

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME;

§ 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

\* \* \*

*Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
18-Oct-12 ...	IL	Chicago .....	Chicago O'hare Intl .....	2/1131	09/04/12	ILS OR LOC RWY 9R, Amdt 9B.
18-Oct-12 ...	IL	Chicago .....	Chicago O'hare Intl .....	2/3002	09/04/12	RNAV (GPS) RWY 9R, Amdt 2A.
18-Oct-12 ...	IL	Chicago .....	Chicago O'hare Intl .....	2/3003	09/04/12	RNAV (GPS) RWY 27L, Amdt 2A.
18-Oct-12 ...	IL	Chicago .....	Chicago O'hare Intl .....	2/3037	09/04/12	ILS OR LOC RWY 27L, ILS RWY 27L (CAT II), ILS RWY 27L (CAT III), AMDT 28B.
18-Oct-12 ...	TX	Laredo .....	Laredo Intl .....	2/5493	09/04/12	RNAV (GPS) RWY 35L, AMDT 1.
18-Oct-12 ...	AR	Springdale .....	Springdale Muni .....	2/5778	09/04/12	ILS OR LOC RWY 18, Amdt 8A.
18-Oct-12 ...	AR	Springdale .....	Springdale Muni .....	2/5782	09/04/12	RNAV (GPS) RWY 18, Amdt 1A.
18-Oct-12 ...	AR	Springdale .....	Springdale Muni .....	2/5783	09/04/12	RNAV (GPS) RWY 36, Amdt 1.
18-Oct-12 ...	AR	Springdale .....	Springdale Muni .....	2/5784	09/04/12	VOR/DME RWY 36, AMDT 9A.
18-Oct-12 ...	AR	Springdale .....	Springdale Muni .....	2/5786	09/04/12	VOR RWY 18, Amdt 15A.
18-Oct-12 ...	SC	Greenville .....	Donaldson Center .....	2/7340	09/04/12	ILS OR LOC RWY 5, Amdt 5.
18-Oct-12 ...	SC	Greenville .....	Donaldson Center .....	2/7341	09/04/12	RNAV (GPS) RWY 23, Orig.
18-Oct-12 ...	SC	Greenville .....	Donaldson Center .....	2/7342	09/04/12	RNAV (GPS) RWY 5, Orig.
18-Oct-12 ...	SC	Greenville .....	Donaldson Center .....	2/7343	09/04/12	NDB RWY 5, Amdt 6.
18-Oct-12 ...	MT	Conrad .....	Conrad .....	2/8277	09/04/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Orig.
18-Oct-12 ...	MN	International Falls ..	Falls Intl .....	2/9577	09/04/12	COPTER ILS OR LOC RWY 31, Amdt 1A.
18-Oct-12 ...	LA	Abbeville .....	Abbeville Chris Crusta Memorial.	2/9660	09/04/12	VOR/DME B, Amdt 3.
18-Oct-12 ...	LA	Abbeville .....	Abbeville Chris Crusta Memorial.	2/9661	09/04/12	VOR/DME A, Amdt 2.

[FR Doc. 2012-23557 Filed 9-28-12; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 357

[Docket No. RM11-21-000; Order No. 767]

#### Revision to Form No. 6

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** In this Final Rule, the Federal Energy Regulatory Commission amends the instructions on page 700 of FERC Form No. 6 (Form 6) to ensure that oil pipelines report interstate-only barrel and barrel-mile data on lines (11) and (12) of page 700 and not a combination of interstate and intrastate throughput. The Commission also directs pipelines that reported combined interstate and intrastate data in any field on lines (1) through (12) of page 700 of their 2010 Form 6 or page 700 of their 2011 Form

6 to file within 90 days of the final rule's publication in the **Federal Register** revised page 700 data containing only interstate data for the years 2009, 2010 and 2011.

**DATES:** *Effective Date:* This rule will become effective December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrew Knudsen (Legal Information), Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502-6527, [Andrew.Knudsen@ferc.gov](mailto:Andrew.Knudsen@ferc.gov). Michael Lacy (Technical Information), Office of Energy Market Regulation, 888 First Street NE., Washington, DC 20426, (202) 502-8843, [Michael.Lacy@ferc.gov](mailto:Michael.Lacy@ferc.gov). Brian Holmes (Technical Information), Office of Enforcement, 888 First Street NE., Washington, DC 20426, (202) 502-6008, [Brian.Holmes@ferc.gov](mailto:Brian.Holmes@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

##### 140 FERC ¶ 61,218

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

#### Revision to Form No. 6

[Docket No. RM11-21-000]

*Order No. 767*

Final Rule

Issued September 20, 2012.

