DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM26–6–000]

Five-Year Review of the Oil Pipeline Index

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order establishing index level.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this Final Order concluding its five-year review of the index level used to determine annual changes to oil pipeline rate ceilings. The Commission establishes an index level of Producer Price Index for Finished Goods minus 0.55% (PPI–FG–0.55%) for the five-year period beginning July 1, 2026.

DATES: This order is effective June 29, 2026.

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SUPPLEMENTARY INFORMATION:

1. On November 20, 2025, the Commission issued a Notice of Proposed Rulemaking initiating the five-year review to establish the oil pipeline index level for the July 1, 2026 to June 30, 2031 period.[1] The NOPR requested comment regarding its proposal to adopt an index level of Producer Price Index for Finished Goods minus 1.42% (PPI–FG–1.42%) and any alternative methodologies for calculating the index level.[2]

2. For the reasons discussed below, we adopt an index level of PPI–FG–0.55%. The departure from the NOPR results from (a) adopting the Liquid Energy Pipeline Association (LEPA) proposal to adjust the data set to account for the Commission's 2020 policy change regarding the determination of the allowed rate of return on equity (ROE) for oil pipelines and (b) other minor corrections to the data set used to calculate the index level. As proposed in the NOPR, we continue to (a) exclude from the data set pipelines' resubmitted cost data for 2019 and (b) trim the data set to the middle 80% of cost changes. The Commission's indexing calculations and other data analysis are set forth in Attachment A to this order. As discussed below, we decline to adopt the other changes to the index calculation that commenters propose.

I. Background

A. Establishment of the Indexing Methodology

3. The Energy Policy Act of 1992 (EPAct 1992) required the Commission to establish a ''simplified and generally applicable'' ratemaking methodology [3] in accordance with the just-and-reasonable standard of the Interstate Commerce Act (ICA).[4] To implement this mandate, the Commission issued Order No. 561 [5] and companion orders,[6] adopting an indexing methodology that allows oil pipelines to change their rates subject to certain ceiling levels as opposed to making cost-of-service filings and mandating annual reporting of summary cost and throughput data in pipeline annual reports (FERC Form No. 6, page 700).[7]

4. In Order No. 561, the Commission committed to review the index level every five years to ensure that it adequately reflects changes to industry costs.[8] The Commission conducted five-year index reviews in 2000,[9] 2005,[10] 2010,[11] 2015,[12] and 2020.[13] In the 2020 review, the Commission established an index level of PPI–FG + 0.78% for the five-year period beginning July 1, 2021.[14] The index level established herein results from the Commission's sixth five-year review of the index level.

B. Kahn Methodology

5. In Order No. 561 and in each five-year review, the Commission has calculated the index level using a methodology developed by Dr. Alfred E. Kahn.[15] The Kahn Methodology uses summary Opinion No. 154–B cost-of-service data from Form No. 6, page 700,[16] from the prior five-year period to determine an appropriate adjustment to be applied to PPI–FG. The calculation is as follows. Each pipeline's cost change is calculated on a per-barrel-mile basis over the previous five-year period (*e.g.,* the years 2019–2024 in this proceeding). To remove statistical outliers and potentially spurious data, the resulting data set is trimmed (*e.g.,* to the middle 80% or middle 50%) by removing an equal number of pipelines from the top or bottom of the distribution. The Kahn Methodology then calculates three measures of the trimmed dataset's central tendency: median, mean, and weighted mean.[17] The Kahn

[1] *Five-Year Rev. of the Oil Pipeline Index,* 193 FERC ¶ 61,145, at P 6 (2025) (NOPR).

[2] *Id.* PP 6–7.

[3] Public Law 102–86, 1801(a), 106 Stat. 3010 (Oct. 24, 1992), *codified at* 42 U.S.C. 7172 note. The mandate to establish a simplified and generally applicable ratemaking methodology specifically excluded the Trans-Alaska Pipeline System (TAPS), or any pipeline delivering oil, directly or indirectly, into TAPS. *Id.* 1804(2)(B).

[4] 49 U.S.C. app. 1(5).

[5] *Revisions to Oil Pipeline Reguls. Pursuant to Energy Pol'y Act of 1992,* Order No. 561, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985 (1993) (cross-referenced at 65 FERC ¶ 61,109), *order on reh'g,* Order No. 561–A, 59 FR 40243 (Aug. 8, 1994), FERC Stats. & Regs. ¶ 31,000 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL I*).

[6] *Cost-of-Serv. Reporting & Filing Requirements for Oil Pipelines,* Order No. 571, 59 FR 59137 (Nov. 16, 1994), FERC Stats. & Regs. ¶ 31,006 (cross-referenced at 69 FERC ¶ 61,102), *order on reh'g and clarification,* Order No. 571–A, 60 FR 356 (Jan. 4, 1995), FERC Stats. & Regs. ¶ 31,012 (1994) (cross-referenced at 69 FERC ¶ 61,411), *aff'd sub nom. AOPL I,* 83 F.3d 1424.

[7] Under indexing, oil pipelines change their rate ceiling levels effective every July 1 by ''multiplying the previous index year's ceiling level by the most recent index published by the Commission.'' 18 CFR 342.3(d)(1). Pipelines may adjust their rates to a level that does not exceed the ceiling levels pursuant to the Commission's regulations so long as no protest or complaint demonstrates that the index rate change so substantially diverges from the pipeline's cost changes that the rate is unjust and unreasonable. *Id.* 343.2(c)(1).

[8] Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,941, 30,947, 30,951; Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,093, 31,099, 31,105.

[9] *Five-Year Rev. of Oil Pipeline Pricing Index,* 93 FERC ¶ 61,266 (2000) (2000 Index Review), *aff'd in part and remanded sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 281 F.3d 239 (D.C. Cir. 2002) (*AOPL II*), *order on remand,* 102 FERC ¶ 61,195 (2003) (2000 Remand Order), *aff'd sub nom. Flying J Inc.* v. *FERC,* 363 F.3d 495 (D.C. Cir. 2004).

[10] *Five-Year Rev. of Oil Pipeline Pricing Index,* 114 FERC ¶ 61,293 (2006) (2005 Index Review).

[11] *Five-Year Rev. of Oil Pipeline Pricing Index,* 133 FERC ¶ 61,228 (2010) (2010 Index Review), *reh'g denied,* 135 FERC ¶ 61,172 (2011) (2010 Rehearing Order).

[12] *Five-Year Rev. of Oil Pipeline Index,* 153 FERC ¶ 61,312 (2015) (2015 Index Review), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 876 F.3d 336 (D.C. Cir. 2017) (*AOPL III*).

[13] *Five-Year Rev. of Oil Pipeline Index,* 173 FERC ¶ 61,245 (2020) (2020 Index Review), *order on reh'g,* 178 FERC ¶ 61,023 (January 2022 Rehearing Order), *reh'g denied,* 179 FERC ¶ 61,100 (2022), *vacated sub nom. Liquid Energy Pipeline Ass'n* v. *FERC,* 109 F.4th 543 (D.C. Cir. 2024) (*LEPA* v. *FERC*), *order following vacatur,* 188 FERC ¶ 61,173 (2024), *order on reh'g,* 193 FERC ¶ 61,137 (2025).

[14] 2020 Index Review, 173 FERC ¶ 61,245 at P 9.

[15] The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has affirmed the Commission's use of the Kahn Methodology. *AOPL I,* 83 F.3d at 1433–37; *Flying J Inc.* v. *FERC,* 363 F.3d at 497–500.

[16] The Opinion No. 154–B methodology is the cost-of-service ratemaking methodology that the Commission uses for oil pipelines. *Williams Pipe Line Co.,* Opinion No. 154–B, 31 FERC ¶ 61,377, *order on reh'g,* Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). Every April 18, pipeline companies must file a summary Opinion No. 154–B cost-of-service on page 700 for each of the prior two years.

[17] The weighted mean assigns a different weight to each pipeline's cost change based on the

Methodology calculates (a) a composite central tendency by averaging the median, mean, and weighted mean and (b) the difference between the composite central tendency of per-barrel-mile cost changes and the percentage change in PPI–FG over the prior five-year period.[18] The Commission then sets the index level for the next five index years at PPI–FG plus or minus this differential.

C. 2025 Five-Year Review

6. On November 20, 2025, the Commission issued the NOPR initiating the five-year review to establish the index level for the July 1, 2026 to June 30, 2031 period. The NOPR proposed an index level of PPI–FG—1.42% and requested comment on this proposal and any alternative methodologies for calculating the index level.[19] The Commission explained that commenters could address issues including, but not limited to, different data trimming methodologies; whether, and if so how, the Commission should adjust the data set to address the effects of the 2020 change in Commission policy for determining oil pipelines' allowed rate of return on equity (ROE Policy Change);[20] and whether, and if so how, the index calculation should incorporate revised cost data for 2019 submitted by 61 pipelines in April-June 2025.[21]

II. Commenters

7. Initial comments in response to the NOPR were due on December 24, 2025, and reply comments were due on January 20, 2026.[22] Pipeline comments were filed by LEPA, Designated Carriers,[23] and Kinder Morgan, Inc. (collectively, Pipelines). Shipper comments were filed by Joint Commenters,[24] Liquids Shippers Group (Liquids Shippers),[25] EPR Shippers,[26] Shell Trading (US) Company (STUSCO), and the Canadian Association of Petroleum Producers (CAPP) (collectively, Shippers). Additional comments were filed by the Energy Infrastructure Council (EIC), Pipeline Safety Trust, and the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

8. Commenters discuss numerous issues related to the proposed index level, including data trimming, addressing the ROE Policy Change, incorporating resubmitted 2019 cost data, and treatment of pipeline cost changes attributable to regulatory obligations and other factors. In addition, to the extent the Commission trims the data set to the middle 80%, CAPP proposes to determine central tendency using the geometric mean, rather than the composite central tendency. Commenters propose varying index levels, including LEPA's proposal to adopt an index level of at least PPI–FG—0.04%,[27] Designated Carriers' proposal of PPI–FG + 0.83%,[28] Joint Commenters' and Liquids Shippers' proposals of PPI–FG—1.64%,[29] and CAPP's proposal of PPI–FG—1.85%.[30]

III. Discussion

9. We adopt an index level of PPI–FG—0.55% for the five-year period beginning July 1, 2026. As discussed below, we adopt the NOPR's proposal to calculate the index level using the middle 80% of cost changes and adopt LEPA's proposed adjustments to the cost data used to derive the index level to account for the ROE Policy Change . Consistent with the NOPR, we decline to incorporate resubmitted 2019 cost data filed by 61 pipelines in April-June 2025, and the index level adopted in this final order relies on pipelines' originally submitted 2019 cost data.[31] We decline to adopt CAPP's proposal to calculate the central tendency of the middle 80% using the geometric mean. We also address arguments regarding pipeline costs resulting from regulatory obligations and other proposed adjustments to the page 700 data set.

A. ROE Policy Change

1. NOPR Proposal

10. In the NOPR, the Commission proposed to calculate the index level without adjusting the 2019 data to reflect the ROE Policy Change that occurred during the 2019–2024 data period subject to this review. Whereas the Commission previously relied solely on the discounted cash flow (DCF) model for determining ROE for oil pipelines pursuant to the Opinion No. 154–B methodology, the Commission now averages the results of the DCF and Capital Asset Pricing Model (CAPM) analyses.[32] During the 2019–2024 data period at issue in this proceeding, the Commission adopted the ROE Policy Statement.[33] Although pipelines filed their 2019 cost data before the ROE Policy Change in 2020 and their 2024 cost data after the ROE Policy Change, in the NOPR the Commission proposed not to adjust the data to account for the ROE Policy Change. The Commission observed that it has never adjusted ROE data as part of a prior index review. In addition, the Commission expressed concern that adjusting the data to address the ROE Policy Change would be a complex endeavor that would conflict with indexing's purpose as a simplified and streamlined process.[34] The Commission encouraged commenters to address whether, and if so, how, it should address the ROE Policy Change in the index calculation.[35]

2. Comments

11. Pipelines argue that the Commission should adjust the page 700 data to account for the ROE Policy Change. Pipelines contend that this adjustment is necessary to calculate an

pipeline's total base-year barrel-miles (*e.g.,* 2019 barrel-miles).

[18] The Kahn Methodology determines the prospective index level by comparing pipeline cost changes and changes in inflation (PPI–FG) over the prior five years. Thus, in this index review, we calculate the index level that will apply beginning July 1, 2026, based on the difference between (a) industry-wide cost changes from 2019–2024 and (b) changes in PPI–FG over the same period. To the extent that the index adopted herein does not reflect the actual future difference between changes in PPI–FG and oil pipeline costs during the 2026–2031 period, those differences will be reflected in future index reviews.

[19] NOPR, 193 FERC ¶ 61,145 at PP 6–7.

[20] *Inquiry Regarding the Comm'n's Pol'y of Determining Return on Equity,* 171 FERC ¶ 61,155 (2020) (ROE Policy Statement).

[21] NOPR, 193 FERC ¶ 61,145 at P 7.

[22] Pursuant to the NOPR, reply comments were originally due on January 14, 2026. *See id.* P 29 (providing that reply comments were due 51 days after publication of the NOPR in the **Federal Register**, which occurred on November 24, 2025). By notice issued January 8, 2026, the Commission granted LEPA's unopposed request to extend the deadline for reply comments to January 20, 2026.

[23] Designated Carriers include Buckeye Partners, L.P., Colonial Pipeline Company (Colonial), Energy Transfer LP (Energy Transfer), Enterprise Products Partners L.P. (Enterprise), and Plains All American Pipeline, L.P. (Plains).

[24] Joint Commenters include Air Transport Association of America, Inc., d/b/a Airlines for America, Chevron Products Company, the National Propane Gas Association, and Valero Marketing and Supply Company.

[25] Liquids Shippers include Apache Corporation, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Devon Gas Services, L.P., Husky Marketing and Supply Company, Occidental Energy Marketing Inc., Ovintiv Marketing Inc., and Talos Energy Inc.

[26] EPR Shippers include ExxonMobil Oil Corporation, PennEnergy Resources, LLC, and Range Resources—Appalachia, LLC.

[27] LEPA Reply Comments at 1–2; *see also* Kinder Morgan Comments at 1, 5 (supporting LEPA's comments); EIC Comments at 2, 15–16 (same).

[28] Designated Carriers Reply Comments at 2.

[29] Joint Commenters Reply Comments at 1–2; Liquids Shippers Reply Comments at 2; *see also* EPR Shippers Reply Comments at 5–6 (supporting Joint Commenters' and CAPP's comments).

[30] CAPP Reply Comments at 1.

[31] For ease of reference, this order refers to ''originally submitted 2019 cost data'' to distinguish from the more recently submitted 2019 cost data filed between April-June 2025.

[32] The DCF and CAPM models are described in the ROE Policy Statement. ROE Policy Statement, 171 FERC ¶ 61,155 at PP 18, 28, 50.

[33] ROE Policy Statement, 171 FERC ¶ 61,155.

[34] NOPR, 193 FERC ¶ 61,145 at P 13.

[35] *Id.* P 14.

index level that accurately measures cost changes during the 2019–2024 period and predicts the likely rate of future cost changes.[36] Pipelines state that the ROE Policy Change did not affect pipelines' actual equity costs and instead only changed how pipelines report allowed equity costs on page 700.[37] Thus, Pipelines contend that the Commission should adjust the reported cost data to derive an ''apples-to-apples'' comparison of pipeline costs between 2019 and 2024 under consistent ratemaking policies.[38]

12. To account for the ROE Policy Change, LEPA proposes to replace the ROEs that pipelines reported on page 700 for 2019 under the Commission's prior policy with revised ROEs that reflect the DCF/CAPM methodology adopted in the ROE Policy Statement.[39] Specifically, LEPA's experts Dr. Shehadeh and Dr. Webb derive a revised 2019 ROE by averaging the pipeline's originally filed DCF ROE for 2019 with an 8.30% CAPM return.[40] They calculate the 8.30% CAPM return using the proxy group that the Commission adopted in Opinion No. 586, modifying the calculation the Commission adopted in Opinion No. 586 to use financial data for the six-month period ending December 31, 2019, rather than the six-month period ending February 29, 2020.[41] LEPA's experts explain that the revised ROEs must be flowed through the remainder of each pipeline's page 700 summary cost of service in order to derive a total cost of service that can be used in the index calculation. Accordingly, LEPA's experts use each pipeline's revised 2019 ROE to adjust their originally reported page 700 allowed return on rate base and income tax allowances for 2019. LEPA's experts then use these adjusted figures to compute a revised 2019 total cost of service for use in the index calculation.[42]

13. LEPA contends that its proposed adjustments are consistent with Commission precedent and the purpose of indexing. LEPA states that the index aims to track actual changes in industry-wide recoverable costs, not changes to the costs that the Commission allows or deems recoverable under the Opinion No. 154–B methodology.[43] According to LEPA, its proposal would restore consistency to the page 700 ROE data using a straightforward adjustment that conforms with EPAct 1992's mandate for simplified ratemaking.[44] Pipelines observe that in the 2020 Index Review, the Commission similarly adjusted the page 700 data to account for the Commission's 2018 income tax policy change for Master Limited Partnership (MLP)-owned pipelines (Income Tax Policy Change).[45] Although the Commission rejected a proposal in the 2020 Index Review to replace pipelines' reported ROEs with standardized ROEs,[46] LEPA argues that its proposed adjustments are distinguishable because they ensure that the page 700 data reflects consistent policies following the ROE Policy Change.[47]

14. Shippers oppose LEPA's proposed adjustments and urge the Commission to adopt the NOPR's proposal to use unadjusted data that incorporates the effects of the ROE Policy Change. Shippers argue that the index aims to reflect changes in costs recoverable under the Commission's Opinion No. 154–B methodology.[48] Shippers contend that because the ROE Policy Change altered the equity costs that pipelines can recover under Opinion No. 154–B, the index should reflect the policy change's effects.[49] Shippers state that excluding the ROE Policy Change from the index calculation would cause pipelines' indexed rates to diverge from the costs recoverable under Opinion No. 154–B.[50]

15. Shippers further argue that LEPA's adjustments would distort the index calculation by overstating pipeline cost changes during the 2019–2024 period. CAPP states that LEPA's proposed CAPM ROE for 2019 is 20% lower than the DCF ROEs that 82% of pipelines reported for.[51] Thus, Shippers argue that using LEPA's ROE proposal would inflate the measure of industry-wide cost changes between 2019–2024 by establishing a lower cost baseline for 2019.[52] Joint Commenters contend that this outcome creates inconsistencies with the data used in the 2020 Index Review and undermines the index as a measure of historical cost changes.[53]

16. In addition, Shippers contend that removing the effects of the ROE Policy Change would complicate the five-year review process in violation of EPAct 1992's mandates for simplified and streamlined ratemaking.[54] For instance, Liquids Shippers state that LEPA's proposal would involve both (a) replacing the pipeline's reported page 700 ROEs with a revised ROE and (b) using the revised ROE to determine an adjusted total cost of service for each pipeline.[55] Liquids Shippers state that these calculations are significantly more complex than the data adjustments adopted in the 2020 Index Review to address the Income Tax Policy Change.[56] Additionally, Joint Commenters state that if the Commission omits the effects of the

[36] LEPA Initial Comments at 13–15, 17–18; Kinder Morgan Comments at 3.

[37] LEPA Initial Comments at 13–15 (citing *id.,* Declaration of Ramsey D. Shehadeh, Ph.D., at 13 (Shehadeh Initial Decl.)); Designated Carriers Initial Comments at 10.

[38] LEPA Initial Comments at 15; LEPA Reply Comments at 29; Designated Carriers Initial Comments at 6; Kinder Morgan Comments at 3.

[39] LEPA Initial Comments at 13–14.

[40] *Id.* at 17; Shehadeh Initial Decl., App. A § II.C.

[41] LEPA Initial Comments, Declaration of Dr. Michael J. Webb, at PP 13–14 (Webb LEPA Decl.).

[42] Shehadeh Initial Decl., App. A § II.C.

[43] LEPA Initial Comments at 18 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 17 n.31).

[44] *Id.* at 17; LEPA Reply Comments at 26–27.

[45] LEPA Initial Comments at 14; LEPA Reply Comments at 23–24 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 16); EIC Comments at 19–20. While the Commission issued a supplemental notice of proposed rulemaking (Supplemental NOPR) in October 2024 proposing to recalculate the index level using unadjusted data that reflected the effects of the Income Tax Policy Change, *see Suppl. Rev. of Oil Pipeline Index Level,* 189 FERC ¶ 61,030 (2024), LEPA argues that this proposal has no legal force because the Commission subsequently withdrew the Supplemental NOPR. LEPA Reply Comments at 23; *see also Suppl. Rev. of Oil Pipeline Index Level,* 193 FERC ¶ 61,136 (2025) (Supplemental NOPR Withdrawal) (withdrawing Supplemental NOPR).

[46] 2020 Index Review, 173 FERC ¶ 61,245 at PP 45–50.

[47] LEPA Initial Comments at 17–18; LEPA Reply Comments at 23.

[48] Joint Commenters Initial Comments at 44–45 (citing *AOPL III,* 876 F.3d at 345–46; 2015 Index Review, 153 FERC ¶ 61,312 at P 13); Liquids Shippers Reply Comments at 9.

[49] *E.g.,* Joint Commenters Initial Comments at 44–46; Joint Commenters Reply Comments at 17. Shippers contend that changes to costs recoverable under Opinion No. 154–B represent ''actual'' cost changes that should be captured in the index calculation. Joint Commenters Initial Comments at 45; Joint Commenters Reply Comments at 16.

[50] Joint Commenters Reply Comments at 19; Liquids Shippers Reply Comments at 10 (citing Reply Aff. of Elizabeth H. Crowe at 6, 8 (Crowe Reply Aff.)).

[51] CAPP Reply Comments, Christensen Associates Reply Report at 8–9 (Christensen Reply Report) (stating that 176 of 215 pipelines that filed page 700 data for 2019 reported ROEs above 10.3%).

[52] *See* Joint Commenters Reply Comments at 24–25; CAPP Reply Comments, Christensen Reply Report at 8.

[53] Joint Commenters Reply Comments at 24–25 (citing *id.,* Brattle Group Reply Report at PP 85–87 (Brattle Reply Report)). Specifically, Joint Commenters state that when using unadjusted page 700 data and trimming to the middle 80%, industry-wide costs increased by 6.7% from 2014–2019 and by 18.1% from 2019–2024, for a cumulative increase of 24.8% between 2014–2024. *Id.* at 25 (citing Brattle Reply Report at P 87). However, Joint Commenters state that adopting LEPA's adjustments to the 2019 data in this proceeding would erroneously imply that industry-wide costs increased by 24.7% from 2019–2024, inflating the measure of cumulative cost changes from 2014–2024 to 33.1%. *Id.* (citing Brattle Reply Report at P 87).

[54] Joint Commenters Initial Comments at 48 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 50); EPR Shippers Initial Comments at 13–14 (same); STUSCO Initial Comments at 9; STUSCO Reply Comments at 8.

[55] Liquids Shippers Reply Comments at 8 (citing Shehadeh Initial Decl. at 20).

[56] *Id.* at 8–9 (citing Crowe Reply Aff. 5).

ROE Policy Change from the index calculation, the only alternative method of reflecting the policy change in rates would be through burdensome cost-of-service litigation.[57]

17. Shippers argue, moreover, that adopting LEPA's adjustments would depart from Commission precedent. Shippers emphasize that the Commission has never previously adjusted ROE data in an index review and specifically declined to replace pipelines' reported ROEs in the 2020 Index Review.[58] Although the Commission adjusted the data set in the 2020 Index Review to address the Income Tax Policy Change, Shippers argue that the Commission has since expressed concerns with this decision because it departed from the Commission's longstanding practice of using unadjusted data.[59] Joint Commenters state that adjusting the reported data to exclude the ROE Policy Change would conflict with the Commission's treatment of a 2005 accounting order in the 2010 Index Review.[60] Moreover, Joint Commenters contend that adjusting 2019 ROEs to reflect a 2020 policy change would conflict with the Commission's method for evaluating whether rates remain grandfathered under EPAct 1992, which measures cost of equity in prior periods using the methodology then in effect.[61]

18. Furthermore, Shippers argue that LEPA's adjustments suffer from methodological flaws. Shippers contend that using a single CAPM result for all pipelines in the data sample is improper because pipelines' ROEs can vary based upon differences in risk.[62] Similarly, Shippers state that it is unclear whether LEPA's proposed CAPM ROE and the pipeline's originally filed DCF ROE reflect the same proxy group[63] or whether LEPA's proposed CAPM analysis conforms with the CAPM analyses that pipelines used in reporting their 2024 ROEs.[64] CAPP states that averaging LEPA's proposed CAPM return with pipelines' originally filed 2019 ROEs produces a weighted average cost of equity of 9.61%, which is less than the industry-wide cost of equity for every year since 2013.[65] CAPP further states that whereas LEPA's proposal implies that industry-wide ROEs increased from 2019–2024, a DCF analysis of LEPA's proxy group used to determine its ROEs shows that ROEs declined over this period.[66]

19. Shippers claim, moreover, that Dr. Shehadeh committed several errors in applying LEPA's proposed adjustments.[67] For example, Joint Commenters state that Dr. Shehadeh proposes to adjust the 2019 data for pipelines that reported identical ROEs throughout the 2019–2024 period, even though the ROE Policy Change did not affect those pipelines' page 700 reporting.[68]

[57] Joint Commenters Initial Comments at 48 (citing *id.,* Brattle Group Report at P 162 (Brattle Initial Report)).

[58] *E.g.,* EPR Shippers Initial Comments at 13–14 (citing NOPR, 193 FERC ¶ 61,145 at P 13; 2020 Index Review, 173 FERC ¶ 61,245 at P 50); Joint Commenters Reply Comments at 20–21 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 49); CAPP Reply Comments at 3.

[59] STUSCO Initial Comments at 10 (citing Supplemental NOPR, 189 FERC ¶ 61,030 at P 28). Shippers acknowledge that the Commission has withdrawn the Supplemental NOPR that proposed to recalculate the index level adopted in the 2020 Index Review using unadjusted data that incorporates the Income Tax Policy Change. However, STUSCO states that the Commission withdrew this proposal for prudential reasons without endorsing the 2020 Index Review's reasoning for adjusting the reported data. *Id.* (citing Supplemental NOPR Withdrawal, 193 FERC ¶ 61,136 at PP 31–33).

[60] Joint Commenters state that although the Commission revised its policies governing the accounting treatment of integrity management costs in 2005, it calculated the index level in the 2010 Index Review using unadjusted Form No. 6 data that reflected both the previous and revised accounting policies. Joint Commenters Initial Comments at 47 (citing 2010 Index Review, 133 FERC ¶ 61,228 at PP 120, 125; *Jurisdictional Pub. Utils. & Licensees,* 111 FERC ¶ 61,501 (2005) (2005 Accounting Order)).

[61] *Id.* at 45 (citing *Tesoro Refin. & Mktg. Co.* v. *Calnev Pipe Line LLC,* 134 FERC ¶ 61,214, at P 68 (2011)); Joint Commenters Reply Comments at 18 (same).

[62] Joint Commenters Reply Comments at 20–21 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 49); CAPP Reply Comments, Christensen Reply Report at 6–7 (citing ROE Policy Statement, 171 FERC ¶ 61,155 at P 6).

[63] Joint Commenters Reply Comments at 20, 23 (citing ROE Policy Statement, 171 FERC ¶ 61,155 at PP 58–66) (arguing that the Commission's policy contemplates using a single proxy group to determine a pipeline's ROE). CAPP further argues that Dr. Webb improperly applies size premium adjustments to the members of his CAPM proxy group based upon their size relative to the companies in the S&P 500, rather than their size relative to other pipelines in the page 700 data set. CAPP Reply Comments, Christensen Reply Report at 7–8.

[64] CAPP Reply Comments, Christensen Reply Report at 10.

[65] *Id.* at 9.

[66] *Id.* at 9–10 (stating that DCF ROEs declined from 12.53% in 2019 to 11.32% in 2024).

[67] Joint Commenters Reply Comments at 23–24 (citing Brattle Reply Report at PP 110–111) (arguing that LEPA erred by (a) adjusting Mustang Pipe Line LLC's (Mustang) 2019 ROE, which was already revised to reflect the DCF/CAPM methodology, (b) averaging its 8.30% CAPM result, which reflects a full year of operations, with Enterprise Crude Pipeline LLC's (Enterprise Crude) reported 5.43% DCF ROE for 2019, which reflects only six months of operations, (c) applying its adjustments to Total Petrochemicals Pipeline USA, Inc. (Total), which reported a negative rate base in 2019, and (d) averaging its CAPM ROE with Bridger Pipeline LLC's (Bridger) original 2019 ROE, which a Commission audit report found was not determined using the DCF methodology).

[68] *Id.* (citing Brattle Reply Report at PP 108–109) (observing that Dr. Shehadeh proposes to adjust Colonial Pipeline Company's and CITGO Pipeline Company's original page 700 ROEs for 2019 notwithstanding that those pipelines reported consistent ROEs for every year between 2019–2024).

3. Commission Determination

20. After consideration and upon review of the comments, we modify our proposal in the NOPR and find that it is reasonable to adjust the page 700 data set to account for the ROE Policy Change in 2020.[69] As such, in calculating the index level, we average each pipeline's originally reported ROE for 2019 with the 8.30% CAPM ROE proposed by LEPA.[70] As further explained below, however, for those pipelines that filed identical ROEs throughout the 2019–2024 period, we find it reasonable to use the ROE reported on page 700 for both 2019 and 2024 without adjustment given that the ROE Policy Change did not affect how the pipeline reported its ROE. In addition, we find it reasonable to apply LEPA's proposed corresponding adjustments to pipelines' original 2019 income tax allowance, return on rate base, and total cost of service in calculating the index level.[71]

21. We find that adjusting the data used to calculate the index level to account for the ROE Policy Change is consistent with the Commission's findings addressing changes to the Opinion No. 154–B methodology in the most recent 2020 Index Review.[72] In that proceeding, the Commission adjusted pipelines' reported cost data for 2014 to account for the Income Tax Policy Change,[73] which altered the Opinion No. 154–B methodology by requiring MLP pipelines to eliminate the income tax allowance and previously accrued Accumulated Deferred Income Taxes balances from their page 700 summary costs of service.[74] Consistent with the NOPR, we

[69] *E.g., Vanda Pharms., Inc.* v. *Ctrs. for Medicare & Medicaid Servs.,* 98 F.4th 483, 498 (4th Cir. 2024) (''The notice-and-comment procedure is designed so that an agency can float a potential rule to the public without committing itself to enacting the proposed rule's content.''); *see also FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[70] As discussed in section III.B, we decline to use the resubmitted 2019 cost data that 61 pipelines filed in 2025 to calculate the index level. Accordingly, we apply the same adjustments to the data for those 61 pipelines as to the rest of the data set, as discussed in this section.

[71] Shehadeh Initial Decl. at 49–50.

[72] When addressing this issue for the first time in the 2020 Index Review, the Commission adjusted the reported page 700 data for 2014 to account for the Income Tax Policy Change. 2020 Index Review, 173 FERC ¶ 61,245 at PP 16–20.

[73] 2020 Index Review, 173 FERC ¶ 61,245 at PP 16–20.

[74] *Inquiry Regarding the Comm'n's Pol'y for Recovery of Income Tax Costs,* 162 FERC ¶ 61,227, at PP 8, 45–46 (2018).

have considered these issues anew,[75] and we continue to find the reasoning in the 2020 Index Review persuasive and applicable here.

22. First, we conclude that the adjustments to the data to account for the ROE Policy Change are necessary to calculate an index level that accurately tracks actual industry-wide cost changes. As the Commission explained in the 2020 Index Review, although the Commission calculates the index level using Opinion No. 154–B cost data reported on FERC Form No. 6, page 700, changes to the Opinion No. 154–B methodology are distinct from pipelines' actual annual cost changes.[76] Thus, where the Commission modifies an Opinion No. 154–B cost-of-service policy used to measure recoverable costs partway through the five-year review period, the Opinion No. 154–B costs of service reported on page 700 for the first and last years of the period will reflect different sets of policies.[77] Here, because the Commission adopted the ROE Policy Change in 2020, pipelines reported cost data for 2019 and 2024 using different ROE methodologies. Accordingly, adjusting the data set to account for the policy change enhances the index calculation by allowing an ''apples-to-apples'' comparison of pipeline cost data measured using a single set of Opinion No. 154–B cost-of-service policies.[78] By contrast, using data that reflect one set of Opinion No. 154–B policies for 2019 and another for 2024 provides a less accurate measure of pipelines' actual cost changes.

23. Second, we conclude that it would be improper for the Commission to use unadjusted cost data that captures the downward effects of the ROE Policy Change on industry-wide page 700 costs. As the Commission stated in the 2020 Index Review, indexing allows for incremental rate adjustments to allow pipelines to recover normal cost changes in future years.[79] The index should not function as a vehicle for incorporating into rates cost-of-service policy changes that occurred during the prior five-year period.[80] Thus, we find that it is reasonable to calculate the index level using adjusted 2019 cost data that reflects the same ROE methodology as the 2024 cost data.

24. We also find that LEPA's proposed approach for modifying the 2019 cost data to account for the ROE Policy Change is reasonable based on the record. LEPA's calculation of an 8.30% CAPM return is consistent with the Commission's application of the ROE Policy Statement in Opinion No. 586. In addition, averaging LEPA's calculated 8.30% CAPM return with pipelines' originally filed DCF-based ROEs produces cost data that is more consistent with the ROE Policy Statement for purposes of calculating the index level. Furthermore, because ROE is an input used to determine income tax allowance, return on rate base, and total cost of service, adjusting pipelines' 2019 ROE data necessitates corresponding adjustments to pipelines' originally reported income tax allowances, returns on rate base, and total costs of service for 2019 to fully address the effects of the ROE Policy Change in calculating the index level.

25. However, we decline to adopt LEPA's proposal to adjust the 2019 cost data for pipelines that reported an identical ROE for each year of the 2019–2024 period.[81] We agree with Joint Commenters that in these circumstances, the ROE Policy Change does not appear to have affected how the pipeline reported its ROE on page 700, and it is not clear that each of these pipeline's 2019 data reflect different Opinion No. 154–B policies than their 2024 data. Thus, because the ROE Policy Change did not render those pipelines' 2019 data inconsistent with their 2024 data, it is unnecessary to adjust their 2019 data to address the policy change's effects.

26. We are unpersuaded by Shippers' arguments against adjusting the 2019 cost data to account for the ROE Policy Change. We disagree with Shippers' claims that adjusting pipelines' 2019 page 700 ROEs using LEPA's CAPM result will inflate the index level. To the extent that pipelines' adjusted 2019 ROEs reflecting the updated combined DCF/CAPM methodology fall below their originally reported 2019 ROEs reflecting the prior DCF-only methodology,[82] this does not establish that adjusting 2019 cost data will distort the index calculation. To the contrary, as discussed above, this approach better accounts for actual industry-wide cost changes during the 2019–2024 period by measuring pipeline costs in 2019 and 2024 using the same set of ratemaking policies. We are likewise unconvinced by Joint Commenters' argument that using 2019 data in this index review that differs from the 2019 data used in the 2020 review will produce a distorted measure of pipeline cost changes from 2014–2024.[83] Our task in this proceeding is to calculate the index based upon pipeline cost changes from 2019–2024,[84] and following the ROE Policy Change, comparing pipelines' 2024 cost data (which reflects the updated ROE methodology) with the unadjusted 2019 data considered in the 2020 Index Review (which reflects the prior ROE methodology) would result in an inaccurate measure of industry cost changes.

27. Similarly unavailing is Shippers' argument that adjusting the data set used to calculate the index level to address the ROE Policy Change would complicate the five-year review process in violation of EPAct 1992. To the contrary, the adjustments adopted herein provide a straightforward solution to the page 700 data inconsistencies resulting from the ROE Policy Change. We acknowledge Liquids Shippers' claim that these adjustments are more complex than the data adjustments addressing the Income Tax Policy Change in the 2020 Index Review.[85] However, any additional complexity relative to the Income Tax Policy Change that occurred during the 2020 Index Review period does not dissuade us from adjusting the data to reflect the ROE Policy Change. Although we recognize that any changes to the reported page 700 data introduce a degree of additional complexity, we conclude that the benefits of more accurately measuring actual industry cost changes during the five-year review period by using consistent ratemaking

[75] NOPR, 193 FERC ¶ 61,145 at P 14 n.32.

[76] 2020 Index Review, 173 FERC ¶ 61,245 at P 17.

[77] *Id.*

[78] *Id.* (''Just as a business must account for changes to its accounting policies when comparing its costs over two different periods, we must make a similar adjustment to the reported page 700 data . . . to derive an 'apples-to-apples' comparison of pipeline cost changes.'').

[79] *Id.* P 18.

[80] *Id.; see also* Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,950 (explaining that indexing ''merely preserves the value of just and reasonable rates in real economic terms'' by allowing pipelines to implement inflation-based adjustments ''to preserve [rates'] real value in real terms'').

[81] *See* Attach. A at Ex. 8 tab (listing 20 pipelines that filed a single ROE value for the full 2019–2024 period).

[82] *See* Joint Commenters Reply Comments at 24–25; CAPP Reply Comments, Christensen Reply Report at 8–9.

[83] Joint Commenters Reply Comments at 24–25 (citing Brattle Reply Report at PP 85–87). The dissent refers to this concern as a ''stitching problem.'' We note that the Commission's prior index published in 2020 contained a similar ''stitching problem'' caused by the adjustments to account for the Income Tax Policy Change. The Commission treats each five-year period as an independent study period, and within this framework accounts for actual changes in costs, which in these cases required adjustments that lead to the effect noted here.

[84] We adjust pipelines' previously reported 2019 cost data in this proceeding for the limited purpose of measuring industry-wide cost changes from 2019–2024 to calculate the index level that will apply beginning July 1, 2026. The data adjustments adopted herein do not apply for any purpose beyond the index calculation performed in this proceeding.

[85] Liquids Shippers Reply Comments at 8–9 (citing Crowe Reply Aff. 5).

policies support adjusting the reported data notwithstanding these concerns. Along similar lines, while Joint Commenters contend that omitting the effects of the ROE Policy Change from the index will increase cost-of-service litigation,[86] this argument rests on speculation and, in any case, does not justify leaving the data inconsistencies resulting from the policy change unaddressed.

28. We disagree with Shippers' claim that adjusting the reported data to address the ROE Policy Change conflicts with Commission precedent. As an initial matter, this approach conforms with the 2020 Index Review, where the Commission similarly adjusted the reported page 700 data to account for the Income Tax Policy Change.[87] Although the Commission has not previously revised ROE data in an index review,[88] this fact does not dissuade us from adjusting the ROE data here.[89] Furthermore, while the Commission declined to adjust pipelines' reported ROEs in the 2020 Index Review,[90] the adjustments rejected in that proceeding are distinguishable from those adopted here. In contrast to this proceeding, where the reported data for 2019 and 2024 reflect different ROE policies, the data considered in the 2020 Index Review reflected a single ROE policy.[91] As a result, because there was no intervening change to the Commission's ROE policy for oil pipelines during the 2014–2019 review period, the Commission reasonably declined to adopt the proposed adjustments to the pipeline cost data consistent with its general policy of calculating the index level using pipeline cost data as reported on FERC Form No. 6, page 700.

29. We likewise disagree with Joint Commenters' claim that removing the effects of the ROE Policy Change is inconsistent with the Commission's treatment of the 2005 Accounting Order. Unlike the ROE Policy Change, the 2005 Accounting Order did not modify the Commission's Opinion No. 154–B methodology and instead merely clarified how pipelines should report new integrity management costs using the Commission's existing policies.[92] Because the Commission's policies were the same before and after the 2005 Accounting Order, it was unnecessary to modify the Form No. 6 data used to calculate the index level in the 2010 Index Review. In any case, regardless of the Commission's determinations in the 2010 Index Review, our task in this proceeding is to calculate the index level based upon pipeline cost changes from 2019–2024, and for the reasons explained above, we find that adjusting the data to account for the ROE Policy Change provides a more accurate measure of actual industry-wide cost changes.

30. Joint Commenters' argument that removing the effects of the ROE Policy Change conflicts with the Commission's grandfathering policies is similarly unavailing. Pursuant to EPAct 1992, the Commission determines whether rates are no longer subject to grandfathering protection by measuring changes in the pipeline's actual ROE to evaluate whether a ''substantial change'' has occurred in the ''economic circumstances of the oil pipeline which were a basis for the rate.'' [93] In applying this substantial-change analysis, the Commission has found that changes in the Commission's ratemaking policies contribute to changes in the ''economic circumstances'' that formed a basis for the grandfathered rate.[94] Accordingly, this policy arises from the specific language governing grandfathered rates in section 1803(b)(1)(A) of EPAct 1992 and is thus separate from the indexing methodology established pursuant to section 1801(a).[95] For the reasons discussed above, we conclude that using adjusted pipeline cost data based upon a consistent ROE methodology will produce a more accurate measure of actual industry-wide cost changes for purposes of calculating the index level in this proceeding.

31. Furthermore, we are unpersuaded by Shippers' claims that LEPA's adjustments are flawed because they average pipelines' reported ROEs for 2019 with the single CAPM return proposed by LEPA.[96] We acknowledge that in the 2020 Index Review, the Commission expressed concerns with adopting a single ROE for all pipelines in the data sample.[97] It is also true that pipelines' ROEs can vary based upon differences in risk.[98] However, unlike the 2020 Index Review, the instant industry-wide index review involves distinct circumstances where pipelines' cost data for the first and last years of the review period reflect different ROE policies. To the extent that LEPA's proposed CAPM return does not precisely measure the cost of equity for all pipelines in the data set, this imprecision is justified by the need to resolve the data incongruities resulting from the ROE Policy Change. We find that averaging LEPA's proposed single CAPM return with pipelines' originally filed 2019 DCF ROEs provides a reasonable method of addressing the ROE Policy Change that coheres with EPAct 1992's mandates for simplified and streamlined ratemaking.[99] Shippers

[86] Joint Commenters Initial Comments at 48 (citing Brattle Initial Report at P 162).

[87] 2020 Index Review, 173 FERC ¶ 61,245 at PP 16–20. Contrary to Shippers' suggestion that the Commission departed from the reasoning in the 2020 Index Review in the January 2022 Rehearing Order and the Supplemental NOPR, the 2020 Index Review remains valid precedent because the D.C. Circuit has vacated the January 2022 Rehearing Order and the Commission has withdrawn the Supplemental NOPR. *LEPA* v. *FERC,* 109 F.4th at 549 (vacating January 2022 Rehearing Order); Supplemental NOPR Withdrawal, 193 FERC ¶ 61,136 at P 21; *see also, e.g., Keystone-Conemaugh Projects* v. *EPA,* 100 F.4th 434, 446 (3d Cir. 2024) (citing *Ala. Power Co.* v. *EPA,* 40 F.3d 450, 456 (D.C. Cir. 1994)) (''[A] vacated agency action is a nullity that has no force and effect.'').

[88] EPR Shippers Initial Comments at 13–14; CAPP Reply Comments at 3; *see also* NOPR, 193 FERC ¶ 61,145 at P 13 (observing that ''[t]he Commission has never adjusted ROE in a prior index proceeding'').

[89] Because this proceeding marks the first index review where the Commission revised its ROE policy for oil pipelines during the relevant review period, the need to adjust the Form No. 6 data to reflect consistent ROE policies did not arise in any prior review.

[90] 2020 Index Review, 173 FERC ¶ 61,245 at PP 45–50.

[91] *See id.* P 46 (explaining that the Commission's policies required pipelines to determine their page 700 ROEs using the DCF-only method in both 2014 and 2019).

[92] 2005 Accounting Order, 111 FERC ¶ 61,501 at P 1 (explaining that the 2005 Accounting Order ''interprets the Commission's existing accounting rules''). To the extent that some pipelines revised their accounting practices in response to the 2005 Accounting Order because they previously did not adhere to the Commission's preexisting policies, *see id.* PP 8, 19, a shift in accounting practices by only a subset of pipelines in the data set would not necessarily justify an adjustment to data used in the industry-wide index. *See* Supplemental NOPR Withdrawal, 193 FERC ¶ 61,136 at PP 32, 34. By contrast, because the ROE Policy Change revised the policies that all pipelines must follow in determining their page 700 ROE, an adjustment to the index level calculation is appropriate here.

[93] EPAct 1992 1803(b)(1)(A); *see also, e.g.,* Opinion No. 586, 185 FERC ¶ 61,126 at P 363 (citing *Tesoro,* 134 FERC ¶ 61,214 at PP 2, 59, 63).

[94] *See* Opinion No. 586, 185 FERC ¶ 61,216 at P 416; *Tesoro,* 134 FERC ¶ 61,214 at P 68.

[95] *Compare* EPAct 1992 1801(a) *with id.* 1803(b)(1)(A).

[96] Joint Commenters Reply Comments at 20–21 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 49); CAPP Reply Comments, Christensen Reply Report at 6–7 (citing ROE Policy Statement, 171 FERC ¶ 61,155 at P 6).

[97] 2020 Index Review, 173 FERC ¶ 61,245 at P 49 (finding that Liquids Shippers had not demonstrated that their proposed standardized ROE figure accurately measures the investor-required cost of equity for all pipelines in the data set).

[98] *Id.* (''Given that oil pipelines have diverse business models and different risk levels, we cannot simply assume that any single ROE could reflect the investor-required return for all pipelines in the data set.'').

[99] Further, as explained above, Dr. Webb's 8.30% CAPM return adheres to the Commission's determinations in Opinion No. 586, whereas Liquids Shippers' proposed 2019 ROE in the 2020 Index Review was solely based on testimony by one participant in the rate proceeding. *Id.* (noting that Liquids Shippers' proposed 2019 ROE was ''a figure

Continued

have not proposed a superior alternative adjustment.[100]

32. Moreover, to the extent that Shippers' arguments imply that the Commission is obligated to determine an individualized CAPM return for each pipeline in the data set, we find this would be a complex and difficult undertaking that runs counter to EPAct 1992's mandate and is not necessary to develop a reasonable measure of actual industry-wide cost changes during this five-year review period. For the same reasons, we find that the adjustments to account for the ROE Policy Change are just and reasonable notwithstanding Shippers' arguments that the proxy group used in LEPA's proposed CAPM analysis may differ from the proxy groups that pipelines used to determine their original 2019 ROEs.[101] As Joint Commenters observe, in determining an individual pipeline's just and reasonable ROE in a cost-of-service rate proceeding, the Commission has performed the DCF and CAPM analyses using a single proxy group.[102] However, in these circumstances, we find that LEPA's proposed adjustment is a reasonable approach to resolving the data incongruities resulting from the ROE Policy Change.[103] In contrast, determining a separate CAPM return for each pipeline in the data set using the same proxy group used in developing its originally reported DCF return would be a complex undertaking that would complicate and prolong the five-year review process contrary to EPAct 1992.[104]

33. Shippers' remaining challenges to LEPA's proposed ROE are likewise unpersuasive.[105] We reject Joint Commenters' argument that LEPA's DCF/CAPM result is inaccurate because it differs from the revised 2019 ROEs that three pipelines filed in 2020 and 2021 following the ROE Policy Statement.[106] Since those pipelines filed their revised ROEs, the Commission further refined the application of its ROE methodology for oil pipelines in Opinion No. 586.[107] Thus, applying the ROE policy that incorporates the changes adopted in Opinion No. 586 necessarily produces a different result than ROE analyses that predate Opinion No. 586. Similarly, CAPP's argument that a DCF analysis of the companies in Dr. Webb's proxy group shows that ROE costs declined between 2019–2024 does not undermine Dr. Webb's calculations.[108] The DCF and CAPM analyses are different calculations that use different data.[109] Accordingly, to the extent that pipeline returns from 2019–2024 determined using the DCF/CAPM ROE method differed from the returns using the DCF ROE method over the same period, this does not establish that the DCF/CAPM returns are inaccurate. For these reasons, we are likewise unpersuaded by CAPP's claim that LEPA's proposed 8.30% CAPM return is lower than both (a) the DCF returns that most pipelines reported for 2019 and (b) the industry-wide average DCF returns since 2013.[110] Because the CAPM and DCF analyses use different data, the fact that LEPA's 8.30% CAPM return differs from pipelines' reported DCF returns does not demonstrate that the CAPM return provides an inaccurate measure

that a participant has proposed in an ongoing hearing on which neither the Presiding Judge nor the Commission have opined''). For this reason, the Commission concluded in the 2020 Index Review that determining a just and reasonable ROE would be a fact-intensive inquiry that could complicate and prolong the five-year review process in violation of EPAct 1992. *Id.* P 50. In contrast here, LEPA's proposed ROE does not raise the same level of concerns because it is based on the Commission's prior determinations in Opinion No. 586.

[100] To the extent that other pipelines may have calculated different CAPM results for 2019 (*see* Brattle Reply Report at PP 94, 110 (referencing revised Form No. 6 filings by Plains, Rocky Mountain, and Mustang in 2020 and 2021)) or different CAPM results could be calculated in 2019, LEPA's proposed CAPM result of 8.30% is the only CAPM result in the record where the Commission and other participants in this proceeding are aware of how it was calculated. Moreover, LEPA's CAPM analysis is consistent with Opinion No. 586.

[101] Joint Commenters Reply Comments at 23 (citing ROE Policy Statement, 171 FERC ¶ 61,155 at PP 58–66).

[102] *See* Opinion No. 586, 185 FERC ¶ 61,126 at PP 114, 129 (determining oil pipeline's DCF and CAPM returns using identical proxy group); *Panhandle E. Pipe Line Co.,* Opinion No. 885, 181 FERC ¶ 61,211, at PP 168, 170 (2022) (determining natural gas pipeline's DCF and CAPM returns using identical proxy group), *order on reh'g,* Opinion No. 885–A, 184 FERC ¶ 61,181 (2023).

[103] The only DCF/CAPM result in the record that is based on a matching proxy group was developed by LEPA's expert Dr. Webb, in which he used a DCF result of 10.12% and a CAPM result of 8.30%, leading to an ROE of 9.21%. However, using that combined DCF/CAPM result for every pipeline would lead to a lower ROE and lower overall 2019 total cost of service for 212 out of 244 pipelines in the data set, thereby leading to a higher index level. Attach. A at Ex. 14 tab. No commenter has advocated for such an approach in this record.

[104] *See* 2020 Index Review, 173 FERC ¶ 61,245 at P 49. Developing a proxy group can be an extensive endeavor on a full record involving specific consideration of each proxy group member. *See, e.g., Chevron Prods. Co.* v. *SFPP, L.P.,* Opinion No. 571, 172 FERC ¶ 61,207, at PP 148–189 (2020). Moreover, we lack information regarding the proxy group used by every pipeline for the originally filed 2019 page 700 ROEs, and so we would have no way of ensuring that the originally filed DCF return would use the same proxy group as LEPA's proposed CAPM return.

[105] We are not persuaded by Joint Commenters' argument that LEPA's adjustments are flawed based on their treatment of Enterprise Crude, Total, Bridger, and Mustang. *See* Joint Commenters Reply Comments at 23–24 (citing Brattle Reply Report at PP 110–111). We recognize that Enterprise Crude's original 2019 ROE reflects only six months of operations, whereas LEPA's CAPM result reflects 12 months of operations. However, even if Enterprise Crude's original ROE is adjusted to resolve this concern, Enterprise Crude would fall outside the middle 80% sample that we use to calculate the index level. *See* Attach. A at Model tab. Likewise, regarding Joint Commenters' statement that Total reported a negative rate base for 2019, we do not consider Total's data in deriving the index because it is not within the middle 80%. Moreover, although a Commission audit report concluded that Bridger did not adhere fully to the Commission's policy in determining its 2019 ROE, the report concluded that Bridger used methods that ''captured the spirit'' of the Commission's policy. Audit of Bridger Pipeline LLC, Docket No. FA19–10–000, at 71 (issued Sept. 23, 2021). In any case, Joint Commenters themselves incorporate Bridger's reported 2019 ROE in calculating their proposed index level. *See* Brattle Initial Report, Workpaper 1, ''WP Table 2'' tab at cell Z211 (reflecting total cost of service reported in Bridger's 2019 Form No. 6, which incorporates the ROE addressed in the audit report). Finally, we recognize that Mustang filed a revised 2019 ROE in 2021 that reflects the ROE Policy Statement. Although LEPA initially applied its adjustments to Mustang's revised ROE, LEPA filed supplemental comments on January 28, 2026, to correct this error. In either case, the treatment of Mustang has no effect on the index level.

[106] Joint Commenters Reply Comments at 21–22 (citing Brattle Reply Report at P 84 & n.44).

[107] Specifically, the Commission revised its application of the CAPM analysis by (a) adopting Bloomberg-based betas instead of Value Line betas and (b) using short-term growth estimates published by the Institutional Brokers' Estimate System (IBES) and Value Line, rather than IBES estimates alone, in determining the CAPM risk premium. Opinion No. 586, 185 FERC ¶ 61,126 at PP 125–126.

[108] Moreover, CAPP has not demonstrated that its DCF analysis for 2024 complies with the Commission's policy. First, CAPP determines its 2024 DCF return using a proxy group of only three companies. CAPP Reply Comments, Attach. F at DCF (2024) tab. However, the Commission has declined to use three-member proxy groups and explained that proxy groups should contain ''at least four, and preferably at least five members, if representative members can be found.'' Opinion No. 586, 185 FERC ¶ 61,126 at P 91 & n.254 (citing ROE Policy Statement, 171 FERC ¶ 61,155 at P 59); *Kern River Gas Transmission Co.,* Opinion No. 486–B, 126 FERC ¶ 61,034, at P 104 (2009) (explaining that the Commission has found that proxy groups of ''three members were too small'' (citing *Williston Basin Interstate Pipeline Co.,* 104 FERC ¶ 61,036, at P 35 (2003))). Furthermore, there is no evidence that CAPP considered additional companies that could be included in the proxy group. Second, CAPP does not demonstrate that the three companies in its proxy group satisfy the Commission's criteria for proxy group membership. In developing its proposed CAPM ROE for 2019, LEPA used the five-member proxy group adopted in Opinion No. 586, which the Commission found was reasonable based on a study period from September 2019–February 2020. In addition, LEPA presents unrebutted testimony from its expert Dr. Webb that the members of the Opinion No. 586 proxy group continue to satisfy the Commission's proxy group criteria during LEPA's proposed study period from July 2019–December 2019. Webb LEPA Decl. at P 13. By contrast, although CAPP proposes to exclude two of the five Opinion No. 586 proxy group companies because they are no longer publicly traded, *see* Christensen Reply Report at 10 n.10, it does not address whether the remaining three companies continue to satisfy the Commission's proxy group criteria during its proposed July 2024–December 2024 study period.

[109] *See* ROE Policy Statement, 171 FERC ¶ 61,155 at PP 4–5, 8 (describing inputs to DCF model and CAPM analysis).

[110] Christensen Reply Report at 8–9.

of pipelines' ROE costs.[111] Furthermore, contrary to CAPP's claim, Dr. Webb's use of size-premium adjustments based on each proxy group member's size relative to the companies in the S&P 500 conforms to the Commission's policy.[112]

34. We also reject CAPP's claim that Dr. Webb's CAPM analysis may differ from the CAPM analyses that pipelines used in preparing their page 700 ROEs for 2024. As discussed above, Shippers have not demonstrated that Dr. Webb's CAPM analysis conflicts with the Commission's policy. Moreover, Form No. 6 instructs pipelines to determine their page 700 ROEs in accordance with the Commission's cost-of-service policies,[113] and CAPP does not allege that pipelines' page 700 ROEs for 2024 do not comply with this requirement.

35. In addition to the issues raised by the comments and consistent with the discussion above, we are no longer concerned about removing the effects of the ROE Policy Change discussed in the NOPR. Although the NOPR stated that the Commission has never adjusted the ROE in prior indexing proceedings,[114] the adjustment to account for the ROE Policy Change is consistent with the 2020 Index Review requiring removal of the effects of other policy changes.[115] Moreover, our analysis of the record also alleviates the concern expressed in the NOPR that the adjustment for the ROE Policy Change would be unduly complicated and inconsistent with indexing's purpose as a simplified and streamlined process.[116] As discussed above, the record has provided a workable means for making the appropriate adjustments to account for the ROE Policy Change.

36. Finally, we disagree with the dissent's arguments opposing the adjustments to account for the ROE Policy Change. The dissent recognizes that it is preferable to calculate the index level using cost data that reflects consistent policies. Although the dissent argues that the appropriate remedy for the data inconsistencies resulting from the ROE Policy Change was for pipelines to file updated 2019 cost data in 2020,[117] the dissent acknowledges that this remedy is unavailable because most pipelines did not make such filings (nor were they required to do so). Thus, the fact remains that the 2019 and 2024 cost data in the record reflect different ratemaking policies. The Commission need not leave the asymmetry unaddressed, as the dissent suggests, merely because pipelines did not file updated data in 2020. On balance, given the record before us, we find that the superior approach is to account for the ROE Policy Change through the adjustments to the 2019 cost data adopted herein. Recognizing that these adjustments, like any other approach, are not exact,[118] we nonetheless conclude that they will produce a more accurate measure of industry-wide cost changes from 2019–2024 than using unadjusted data reported under different policies. Moreover, we find that our determinations in this order sufficiently respond to the dissent's other contentions.[119]

B. Resubmitted Form No. 6s

1. NOPR Proposal

37. The Commission proposed in the NOPR to calculate the index level using pipelines' originally filed 2019 cost data, rather than the resubmitted 2019 cost data that 61 pipelines filed in April-June 2025. The Commission observed that the resubmitted data was filed five years after the 2019 cost data was originally due for submission and that a similarly significant volume of late Form No. 6 resubmissions had not arisen in any prior five-year index review. The Commission stated that while many of the changes involved revisions to ROE and capital structure, some pipelines made additional changes to other cost components unrelated to ROE, such as rate base and operating expenses.[120] In addition, the Commission stated that pipelines included limited explanation or supporting calculations for the proposed changes to their original data. Furthermore, the Commission expressed concern that using the resubmitted 2019 cost data could introduce biases to the index level calculation because only some pipelines filed resubmitted data. The Commission requested comment on whether, and if so, how, the index calculation should incorporate the resubmitted 2019 cost data.[121]

2. Comments

38. LEPA contends that the Commission should use resubmitted 2019 cost data that pipelines filed in 2025 in calculating the index. LEPA argues that Dr. Webb's testimony addresses the Commission's concern that the resubmitted data lacks support by providing calculations supporting the revised 2019 ROEs included in the resubmittals.[122] In response to the Commission's concern that using the revised data could bias the index level calculation because only some pipelines updated their data,[123] LEPA states that its proposed adjustments resolve this concern by adjusting the 2019 cost data for all pipelines in the data set, including those that did not resubmit their Form No. 6.[124]

39. Shippers argue that the Commission should use pipelines' originally filed 2019 cost data and decline to consider the recently resubmitted data. Shippers contend that the resubmitted Form No. 6s are

[111] For example, LEPA presents CAPM and DCF analyses of the Opinion No. 586 proxy group for both 2014 and 2019. In both years, the CAPM analysis produced lower returns than the DCF analysis. LEPA Reply Comments, Decl. of Dr. Michael J. Webb at PP 7–8 (determining CAPM returns of 9.47% for 2014 and 9.17% for 2019, compared to DCF returns of 13.62% for 2014 and 10.12% for 2019).

[112] *See* Opinion No. 586, 185 FERC ¶ 61,126 at P 129 (adopting a CAPM analysis incorporating Duff & Phelps size premium adjustments, which adjust the proxy group members' cost-of-equity estimates based on their size relative to the S&P 500); Ex. MJW–L2 at ''Size Adjustment'' tab (applying Duff & Phelps size premiums approved in Opinion No. 586).

[113] *See* FERC Form No. 6, page 700 at Instruction (2) (''The values [on page 700] shall be computed consistent with the Commission's Opinion No. 154–B et al. methodology.'').

[114] NOPR, 193 FERC ¶ 61,145 at P 13.

[115] 2020 Index Review, 173 FERC ¶ 61,245 at PP 16–20 (adjusting the reported page 700 data for 2014 to account for the Income Tax Policy Change). This is also the first time the Commission's ROE policy for oil pipelines changed since the Commission began using the page 700 to calculate the index level in the 2015 Index Review. 2015 Index Review, 153 FERC ¶ 61,312 at PP 12–18. Prior to 2015, the Commission calculated the index level using accounting data on Form No. 6 that does not directly incorporate an ROE.

[116] NOPR, 193 FERC ¶ 61,145 at P 13.

[117] As discussed above, following the ROE Policy Change in 2020, the Commission further refined its ROE methodology in 2023 in Opinion No. 586. Thus, even if pipelines had filed revised 2019 cost data in 2020 to reflect the ROE Policy Change, that revised 2019 data would not reflect the same ROE policy as 2024 cost data filed after Opinion No. 586. *Supra* P 33.

[118] For instance, we acknowledge that LEPA's single CAPM result may not precisely measure the cost of equity of each pipeline in the data set. *Supra* P 31. Moreover, we recognize that by adopting these adjustments, we are comparing 2024 data that incorporates individually reported CAPM returns with 2019 data that incorporates a single, industry-wide CAPM return. However, as discussed above, we find that it is preferable, on balance, to address the data asymmetry resulting from the ROE Policy Change by making these adjustments, notwithstanding that this approach (as would any other) entails some imprecision.

[119] *Supra* PP 31–32 (responding to argument that the adjustments improperly use a single CAPM result for all pipelines in the data sample); *supra* PP 28, 31 (responding to argument that the adjustments conflict with the Commission's determinations in the 2020 Index Review); *supra* P 26 (responding to argument that the adjustments create a ''stitching problem'' resulting from inconsistencies with the 2019 cost data used in the 2020 Index Review).

[120] *Id.* P 15 n.33.

[121] *Id.* P 16.

[122] LEPA Initial Comments at 19 (citing Webb Decl. at P 18; Ex. MJW–L2).

[123] NOPR, 193 FERC ¶ 61,145 at P 16.

[124] LEPA Initial Comments at 19–20 (citing Shehadeh Decl. at App. A).

untimely and contain limited support for the changes to the originally reported page 700 cost data, including changes to cost-of-service items unrelated to ROE.[125] To the extent that pipelines revised their original data to reflect the Commission's determinations in Opinion No. 586, Shippers argue that reflecting this 2023 decision in page 700 data for 2019 would contravene the requirement for pipelines to complete page 700 in accordance with the Opinion No. 154–B methodology effective at the time of filing.[126] Moreover, because all pipelines that resubmitted their 2019 data reported the 9.21% revised ROE prepared by Dr. Webb, Shippers contend that the resubmissions reflect a coordinated effort to skew the index upward by altering the page 700 data set.[127] Shippers state that incorporating the resubmitted data in the index level calculation would undermine the reliability of Form No. 6 data and encourage similar untimely resubmissions in the future.[128]

3. Commission Determination

40. Consistent with the proposal in the NOPR, we decline to incorporate into the index level calculation the 2019 cost data that 61 pipelines resubmitted between April and June 2025 and will rely on pipelines' originally submitted 2019 cost data.[129] As explained in the NOPR, the resubmissions were filed five years after the cost data was originally due to be submitted.[130] A similarly significant volume of late filings of cost data has not arisen in prior five-year review proceedings.[131]

41. Moreover, as the Commission stated in the NOPR, the resubmitted 2019 cost data lack supporting calculations or explanations for the late filings.[132] The record created by the comments does not resolve this concern. Although LEPA argues that the record includes an explanation for the ROE calculations in the resubmitted 2019 cost data, the resubmitted 2019 cost data include several other departures from the originally filed data.[133] These additional departures[134] remain unexplained.[135]

42. Finally, although using the resubmitted 2019 cost data in calculating the index level would help to reflect the ROE Policy Change, we find that the ROE Policy Change is sufficiently and more effectively addressed by the adjustment to the originally filed 2019 cost data discussed in section III.A of this order. Specifically, because only 61 pipelines resubmitted new 2019 cost data, using the ROEs in the resubmitted filings and making the adjustment discussed in section III.A to the ROEs for the remaining pipelines could lead to inconsistent treatment of the ROEs across the whole data set. Accordingly, as proposed in the NOPR, we are not including the late submitted 2019 cost data in the calculation of the index level.[136]

C. Data Trimming

1. NOPR Proposal

43. The Commission proposed in the NOPR to calculate the index level by trimming the data set to the middle 80%, consistent with its practice in the 2020 Index Review.[137] The Commission stated that considering a larger data sample should enhance the calculation of the central tendency of industry cost experience. Here, the Commission observed that the middle 80% provides a more robust sample of industry cost experience compared to the middle 50%.[138] In addition, the Commission preliminarily found that using the more inclusive data sample in the middle 80% would aid the Commission in identifying the central tendency of industry-wide cost changes that reflects the ''normal'' cost changes recoverable by the index.[139] The Commission encouraged commenters to address whether it should continue to trim the data set to the middle 80% or adopt an alternative approach to data trimming.[140]

2. Comments

44. LEPA states that the Commission should calculate the index level by trimming the data set to the middle 80%,[141] consistent with the 2020 Index Review.[142] Although the Commission relied solely on the middle 50% in the 2015 and 2010 Index Reviews, LEPA contends that the Commission's approach in those proceedings does not require using the middle 50% here.[143] LEPA argues that absent concerns about

[125] Liquids Shippers Initial Comments at 14–17; EPR Shippers Initial Comments at 15; STUSCO Initial Comments at 11–12; STUSCO Reply Comments at 9.

[126] Joint Commenters Initial Comments at 49–50 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 48; Brattle Initial Report at P 166); Liquids Shippers Initial Comments at 15 (citing Aff. of Elizabeth H. Crowe at 10–11 (Crowe Initial Aff.)).

[127] Joint Commenters Initial Comments at 49 (citing Brattle Initial Report at P 164); Liquids Shippers Initial Comments at 15–16 (citing Crowe Initial Aff. 9 & n.11).

[128] EPR Shippers Initial Comments at 16; STUSCO Initial Comments at 11–12.

[129] *See* NOPR, 193 FERC ¶ 61,245 at P 16.

[130] *Id.*

[131] *Id.*

[132] The filings themselves merely state that ''[t]he cost of service results have been updated to reflect the most current interpretation of the FERC methodology outlined in Opinion No. 154–B, 31 FERC ¶ 61,377, as modified and clarified by subsequent rulings.'' *See, e.g.,* Buckeye Pipe Line Transportation LLC, Revised 2020 FERC Form No. 6 Report, at page 2 (filed June 16, 2025). Other pipelines added that ''2019 and 2020 data has been restated using a revised [ROE] calculation consistent with the ROE methodology approved by the Commission in Opinion No. 586.'' Express Pipeline, LLC, Revised 2020 FERC Form No. 6 Report, at page 700 (filed May 2, 2025). However, these pipelines did not explain how or why the holdings in Opinion No. 586 prompted the modifications to the pipelines' 2019 cost data.

[133] NOPR, 193 FERC ¶ 61,245 at P 15 n.33.

[134] Including the resubmitted Form No. 6 filings would change the index level from PPI–FG—0.55%, as adopted in this order, to PPI–FG—0.22%. The substantial majority of this differential (22 out of 33 basis points) results from the unexplained modifications as opposed to the revised ROEs. Attach. A at Ex. 12 tab.

[135] Page 700 instructs pipelines making ''major changes to [their] application of the Opinion No. 154–B et al. methodology'' to ''describe such changes in a footnote.'' Form No. 6, page 700 at Instruction (6); *see also id.,* General Instruction IX (''Whenever . . . pages [of Form No. 6] refer to figures from a previous period the figures reported must be based upon those shown by the report of the previous period or an appropriate explanation given as to why different figures were used.''). Here, although the resubmissions state generally that the pipelines were updating their previously reported 2019 cost data to reflect the current interpretation of the Opinion No. 154–B methodology, they did not describe or explain the changes to cost data unrelated to ROE.

[136] The ROE Policy Statement issued May 21, 2020, one month after pipelines filed their 2019 page 700s in April 2020. Accordingly, in the ROE Policy Statement, the Commission encouraged pipelines to file updated 2019 cost data that reflected the ROE Policy Change by July 21, 2020. ROE Policy Statement, 171 FERC ¶ 61,155 at P 92; *see also* Notice Establishing Date for Filing Updated Data, Docket No. PL19–4–000 (issued July 7, 2020). However, the Commission did not commit to use this updated data in any future index review. *See id.* (stating that ''reflecting the revised [ROE] methodology in page 700 data for 2019 may help the Commission better estimate industry-wide cost changes for purposes of the five-year review'' but that ''the Commission will address this issue further in the five-year review''). Only two pipelines filed updated 2019 cost data in July 2020, only three months after 2019 cost data was due. Here, by contrast, the resubmitted 2019 cost data filed in 2025 were submitted five years after the data was originally due. Moreover, unlike the resubmissions contemplated by the ROE Policy Statement, the 61 resubmissions filed in 2025 include significant, unexplained changes to page 700 cost-of-service items unrelated to ROE.

[137] NOPR, 193 FERC ¶ 61,245 at P 8.

[138] *Id.* P 9.

