

FERC Puts Cloud Over Certain Oil Pipeline Marketing Affiliate Transactions

In an unexpected shake up in the oil pipeline industry, the Federal Energy Regulatory Commission (“FERC” or “Commission”) recently declined to approve an oil pipeline’s proposal to have its marketing affiliate obtain its pipeline capacity at full price and then resell the space at a discount, a practice that is currently widespread in the industry. *Magellan Midstream Partners, L.P.*, 161 FERC ¶ 61,219 (Nov. 22, 2017).

Magellan Midstream Partners, L.P. (“Magellan”) filed a petition for declaratory order requesting the Commission declare its proposal to establish a marketing affiliate to buy, sell, and ship crude oil on Magellan’s pipeline system lawful under the Interstate Commerce Act (“ICA”). The proposed marketing affiliate would pay Magellan’s shipping rates filed with FERC, even if the affiliate resold the capacity at an economic loss—where the price differential between the origin and destination markets is less than the filed tariff rates. Magellan said that even though the affiliated company would lose money on the transaction, the integrated company would make money overall and would be able to attract more crude oil shippers. Magellan argued that due to the prevalence of these transactions in the oil pipeline industry, it was at a disadvantage in attracting oil pipeline shippers because it could only offer transportation services at its filed tariff rate.

FERC declined to approve of the proposal, stating that it would constitute an illegal rebate under the ICA and would violate the ICA’s anti-discrimination provisions by offering pipeline transportation under customized terms and rates unavailable to shippers who nominate volumes directly from the pipeline, under its published tariff. FERC reasoned that while an oil pipeline is free to create a marketing affiliate, the same rates, terms, and conditions must be offered to all similarly situated shippers; the ICA prohibits a common carrier pipeline from giving special rates or rebates to any particular shipper. FERC stated that the Supreme Court has “consistently held” these types of transactions violate the ICA’s prohibition on rebates. “[A]ny transaction that does not allow the carrier to recover its published tariff rate is prohibited by the ICA . . . The fact that the filed tariff rate was paid by the Marketing Affiliate to its pipeline is not relevant if the entire transaction includes either direct or indirect payments back to the shipper,” FERC said.

Related Capabilities

- Energy & Natural Resources
- Oil & Gas

Magellan Midstream Partners, L.P., 161 FERC at ¶ 14. FERC also stated that the proposal would violate the ICA's publication requirements under Sections 6(1) and 6(3).

FERC's ruling will likely cause oil pipelines to review their current marketing affiliate contracts and will impact how marketing affiliates do business in the future. Magellan, and pipeline companies that supported Magellan's petition, may also ask FERC to reconsider or clarify its order. As it stands, the ruling provides unaffiliated marketing companies and pipeline shippers paying the published tariff rate ammunition to file complaints with FERC if they suspect pipelines have provided discounts or rebates to marketing affiliates. The outcome of any such future challenge will depend on the facts surrounding specific pipeline affiliate arrangements and transactions.