1. In this Final Rule, the Commission amends the instructions on page 700, Annual Cost of Service Based Analysis Schedule, of FERC Form No. 6, Annual Report of Oil Pipeline Companies, (Form 6) to ensure that oil pipelines report interstate-only barrel and barrel-mile data on lines (11) and (12) of page 700 and not a combination of interstate and intrastate throughput.<sup>1</sup> The Commission also directs pipelines that reported combined interstate and intrastate data in any field on lines (1) through (12) of page 700 of their 2010 Form 6<sup>2</sup> or their 2011 Form 6<sup>3</sup> to file within 90 days of the final rule's publication in the **Federal Register**

<sup>1</sup> Concurrent with the issuance of this Final Rule, the Commission is proposing additional changes to Page 700 of Form 6 in a Notice of Proposed Rulemaking in Docket No. RM12-18-000.

<sup>2</sup> Pipelines filed their 2010 FERC Form 6 on April 18, 2011.

<sup>3</sup> Pipelines filed their 2011 FERC Form 6 on April 18, 2012.

revised page 700 data containing only interstate data for the years 2009, 2010, and 2011.<sup>4</sup>

## I. Background

2. Page 700 of Form 6 serves as a preliminary screening tool for shippers to evaluate interstate pipeline rates subject to the Commission's jurisdiction.<sup>5</sup> Thus, in Order Nos. 620 and 620-A, the Commission clarified that page 700 must include only jurisdictional costs and jurisdictional revenues (i.e. interstate costs and interstate revenues) and not a combination of jurisdictional and non-jurisdictional data.<sup>6</sup> Page 700 contains data for the current year and previous year, which allows shippers and the Commission to evaluate the pipeline's cost changes during the prior year.<sup>7</sup>

3. On July 29, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR)<sup>8</sup> proposing to modify the instructions for line (11)<sup>9</sup> and line (12)<sup>10</sup> of page 700 to specify that pipelines must report only interstate barrels and interstate barrel-miles, not a combination of interstate and intrastate throughput. The NOPR observed that the current instructions on page 700 for lines (11) and (12) may inadvertently have caused some pipelines to report barrel and barrel-mile throughput that combines interstate and intrastate data.<sup>11</sup>

<sup>4</sup> 2009 data will be reported in Column C of the revised 2010 Form 6, page 700. 2010 data will be reported in Column B of the revised 2010 Form 6, page 700 and Column C of the revised 2011 Form 6, page 700. 2011 data will be reported in Column B of the revised 2011 Form 6, page 700.

<sup>5</sup> All jurisdictional pipelines are required to file page 700, including pipelines exempt from filing the full Form 6. 18 CFR §§ 357.2(a)(2) and (a)(3) (2011).

<sup>6</sup> *Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts*, Order No. 620, FERC Stats. & Regs. ¶ 31,115, at 31,959, on reh'g, 94 FERC ¶ 61,130, at 61,498 (2001).

<sup>7</sup> Page 700 of the 2010 Form 6 contains data for 2010 and 2009. Following the issuance of the NOPR, pipelines filed the 2011 Form 6 on April 18, 2012, which contains page 700 data for 2011 and 2010.

<sup>8</sup> *Revision to Form No. 6*, 76 FR 46668 (Aug. 3, 2011), FERC Stats. & Regs. ¶ 32,677 (2011) (NOPR).

<sup>9</sup> Instruction number 4 on page 700 of the Form 6.

<sup>10</sup> Instruction number 5 on page 700 of the Form 6.

<sup>11</sup> Specifically, the instruction for line (12) on page 700 directs pipelines to report the same barrel-mile figures as those reported on line 33a of page 600 of the Form 6. Similarly, the instruction for line (11) on page 700 directs pipelines to report the same barrel figures as those reported on line 33b of page 601 of the Form 6. Thus, the instructions on page 700 specify that the throughput data reported on page 700 is the same throughput data that is reported on page 600-601. The instructions for page 600 direct pipelines to include "all oils received" by the pipeline, which consequently may have led some filers to report combined interstate and

4. In addition to modifying the instructions for the page 700, the NOPR further proposed to require any pipeline that reported combined interstate and intrastate data in lines (1) through (12) on page 700 to file a revised page 700 of the 2010 Form 6 containing interstate-only data for 2009 and 2010.

5. On April 18, 2012, following the issuance of the NOPR and after the filing of comments in this proceeding, pipelines filed the 2011 Form 6, which contains page 700 data for 2011 and 2010.

## II. Comments

6. Comments on the NOPR were due on October 3, 2011. Comments were filed by Valero Marketing and Supply Company (Valero); Air Transport Association of America and the National Propane Gas Association (ATA/NPGA); Magellan Pipeline, L.P. (Magellan); Association of Oil Pipelines (AOPL);<sup>12</sup> Enbridge Pipelines Inc.; and R. Gordon Gooch (Mr. Gooch). AOPL, Valero and Mr. Gooch filed reply comments, which the Commission accepts as they assisted our decision-making process.

## III. Discussion

### A. Clarification to Page 700 Requiring That All Pipelines Report Interstate-Only Barrels and Barrel Miles

#### 1. The NOPR

7. The NOPR proposed to modify the instructions for line (11) and line (12) of page 700 to specify that pipelines must report only interstate barrels and interstate barrel-miles and not a combination of interstate and intrastate throughput.

#### 2. Comments

8. Valero, ATA/NPGA, and Mr. Gooch support the clarification that pipelines are to report on page 700 only interstate barrels and barrel-miles. They state that this change is consistent with the purpose of page 700. Magellan also states that it supports the proposal. AOPL and Enbridge state that they do not oppose the proposal to change the instructions on page 700.

#### 3. Discussion

9. The Commission adopts the proposal to clarify that the barrel and barrel-mile data reported on lines (11) and (12) of page 700 must include

intrastate barrel-miles on lines (11) and (12) of page 700.

<sup>12</sup> AOPL states that it is a nonprofit trade association that represents the interests of common carrier oil pipelines. AOPL states that its members transport almost 85 percent of the crude oil and refined petroleum products shipped through pipelines in the United States.

interstate-only data and may not comingle interstate and intrastate data. None of the parties oppose this change. This modification will ensure that the interstate-only revenues and costs currently required to be reported on page 700 are accompanied by interstate-only volumes.

### B. Filing Revised Page 700

#### 1. The NOPR

10. The NOPR proposed that pipelines that reported combined interstate and intrastate data in lines (1) through (12) on page 700 should file a corrected 2010 Form 6 page 700 containing interstate only data for 2009 and 2010.

#### 2. Comments

##### i. Initial Comments

11. Valero, ATA/NPGA, and Mr. Gooch support requiring pipelines that included intrastate data in the page 700 on the 2010 Form 6 to file revised 2009 and 2010 data containing interstate-only information. In addition, Valero and ATA/NPGA request that the Commission require pipelines to re-file corrected page 700 going back to the 2005 Form 6. Valero, ATA/NPGA, and Mr. Gooch state that once the Commission has gathered the page 700 information, it should then re-evaluate the appropriateness of the current oil pipeline index<sup>13</sup> based upon the prior years' page 700 information. The current index adjustment is the result of the Commission's recent five-year review of the index conducted in 2010.<sup>14</sup> Shipper parties had proposed using page 700 in the 2010 five-year review of the index level and now claim that the Commission rejected the use of the page 700 data only due to the interstate/intrastate mismatch on page 700, which is being remedied by this proceeding. Valero argues that burden on pipelines of re-filing data back to 2005 is likely to be negligible. Extrapolating from the cost estimates in the NOPR, Valero asserts that re-filing corrected Form 6, page 700 going back to 2005 would be \$171.10 for a pipeline that is re-filing all five-years.

12. In contrast, AOPL, Magellan, and Enbridge oppose requiring any pipeline

<sup>13</sup> Under the index, an oil pipeline may change its ceiling rates effective every July 1 by multiplying the previous index year's ceiling rates by the index multiplier published by the Commission. The index is currently set at the Producer Price Index for Finished Goods (PPI-FG) plus an adjustment factor of 2.65 percent.

<sup>14</sup> *Five-Year Review of Oil Pipeline Pricing Index*, 133 FERC ¶ 61,228, at P 64-85 (2010) (2010 Five-Year Index Review), *reh'g denied*, 135 FERC ¶ 61,172, at P 27-43 (2011) (2010 Five-Year Index Review Rehearing).

that comingled interstate and intrastate costs to re-submit 2009 page 700 data. AOPL and Magellan assert that there is no compelling regulatory need for the 2009 data. AOPL argues that requiring 2009 data is a retroactive action that is contrary to the precepts of administrative law.<sup>15</sup> These parties do not raise objections to filing interstate-only 2010 data as part of the 2011 Form 6 to be filed on April 18, 2012.

13. Additionally, AOPL and Magellan dispute the NOPR's estimate that re-filing 2009 and 2010 data will only be one hour per filer. AOPL contends that it can be difficult to determine whether a movement is interstate or intrastate. Similarly, Magellan states that until the most recent 2010 Form 6 filed on April 18, 2011, Magellan filed comingled interstate and intrastate throughput and operating cost data on its page 700. Based upon its own experience, Magellan estimates that revisions to 2009 data for other pipelines would require forty man-hours over a three-week period involving multiple personnel.

#### ii. Reply Comments

14. In its reply comments, AOPL asserts that Valero, ATA/NPGA, and Mr. Gooch's proposal to require re-filing of page 700 data going back the 2005 Form 6 is an improper collateral attack on the Commission's decisions in the 2010 Five-Year Index Review. AOPL adds that if the Commission considers using page 700 to calculate the index in the future, the Commission must address the objections that were raised in the last five-year review.<sup>16</sup>

15. Also in its reply comments, AOPL reiterates its position that the request for corrected 2009 data has not been justified. AOPL contends that the burden of recalculating the 2010 Form 6, page 700 data substantially exceeds the one hour per filer estimated by the NOPR. AOPL states that sorting out the jurisdictional status of individual pipeline movements and recalculating the correct number of barrels and barrel-miles to each destination can be quite time consuming. Responding to Valero, ATA/NPGA, and Mr. Gooch, AOPL states that the further back in time the recalculation is required, the more difficult the data is to reconstruct. AOPL adds that there have been significant changes in pipeline ownership and

operations since 2005, making it more difficult to reconstruct historic data.

16. In its reply comments, Valero denies that its request is a collateral attack on the 2010 Five-Year Index Review. Valero emphasizes the importance of the index level for shipper costs. Citing the NOPR's estimate of a total cost of \$11,362.70 to correct the referenced reporting errors for the years 2009 and 2010, Valero asserts that requiring pipelines to file corrected data for 2006, 2007, and 2008 would cost \$35,000. Valero disputes AOPL's and Magellan's claims regarding burden of filing revised interstate-only page 700 information. Valero observes that only one pipeline (Magellan) raised objections to the Commission's burden estimate. Valero states that pipelines such as Magellan already report intrastate and interstate revenue on page 301 of the Form 6. Thus, Valero concludes that pipelines should be fully aware of the corresponding interstate and intrastate movements, barrels, and barrel-miles, underlying these reported revenue amounts. Valero notes that pipelines are already required to report interstate-only data for lines (1) through (10).

#### 3. Commission Determination

17. In the NOPR, the Commission proposed to require any pipeline that reported comingled interstate and intrastate data on lines (1) through (12) of the 2010 Form 6, page 700 to file revised 2010 Form 6, page 700 data for the years 2010 and 2009. In addition, following the issuance of the NOPR and after the filing of comments, pipelines filed the 2011 Form 6 on April 18, 2012, which contains page 700 data for 2011 and 2010.

18. Accordingly, the Commission directs any pipeline that reported combined interstate and intrastate data in any field on lines (1) through (12) of page 700 of its 2010 Form 6 or page 700 of its 2011 Form 6 to file revised page 700 data containing only interstate data for the years 2009, 2010 and 2011.

19. This action ensures the availability of complete interstate cost per barrel-mile data consistent with the Commission's regulation of interstate oil pipeline rates and the intent of page 700 to enable the Commission and shippers to analyze interstate pipeline costs. For example, the interstate-only information for the year 2009, 2010 and 2011 will provide the Commission with useful information during the next five-year review of the Commission's index level.<sup>17</sup> In the recent 2010 Five-Year

Index Review, parties urged the Commission to modify its existing practice and to use page 700 data to calculate the oil pipeline index.<sup>18</sup> The Commission determined that it could not use data from page 700 because the page 700 instructions, which are being corrected by this order, created a "mismatch between the page 700 total cost-of-service, which includes only interstate data, and the page 700 throughput data, which includes interstate and intrastate data."<sup>19</sup> Thus, by collecting the interstate-only page 700 data for 2009, 2010 and 2011, as directed by this order, the Commission will have available complete page 700 data for the five-year (2009–2014) period to use during the 2015 Five-Year Index Review if deemed appropriate.<sup>20</sup>

20. The Commission will not require pipelines to file revised page 700 data for the years prior to 2009. The sole purpose given by Valero, ATA/NPGA, and Mr. Gooch for requesting this information is to reconsider the conclusions of the Commission's 2010 Five-Year Index Review. The proposal to revisit the indexing calculation is a collateral attack on the recently completed 2010 Five-Year Index Review, which has been administratively final as of the Commission's order on rehearing.<sup>21</sup> A request to further reconsider the Commission's indexing methodology and to re-calculate the index level is unnecessary given the scope of that proceeding and the use of the Commission's established methodology.<sup>22</sup>

21. In response to AOPL, Magellan, and Enbridge, the Commission does not view the re-filing requirement for the

previous index year's ceiling rates by the index multiplier published by the Commission. The Commission reviews the index level every five years to determine whether it continues to track oil pipeline cost changes and to revise the index level if necessary. The Commission completed its most recent review, establishing an index level to be effective for the period July 1, 2011, through June 30, 2016, of the Producer Price Index for Finished Goods (PPI-FG) plus an adjustment factor of 2.65 percent. 2010 Five-Year Index Review, 133 FERC ¶ 61,228, *reh'g denied*, 135 FERC ¶ 61,172.

<sup>18</sup> The Commission has historically used data from elsewhere on the Form 6, not the page 700. Specifically the Commission has used data drawn from the Form 6: Carrier Property, page 110; Accrued Depreciation, page 111; Operating Revenues and Operating Expenses, page 114; Crude and Products Barrel-Miles, page 600. 2010 Five-Year Index Review, 133 FERC ¶ 61,228 at n.9.

<sup>19</sup> 2010 Five-Year Index Review, 133 FERC ¶ 61,228 at P 83.

<sup>20</sup> In each five-year review, the Commission has considered cost per barrel mile changes over the prior five year period. *E.g.*, 2010 Five-Year Index Review, 133 FERC ¶ 61,228 at P 5.

<sup>21</sup> 2010 Five-Year Index Review Rehearing, 135 FERC ¶ 61,172.

<sup>22</sup> *Id.* P 43.

<sup>15</sup> AOPL Comments at 6 (citing *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988)).

<sup>16</sup> AOPL Comments at 3 (citing Reply Comments of the Association of Oil Pipe Lines at 30–37, Docket No. RM10–25–000 (Sept. 20, 2010); Response of the Association of Oil Pipe Lines at 19–28, Docket No. RM10–25–000 (Oct. 20, 2010)).

<sup>17</sup> Under the index, an oil pipeline may change its ceiling rates effective every July 1 by multiplying

2010 Form 6, page 700 and the 2011 Form 6, page 700 as creating an undue burden. The Commission is not persuaded that requiring pipelines to file revised 2009, 2010 or 2011 interstate only page 700 data will be as difficult or costly as AOPL, Magellan, and Enbridge suggest. This requirement will only affect pipelines that filed comingled interstate and intrastate data on the page 700. Regarding cost and revenue data, the Commission's directive does not impose an expense on pipeline parties that is not already embodied in existing Commission rules. The Commission clarified over a decade ago that cost and revenue information reported on lines (1) through (10) of page 700 data should include interstate-only data.<sup>23</sup> No party disputes this.

22. Regarding the barrel and barrel-mile data on lines (11) and (12), Magellan and AOPL contend that it is sometimes difficult to determine whether a shipment is interstate or intrastate. However, compliance with the existing requirement for pipelines to file only interstate costs and revenues on lines (1) through (10) requires a similar determination distinguishing between interstate shipments and intrastate shipments.<sup>24</sup>

#### C. Magellan's Request for Clarification

23. Magellan requests that the Commission permit flexibility in the methodology that pipelines adopt for allocating intrastate and interstate cost data in page 700. Magellan asserts that it is not possible to precisely segregate interstate cost data from intrastate cost data in all instances. Thus, Magellan asserts that a dual use pipeline will need to develop its own methodology for allocating such costs. Magellan states that prior to the Form No. 6 it filed in 2010, Magellan included both interstate and intrastate data on page 700. Magellan states that to do so, it developed and adopted a methodology to allocate operating expenses between interstate and intrastate movements

based upon a barrel-mile analysis. Thus, Magellan states that it used this methodology to allocate operating expenses between interstate and intrastate movements on a barrel-mile basis.

24. The Commission will deny Magellan's request. We will not pass judgment in this proceeding on past or future page 700 submissions or the methodologies used to separate interstate from intrastate. The purpose of this order is to modify the instructions for lines (11) and (12) of page 700 related to reporting barrels and barrel-miles of throughput. In filing page 700, pipelines are required to follow the Commission's cost-of-service methodology. Magellan's request for clarification is further inapposite because the Commission clarified a decade ago in Order No. 620-A<sup>25</sup> that pipelines were only to report interstate (as opposed to interstate and intrastate) costs on lines (1) through (10) of page 700. To the extent that Magellan is concerned that its system creates novel circumstances, Magellan can seek specific guidance from the Commission or Commission Staff regarding the particular allocation methodology that it has adopted.

