of 1992's mandate to ''streamline procedures * * * relating to oil pipelines rates in order to avoid unnecessary regulating costs and delays.'' [10] It argues that the process

[3] Request for rehearing at 3, *citing, generally,* 1B Moore's Federal Practice ¶¶ 0.441–0.448.

[4] *Id.* at 4.

[5] *Id.* at 4, 5. The AOPL notes that it has challenged Order No. 561 on the legal issue by filing an appeal in the D.C. Circuit. *See* AOPL v. FERC, No. 94–1538 (filed August 5, 1994).

[6] Texaco v. FPC, 417 U.S. 380 (1974); and Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[7] In Order No. 572, the Commission referred to the Permian Basin Area Rate Cases, 390 U.S. 747 (1988), as support for the proposition that the Commission may impose a moratorium on filings for market-based rates except under the application process. In Permian, the Supreme Court held ''that the Commission may under §§ 5 and 16 [of the Natural Gas Act] restrict filings under § 4(d) of proposed rates higher than those determined by the Commission to be just and reasonable.'' (at 780) It is true as the AOPL submits that Permian involved a temporary moratorium and the Supreme Court declined to prescribe the limitations of the Commission's authority to proscribe moratoria upon filings in other circumstances. Here, however, the Commission's moratorium is also limited in that once an oil pipeline makes a showing that it lacks significant market power in the relevant markets, it is no longer prevented from charging market-based rates in those markets. In addition, the Supreme Court's main concern was with circumstances of changing costs as opposed to the apparent stability of production costs in Permian. Of course, under Order No. 561, the oil pipelines may file for cost-of-service rates.

[8] The AOPL further submits that, with respect to a rate filing, the Commission does not have the statutory authority to require at the threshold the kind of filing required by Order No. 572. As discussed in Order No. 571–A, issued contemporaneously with this order, the Commission concludes here that it has the authority under Section 12(1) of the ICA to adopt filing requirements at the threshold for rate filings, such as for market-based rates. Of course, here, the Commission has adopted the waiver approach rather than relying on Section 12(1) in connection with a rate filing.

[9] Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486,1510 (D.C. Cir. 1984).

[10] Section 1802(a) of the Act of 1992.

adopted by Order No. 572, requiring a case-in-chief if no protest is filed, cannot be characterized as a streamlining measure.

As discussed in Order No. 572, the Commission has fully complied with the mandate of the Act of 1992 by adopting the indexing methodology. The market-based ratemaking approach is not generally applicable and, in any, event, as stated in Order No. 572, does streamline procedures as to those rates. Therefore, the Commission denies the AOPL's request for rehearing on the Commission's conclusion that it did not violate the Act of 1992.

The Commission Orders

The AOPL's request for rehearing of Order No. 572 is denied. By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–116 Filed 1–3–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC96

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Parent-to-Child Deeming for Certain Disabled Children

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 8010 of the Omnibus Budget Reconciliation Act of 1989 which provides that a disabled child under age 18 who lives with his or her parent(s) will not have parental income or resources deemed to him or her if the child previously received a reduced supplemental security income (SSI) benefit (personal needs allowance) while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care; the child is eligible for medical assistance under a Medicaid State home care plan; and the child would otherwise be ineligible for a Federal SSI benefit because of the deeming of the parents' income or resources. The rule also provides that, although deeming is waived in these circumstances, the in-kind support and maintenance provided by the parents will not be counted. Lastly, when such a child would not be ineligible because of the deeming of his parents' income but would receive a benefit of less than the amount payable under section 8010, the child's benefit will be $30 a month plus any optional State supplementation. Any of the child's own countable income will then be deducted from that amount.

EFFECTIVE DATE: This rule is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Bond, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794.

SUPPLEMENTARY INFORMATION: Section 1614(f)(2) of the Social Security Act (the Act), requires that, for purposes of determining eligibility for and the amount of SSI benefits, the income and resources of a child under age 18 be deemed to include the income and resources of a parent (or spouse of a parent) who is living in the same household as the child, except to the extent determined by the Secretary to be inequitable under the circumstances. Regulations at § 416.1160 through § 416.1169 explain how we deem income and when it is inequitable to deem part or all of that income. Regulations at § 416.1202 through § 416.1204a explain how we deem resources.

Section 8010(a) of Pub. L. 101–239 amended section 1614(f)(2) of the Act to provide that parental income and resources shall not be deemed to any child under age 18 who is disabled, received SSI benefits under section 1611(e)(1)(B) while in an institution described in that section, is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3), and, except for this waiver of deeming, would not be eligible for a Federal SSI benefit. Section 8010(b) amended section 1611(e)(1)(B) of the Act to include eligible children as described in section 1614(f)(2)(B) of the Act, among those eligible for the SSI personal needs allowance. These provisions became effective June 1, 1990.

The regulation provides that we do not deem parental income and resources to disabled children who:

- Previously received SSI personal needs allowance benefits while residents of a medical facility for which Medicaid paid more than fifty percent of the cost of the individuals' care;
- Are eligible for medical assistance under Medicaid State home care plans approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3); and
- Would otherwise be ineligible for a Federal SSI benefit because of the deeming of their parents' income and/or resources.

The regulation also provides that children for whom the deeming rules are waived may be eligible to receive an SSI benefit up to the personal needs allowance (currently $30 monthly), plus an optional State supplement in certain States. The optional State supplement payable to a child for whom the deeming rules are waived will be determined by the State and, if the supplement is administered by the Federal government, set out in Federal/State agreements.

Further, the regulation states that in-kind support and maintenance provided by a child's parent(s), which we do not count when deeming of parental income applies, also will not count when deeming of parental income is waived under section 1614(f)(2) of the Act. Otherwise, the counting of such in-kind support and maintenance could negate the beneficial effect of section 8010 of Pub. L. 101–239.

Finally, the regulation addresses the situation of children who do not meet the criteria for waiver of deeming only because parental income is not high enough to make them ineligible for SSI benefits but is high enough to result in an SSI payment that is less than the amount that would be payable under section 8010 of Pub. L. 101–239. Under the regulation, such children would receive an SSI benefit up to the personal needs allowance plus any optional State supplement. Any of the child's own countable income would then be deducted from that amount. This change is being made under the Secretary's discretionary deeming authority in section 1614(f)(2)(A) of the Act which allows the Secretary to determine the extent to which deeming of parental income and resources is inequitable under the circumstances. This change is necessary to prevent anomalies from being introduced into parent-to-child deeming.

We published this regulation as a notice of proposed rulemaking (NPRM) on September 22, 1993, (58 FR 49249). The 60-day comment period ended on November 22, 1993. We received no comments and are adopting the regulation as proposed.

Regulatory Procedures

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet