

167 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

ONEOK Elk Creek Pipeline, L.L.C.

Docket No. IS19-303-001

ORDER REJECTING TARIFF

(Issued June 28, 2019)

1. On May 30, 2019, ONEOK Elk Creek Pipeline, L.L.C. (ONEOK) filed FERC Tariff No. 1.1.0 (Amended Tariff),¹ to be effective June 1, 2019. As discussed below, we reject the Amended Tariff without prejudice.

2. The Amended Tariff supersedes ONEOK's previously filed initial tariff, FERC Tariff No. 1.0.0, 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.² ONEOK states that the Amended Tariff changes the Committed Rate in Item No. 95 to 206.89 cents per barrel.³ ONEOK represents that this per barrel transportation maximum rate was developed in compliance with Commission regulations in 18 C.F.R. § 346.2 for cost-of-service methodology for support of initial rates and in accordance with 18 C.F.R. § 342.2(a).⁴ ONEOK states that the Amended Tariff also changes the Uncommitted Rate in Item No. 95 to 205.89 cents per barrel, which is

¹ ONEOK Elk Creek Pipeline, L.L.C., FERC Oil Tariff, Elk Creek FERC Tariffs Database, [FERC Tariff No. 1.1.0](#), [FERC Tariff No. 1.1.0](#), [1.1.0](#).

² The Amended Tariff was filed during the pendency of the initial tariff. *See* 18 C.F.R. § 341.4 (2018). ONEOK states that it continues to anticipate starting new transportation movements on or about June 1, 2019 and has retained the originally submitted effective date.

³ In its previously filed initial tariff, the Committed Rate in Item No. 95 was listed at 207.89 cents per barrel.

⁴ 18 C.F.R. § 342.2(a) states that “[a] carrier must justify an initial rate for new service by: (a) Filing cost, revenue, and throughput data supporting such rate as required by part 346 of this chapter.”

1.00 cent per barrel lower than the per barrel transportation maximum rate.⁵ In addition, ONEOK states that the Amended Tariff includes an updated cost-of-service study, which reflects clarifying updates to the Summary Schedule and addition of Statement G – Revenues.

3. We find that ONEOK's Amended Tariff does not meet the requirements of 18 C.F.R. § 342.2 regarding the initial Committed Rates. As the Commission has recently reiterated in several orders, Commission regulations require that an initial committed rate must meet the requirements for initial rates for a new service under 18 C.F.R. § 342.2(a), file a cost-of-service rate, or 18 C.F.R. § 342.2(b), file a sworn affidavit that the rate is agreed to by at least one non-affiliated shipper who intends to use the service in question, when the tariff is ultimately filed with the Commission.⁶ The proposed Committed Rates are pursuant to a Transportation Services Agreement (TSA) that was negotiated with shippers during an open season process.⁷ ONEOK's initial Committed Rates are represented to be set at a cost-of-service level,⁸ and it appears that the Amended Tariff pursuant to the TSA establishes an initial cost of service rate.⁹

⁵ ONEOK also states that footnotes have been added to indicate the rate applied to barrels originating from the Carpenter interconnect. The footnotes appear to state the Carpenter rates in dollars per barrel, though they are labeled as cents per barrel.

⁶ See, e.g., *Magellan Pipeline Co., L.P.*, 166 FERC ¶ 61,181, at P 34 (2019); *Enterprise TE Products Pipeline Co. LLC*, 166 FERC ¶ 61,180, at P 11 (2019); *EnLink Delaware Crude Pipeline, LLC*, 166 FERC ¶ 61,226, at P 18 (2019); *EnLink Crude Pipeline, LLC*, 166 FERC ¶ 61,225, at P 16 (2019); *Plantation Pipe Line Co.*, 167 FERC ¶ 61,025, at P 15 (2019); *EnLink NGL Pipeline, LP*, 167 FERC ¶ 61,024, at P 18 (2019); *EPIC Crude Pipeline, LP*, 167 FERC ¶ 61,026, at P 25 (2019); *Targa NGL Pipeline Co. LLC*, 166 FERC ¶ 61,179, at P 20 (2019).

⁷ The proposed Committed Rates appear more akin to negotiated rates. The Amended Tariff states that the Committed Rates “are charged to Committed Shippers pursuant to a TSA executed as a result of the open season that concluded on November 14, 2018.” Amended Tariff, Item No. 95 n.3.

⁸ See Amended Tariff, Cost of Service Summary Schedule.

⁹ Although ONEOK does not include in its Amended Tariff filing the TSA referenced in the Amended Tariff or reference any related dockets, the *pro forma* TSA is included in a petition for declaratory order filed by ONEOK seeking approval of the open season process, rate structure, prorationing policy, and certain terms of service for transportation on the Elk Creek pipeline system that is currently pending before the Commission in Docket No. OR19-13-000. See Petition for Declaratory Order of

However, over the 20-year term, this proposed rate under the TSA (which appears to be with an affiliate) will not be subject to the Commission's indexing and cost-of-service regulations, including the ability to challenge on a cost-of-service basis.¹⁰

4. An oil pipeline bears the burden of demonstrating that proposed rates and changes to its tariff are just and reasonable.¹¹ Because we find that ONEOK did not meet its burden, we reject the Tariff without prejudice.

The Commission orders:

ONEOK Elk Creek Pipeline, L.L.C. FERC Tariff No. 1.1.0 is rejected without prejudice.

By the Commission. Commissioner Glick is concurring with a separate statement to be issued at a later date.

(S E A L)

Kimberly D. Bose,
Secretary.

ONEOK Elk Creek Pipeline, L.L.C., Exhibit G, FERC Docket No. OR19-13-000 (December 20, 2018).

¹⁰ We note that in *Express Pipeline Partnership*, 76 FERC ¶ 61,245 (1996), the Commission found that initial committed rates were justified under 18 C.F.R. § 342.2(a) as discounted volume incentive rates. Among other distinctions, in contrast to ONEOK's proposal, those proposed rates (including future changes) were both justified using cost-of-service estimates for each year they would be in effect, and discounted to uncommitted rates that could be challenged on a cost-of-service basis consistent with the rate structure approved by the Commission.

¹¹ See, e.g., *Laurel Pipe Line Co., L.P.*, 167 FERC ¶ 61,210, at P 24 (2019); *Chaparral Pipeline Co., LLC*, 152 FERC ¶ 61,068, at P 7 (2015); *Colonial Pipeline Co.*, 156 FERC ¶ 61,001, at P 15 (2016); *Mars Oil Pipeline Co.*, 150 FERC ¶ 61,148, at n.7 (2015).

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