#### D. Other Issues

##### 1. Comments

25. The parties raised multiple issues related to other aspects of page 700 or Form 6. Valero and ATA/NPGA contend that revisions should be made to page 700 so that each pipeline and/or system is separately reported on page 700.<sup>26</sup> Valero and ATA/NPGA also argue that pipelines should be required to provide the workpapers supporting page 700 to the shippers. ATA/NPGA also proposes to require pipelines to file the entire Form 6 before they can file for an index rate increase.<sup>27</sup>

26. Parties also raised issues not involving Form 6. ATA/NPGA further asserts that the Commission should change the interest rate applicable to

refunds and reparations. ATA/NPGA and Mr. Gooch also raise issues related to alleged over-recoveries by certain pipelines. ATA/NPGA and Mr. Gooch argue that pipelines showing over-recoveries on their Form No. 6 annual report should be required to show cause why their rates should not be considered unjust and unreasonable. Mr. Gooch also objects to the Commission's regulations and policies regarding protests and complaints against oil pipeline rates. Valero asserts that the Commission should clarify that shippers retain the right to challenge, via protest or complaint, the 2011 index rate increases for pipelines that have filed deficient cost and revenue data on page 700. Mr. Gooch also asks that the Commission clarify precisely how barrel-miles may be used to demonstrate reasonable grounds to believe that the rate increase is "substantially divergent" from the costs so that the resulting rates may not be just and reasonable.

27. In its reply comments, AOPL states that these comments are beyond the scope. AOPL adds that the Shippers have repeatedly raised and the Commission has repeatedly rejected (a) proposals to segregate Form 6 and page 700 data by pipeline system and (b) require pipelines to file their page 700 workpapers with the Form 6.<sup>28</sup> AOPL states that nothing has changed since the Commission last rejected these proposals in 2008. Specifically responding to Mr. Gooch's comments regarding pipeline over-recoveries, AOPL states that shippers have the option to file a complaint to the extent that they are concerned with the level of individual pipeline rates.

28. In his reply comments, Mr. Gooch contends that his comments are not beyond the scope because, he argues, they are a constitutionally protected petition for a redress of grievances. Mr. Gooch also reiterates his comments regarding alleged over-recoveries by certain pipelines and asserts that it is difficult to file complaints.

##### 2. Commission Decision

29. These issues are beyond the scope of this proceeding, which is limited to a minor correction to the throughput levels reported on page 700 and obtaining corrected data for 2009, 2010, and 2011. No party opposed the limited change to page 700 that was actually

<sup>23</sup> In Order No. 620-A, the Commission stated:

The Commission never intended in the Final Rule to have a pipeline report its non-jurisdictional costs on page 700. \* \* \* [W]e take this opportunity to clarify Order No. 620 that the cost-of-service and revenue data reported on page 700 will be the cost of service and revenues related to FERC jurisdictional services.

94 FERC at 61,498.

<sup>24</sup> Page 301 of the Form 6 also requires pipelines to separately identify interstate revenues and intrastate revenues. Furthermore, under the Interstate Commerce Act (ICA), carriers must charge the correct rate on file for transportation service, and shippers are required to provide accurate information regarding the nature of their shipments in order to ensure that the correct rate is charged, which would include distinguishing interstate and intrastate rates. See 49 app. U.S.C. 10.

<sup>25</sup> Order No. 620-A, 94 FERC at 61,498.

<sup>26</sup> Currently, page 700 data contains total company data that is not broken down by pipeline or system. Valero Comments at 16. For example, Valero states that Mid-America Pipeline Company, LLC, has three distinct and separate systems, each with their own separate cost of service. Valero states that without being able to evaluate the cost of service for the specific segments at issue, it is impossible for shippers to determine the appropriateness or reasonableness of a particular segment's rates.

<sup>27</sup> Currently, pipelines with operating revenues less than \$500,000 but more than \$350,000 are only required to file page 301, "Operating Revenues Accounts (Account 600)" and page 700. 18 CFR § 357(a)(2) (2011). Pipelines with operating revenues less than \$350,000 must only file page 700. *Id.* § 357(a)(3).

<sup>28</sup> AOPL Reply Comments at 5 (citing *Cost of Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,168-169 (1994); Order No. 620, FERC Stats. & Regs. ¶ 31,115 at 31,959; *Review of FERC Form Nos. 6 and 6-Q*, 125 FERC ¶ 61,308, at P 5-9 (2008)).

presented in the NOPR. Given the limited nature of the NOPR, this proceeding is not the appropriate forum for considering additional changes to FERC Form No. 6, such as the segregation of data or changing Commission policy to make available pipeline cost-of-service workpapers. Other issues, such as the Commission's policies regarding protests to pipeline rates, are also not before the Commission and will be addressed as they arise in litigation.

**IV. Information Collection Statement**

30. The Commission's estimate of the additional Public Reporting Burden and cost related to the final rule in Docket RM11-21-000 follow. The Commission recognizes that there will be a one-time increased burden involved in the initial implementation associated with: (a) Using only interstate figures for lines 1-12 of page 700, and (b) re-filing of revised data for lines (1) through (12) of page 700 for 2009, 2010, and 2011. Given the time it takes to verify data and file it with the Commission, we may have underestimated the one hour

average per filer. Consequently we have revised the average burden to four hours for filing corrected 2009 and 2010 page 700 data. In this final rule, the Commission is also seeking revised 2011 data. Thus, we estimate an additional one-time burden of six hours per filer for the combined implementation and the re-filing of the page 700 for the 2009, 2010, and 2011 data. For the recurring effort involved in filing interstate data on lines (1) through (12) of page 700 for 2012 and future years, we estimate that the change in burden is negligible (after the initial implementation).

RM11-21, FERC Form 6	Annual No. of filers	Estimated additional one-time burden per filer (Hr.)	Total estimated additional one-time burden (Hr.)	Estimated additional one-time cost per filer (\$) <sup>29</sup>
Implementation Burden (one-time); and Re-filing of Page 700, lines 1-12 for 2009-2010 (one-time) .....	<sup>30</sup> 166	6	996	\$414.06
Total .....	166	.....	996	\$68,733.96

The additional one-time burden of 996 hours is being spread over the three years for the purposes of submittal to the Office of Management and Budget (OMB), giving an average additional annual burden of 332 hours.

*Information Collection Costs:* The Commission seeks comments on the costs and burden to comply with these requirements.

Total additional one-time cost = \$68,733.96.

*Title:* FERC Form No. 6, Annual Report of Oil Pipeline Companies.

*Action:* Revision to the FERC Form 6.

*OMB Control No:* 1902-0022.

*Respondents:* Public and non-public utilities.

*Frequency of Responses:* Initial implementation and one-time re-filing of selected data for 2009, 2010, and 2011.

*Necessity of the Information:* This action ensures the availability of complete interstate cost per barrel-mile data consistent with the Commission's regulation of interstate oil and petroleum product pipeline rates and the intent of page 700 to enable the

Commission and shippers to analyze interstate pipeline costs.

*Internal review:* The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

31. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), Phone: (202) 502-8663, fax: (202) 273-0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please reference OMB Control No. 1902-0022, FERC-6 and the docket number of this rulemaking in your submission.

**V. Environmental Analysis**

32. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a

significant adverse effect on the human environment.<sup>31</sup> The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination.<sup>32</sup> Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

**VI. Regulatory Flexibility Act Certification**

33. The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.<sup>33</sup> Agencies are not required to make such an analysis if a rule would not have such an effect.

34. The Commission does not believe that this rule will have an adverse impact on small entities, nor will it impose upon them any significant costs of compliance. The Commission identified 29 small entities as respondents to the requirements in the proposed rule.<sup>34</sup> As explained above,

<sup>29</sup> Based on an estimated average cost per employee for 2012 (including salary plus benefits) of \$143,540, the estimated average hourly cost per employee is \$69.01. The average work year is 2,080 hours.

<sup>30</sup> Although 166 pipelines file page 700, the number of pipelines that must file corrected information will likely be substantially less. Some pipelines only transport interstate shipments and thus would have reported only interstate data on page 700. Other pipelines may have reported only interstate data on lines (1)-(12) on page 700, and these pipelines would not need to file additional data.

<sup>31</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 486 FR 1750 (Jan. 22, 1988), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>32</sup> 18 CFR § 380.4(a)(5).

<sup>33</sup> 5 U.S.C. 601-12.

<sup>34</sup> The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry

the change to page 700 will not increase the burden of preparing page 700. Further, the time required to implement changes and to file any necessary one-time revision of the page 700 data as specified in this order is minimal (an average of six hours per company). The Commission does not estimate that there are any other regulatory burdens associated with this final rule. Thus, the Commission certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

#### VII. Effective Date and Congressional Notification

35. These regulations are effective December 31, 2012. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

Classification System defines a small oil pipeline company as one with less than 1,500 employees. See 13 CFR 121, 201.

#### VIII. Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC’s Home Page (<http://www.ferc.gov>) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

37. From FERC’s Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the FERC’s Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502–

8371, TTY (202) 502–8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

**Kimberly D. Bose,**  
*Secretary.*

**Note:** Appendix A will not be published in the Code of Federal Regulations.

#### Appendix A—Summary of Proposed Changes to FERC Form 6, Page 700

Instruction 4 is revised to read as follows:

Enter on line 11, columns b and c, the interstate throughput in barrels for the current and previous calendar years.

Instruction 5 is revised to read as follows:

Enter on line 12, columns b and c, the interstate throughput in barrel-miles for the current and previous calendar years.

Line 11 is revised to read as follows:

Total Interstate Throughput in Barrels

Line 12 is revised to read as follows:

Total Interstate Throughput in Barrel-Miles

**Note:** Appendix B will not be published in the Code of Federal Regulations.

#### Appendix B: Revised Page 700 to Form 6

Name of Respondent	This Report Is: <input type="checkbox"/> (1) An Original <input type="checkbox"/> (2) A Resubmission	Date of Report (Mo, Da, Yr) / /	Year/Period of Report End of _____
<b>Annual Cost of Service Based Analysis Schedule</b>			
<p>1.) Use footnotes when particulars are required or for any explanations.</p> <p>2.) Enter on lines 1-9, columns (b) and (c), the value the respondent's Operating &amp; Maintenance Expenses, Depreciation Expense, AFUDC Depreciation, Amortization of Deferred Earnings, Rate Base, Rate of Return, Return, Income Tax Allowance, and Total Cost of Service, respectively, for the end of the current and previous calendar years. The values shall be computed consistent with the Commission's Opinion No. 154-B et al. methodology. Any item(s) not applicable to the filing, the pipeline company shall report nothing in columns (b) and (c).</p> <p>3.) Enter on line 10, columns (b) and (c), total interstate operating revenue, as reported on page 301, for the current and previous calendar years.</p> <p>4.) Enter on line 11, columns b and c, the interstate throughput in barrels for the current and previous calendar years.</p> <p>5.) Enter on line 12, columns b and c, the interstate throughput in barrel-miles for the current and previous calendar years.</p> <p>6.) If the company makes major changes to its application of the Opinion No. 154-B et al. methodology, it must describe such changes in a footnote, and calculate the amounts in columns (b) and (c) of lines No. 1-12 using the changed application.</p> <p>7.) A respondent may be requested by the Commission or its staff to provide its workpapers which support the data reported on page 700.</p>			
Line No.	Item (a)	Current Year Amount (in dollars) (b)	Previous Year Amount (in dollars) (c)
1	Operating and Maintenance Expenses		
2	Depreciation Expense		
3	AFUDC Depreciation		
4	Amortization of Deferred Earnings		
5	Rate Base		
6	Rate of Return % (10.25% -10.25)		
7	Return on Rate Base		
8	Income Tax Allowance		
9	Total Cost of Service		
10	Total Interstate Operating Revenues		
11	Total Interstate Throughput in Barrels		
12	Total Interstate Throughput in Barrel-Miles		

FERC FORM No. 6 (REV. 12-00)

Page 700

[FR Doc. 2012-23806 Filed 9-28-12; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****18 CFR Part 375**

[Docket No. RM12-20-000; Order No. 766]

**Delegation of Authority Regarding Electric Reliability Organization's Budget, Delegation Agreement, and Policy and Procedure Filings**

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

**SUMMARY:** The Commission is issuing this Final Rule to revise its delegations of authority to align with an internal Commission reorganization, which reassigned certain responsibilities for specific Electric Reliability Organization (ERO) filings. In particular, this Final Rule transfers delegated authority, from

the Director of the Commission's Office of Electric Reliability to the Director of the Commission's Office of Energy Market Regulation, to act on ERO filings pertaining to ERO annual budgets, ERO delegation agreements, and ERO policies and procedures.

**DATES:** This rule is effective October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Christine A. Powell, Office of the General Counsel, Federal Energy Regulatory Commission, Room 104-04, 888 First Street NE., Washington, DC 20426, 202-502-6608.

**SUPPLEMENTARY INFORMATION:****140 FERC ¶ 61,202**

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

(Issued September 20, 2012)

**I. Background**

1. The Energy Policy Act of 2005 added section 215 to the Federal Power Act (FPA), which requires a Commission-certified Electric

Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.<sup>1</sup> Under this section, the ERO must, among other things, "allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section,"<sup>2</sup> and the Commission also must issue regulations authorizing the ERO to enter into an agreement to delegate authority to a Regional Entity if the Regional Entity meets certain conditions.<sup>3</sup>

2. In Order No. 672, the Commission adopted regulations in accordance with FPA sections 215(c)(2)(B) and 215(e)(4): 39.4, Funding of the Electric Reliability Organization; 39.8, Delegation to a Regional Entity; and 39.10, Changes to an Electric Reliability Organization Rule or Regional Entity Rule.<sup>4</sup>

3. Section 39.4 of the Commission's regulations requires the ERO to file with

<sup>1</sup> 16 U.S.C. 824o.<sup>2</sup> *Id.* 824o(c)(2)(B).<sup>3</sup> *Id.* 840o(e)(4).<sup>4</sup> *Id.*