[139] *Id.* P 10.

[140] *Id.* P 11.

[141] LEPA Initial Comments at 20–22. Kinder Morgan and EIC support LEPA's proposal to use the middle 80%. Kinder Morgan Initial Comments at 1, 3; EIC Initial Comments at 5, 20.

[142] LEPA Initial Comments at 21 (citing 2020 Index Review, 173 FERC ¶ 61,245 at PP 28, 63). LEPA also observes that the Commission considered the middle 80% in the 2005 and 2000 Index Reviews, where it determined the index level using an average of the middle 80% and middle 50%. LEPA Reply Comments at 11 (citing 2005 Index Review, 114 FERC ¶ 61,293 at PP 4, 33; 2000 Remand Order, 102 FERC ¶ 61,194 at PP 24–25, 28).

[143] LEPA Reply Comments at 11.

introducing erroneous or outlying data, a larger data sample provides a superior basis for evaluating normal cost changes and that excluding the additional data in the middle 80% would bias the index downwards.[144] Pipelines further state that considerations that the Commission has previously found support trimming to the middle 50% should not control here. Pipelines argue that although the Commission found in Order No. 561 that data reporting errors supported restricting its analysis to the middle 50%, subsequent improvements in reporting accuracy have resolved this concern.[145] Moreover, according to Pipelines, the fact that the middle 80% is more widely dispersed than the middle 50% does not establish that the middle 80% contains outlying or anomalous data.[146]

45. Although Designated Carriers do not oppose LEPA's proposal to use the middle 80%,[147] they recommend that the Commission trim the data set using the Ferguson Kurtosis test (Ferguson Test) [148] as applied by their witness Dr. Webb.[149] Designated Carriers state that to obtain an accurate measure of industry cost experience, the Commission should use the broadest possible sample of cost data that excludes statistical outliers.[150] Designated Carriers state that trimming to the middle 80% removes all cost changes in the top and bottom 10% of the data set without examining whether those observations represent statistical outliers. By contrast, Designated Carriers contend that the Ferguson Test provides a superior approach because it only omits observations that represent true statistical outliers and retains all remaining data.[151] Here, Designated Carriers state that the Ferguson Test indicates that only 14 pipelines in the full data set constitute potential outliers.[152] Because trimming to the middle 80% would exclude 40 pipelines from the cost-change analysis, Designated Carriers state that this approach could bias the index calculation by removing relevant data.[153]

46. Shippers oppose Pipelines' proposals and urge the Commission to trim the data set to the middle 50% consistent with its practice in Order No. 561 and in the 2010 and 2015 Index Reviews.[154] Shippers state that the Commission has previously found that using the middle 50% provides a simple and transparent method of excluding anomalous data while minimizing the need to analyze individual pipeline data.[155] Shippers argue that the middle 80% here contains anomalous and extraordinary costs that would skew the index upwards and frustrate the index's goal of measuring normal cost changes.[156] For instance, Shippers argue that pipelines in the incremental 30% (*i.e.,* pipelines that are included in the middle 80% but not the middle 50%) reported cost changes resulting from major transactions, operational incidents, accounting changes, partial-year operating data, and other factors unrepresentative of typical experience.[157] CAPP contends that pipelines in the incremental 30% experienced weaker correlations between changes in total costs and barrel-miles than pipelines in the middle 50%, indicating that the middle 80% includes anomalous and unrepresentative cost changes.[158] Shippers also state that the middle 80% is more dispersed than the middle 50% in this proceeding and the middle 80% in prior reviews, indicating that it contains extraordinary cost changes.[159] Shippers further argue that it is unnecessary to use the middle 80% to obtain a representative sample of industry experience because the middle 50% contains a greater percentage of barrel-miles subject to the index (82%) than in the 2015 (56%) or 2010 Index Reviews (76%).[160] Joint Commenters contend that the Commission should only use the middle 80% if it performs a detailed review to verify that it excludes anomalous costs.[161]

47. Shippers contend that LEPA's arguments do not justify using the middle 80%. Shippers state that LEPA's reliance on the 2020 Index Review is

[144] *Id.* at 10, 13–14 (citing *id.,* Reply Declaration of Ramsey D. Shehadeh, Ph.D., at 12–13 (Shehadeh Reply Decl.)); *see also* Designated Carriers Initial Comments at 19 (citing *id.,* Aff. of Dr. Michael J. Webb ¶ 8 (Webb Initial Aff.)); Designated Carriers Reply Comments at 15.

[145] LEPA Reply Comments at 13 (citing 2005 Index Review, 114 FERC ¶ 61,293 at P 48 & n.20; Shehadeh Reply Decl. at 12); Designated Carriers Initial Comments at 18, 29 (citing Webb Initial Aff. ¶ 7).

[146] LEPA Reply Comments at 15 (citing Shehadeh Reply Decl. at 6); Designated Carriers Reply Comments at 14–15.

[147] *See* Designated Carriers Reply Comments at 9 (stating that trimming to the middle 80% is the ''most restrictive approach the Commission should potentially adopt''); *see also* Designated Carriers Initial Comments at 19 (citing Webb Initial Aff. ¶ 10); Designated Carriers Reply Comments, Reply Aff. of Dr. Michael J. Webb at P 30 (Webb Reply Aff.).

[148] The Ferguson Test begins with the full data set and evaluates whether the data point furthest removed from the median conforms to a normal distribution. If the value does not conform to a normal distribution, the Ferguson Test classifies the value as a statistical outlier and removes it from the data set. This process repeats until the data point furthest from the median adheres to a normal distribution. *See* Webb Initial Aff. ¶ 30. In performing this analysis here, Dr. Webb (a) transforms the full data set to a normal distribution by taking the natural logarithm of each cost-change observation and (b) applies the Ferguson Test to the log-transformed data set. *Id.* PP 27–28.

[149] Designated Carriers Initial Comments at 7, 17–29; Designated Carriers Reply Comments at 9–10; Webb Initial Aff. ¶¶ 29–34; Ex. MJW–D16 at 1–27.

[150] Designated Carriers Initial Comments at 19–20.

[151] *Id.* at 19–20, 24–25.

[152] Ex. MJW–D16 at 19–24 (showing that the Ferguson Test identifies 14 pipelines as statistical outliers using the revised data set that incorporates LEPA's adjustments to account for ROE Policy Change and other proposed changes); *see also* Designated Carriers Initial Comments at 26–27; Webb Initial Aff. at PP 34–35. Dr. Webb attests that a separate statistical outlier test, the D'Agostino K-Squared test, produces similar results. Webb Initial Aff. ¶¶ 31–32, 34–35.

[153] Designated Carriers Initial Comments at 19, 26 (citing Webb Initial Aff. ¶ 8).

[154] Joint Commenters Initial Comments at 23–24; Liquids Shippers Initial Comments at 8–9 (citing 2015 Index Review, 153 FERC ¶ 61,312 at PP 43, 60; 2010 Index Review, 133 FERC ¶ 61,228 at P 61; Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097); EPR Shippers Initial Comments at 2–3, 6–7 (citing 2015 Index Review, 153 FERC ¶ 61,312 at P 42; 2010 Index Review, 133 FERC ¶ 61,228 at PP 54, 61; Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097). Shippers state that although the Commission used the middle 80% in the 2020 Index Review, it later cast doubt upon its reasoning for that decision. *E.g.,* EPR Shippers Initial Comments at 4–5, 9 (citing Supplemental NOPR, 189 FERC ¶ 61,030 at PP 13–23; January 2022 Rehearing Order, 178 FERC ¶ 61,023 at P 43); STUSCO Initial Comments at 7 (citing Supplemental NOPR, 189 FERC ¶ 61,030 at PP 13–23; January 2022 Rehearing Order, 178 FERC ¶ 61,023 at PP 37, 43–58).

[155] Joint Commenters Initial Comments at 24–25 (citing 2015 Index Review, 153 FERC ¶ 61,312 at PP 22–30, 36, 42–44 & nn. 80, 83); Liquids Shippers Initial Comments at 8 (citing 2010 Index Review, 133 FERC ¶ 61,228 at P 61); EPR Shippers Initial Comments at 3, 6 (citing 2015 Index Review, 153 FERC ¶ 61,312 at P 44; 2010 Index Review, 133 FERC ¶ 61,228 at P 61).

[156] *E.g.,* Joint Commenters Initial Comments at 28–29, 36; EPR Shippers Initial Comments at 8–9; CAPP Initial Comments at 3–4; STUSCO Reply Comments at 5–6. Shippers contend that anomalous data in the middle 80% exerts a significant influence upon the sample's central tendency and thus would skew the index calculation. Joint Commenters Initial Comments at 31–33 (citing Brattle Initial Report at PP 113, 117–118 & fig. 24); Liquids Shippers Initial Comments at 10–11 (citing Crowe Initial Aff. 5–6); STUSCO Initial Comments at 5–6.

[157] Joint Commenters Initial Comments at 36–39 (citing Brattle Initial Report at PP 62, 65–66, 69–76, 80–84 & Figures 5–9, 11–12); Brattle Initial Report at P 101 & Figure 17; Liquids Shipper Initial Comments at 10; Crowe Initial Aff. 3–5.

[158] CAPP Initial Comments, Christensen Initial Report at 18–19.

[159] Joint Commenters Initial Comments at 34 (citing Brattle Initial Report at P 91 & fig. 15); Liquids Shippers Initial Comments at 11 (citing Crowe Initial Aff. 6); EPR Shippers Initial Comments at 10–11; STUSCO Reply Comments at 5.

[160] Joint Commenters Initial Comments at 28–29 (citing *AOPL III,* 876 F.3d at 342–44; 2015 Index Review, 153 FERC ¶ 61,312 at P 55 n.85; 2010 Index Review, 133 FERC ¶ 61,228 at P 63; Brattle Initial Report at P 125 & fig. 25); Liquids Shippers Initial Comments at 11–12 (citing Crowe Initial Aff. 7); EPR Shippers Initial Comments at 9; STUSCO Initial Comments at 5.

[161] Joint Commenters Initial Comments at 27.

misplaced because the Commission subsequently disavowed its reasoning for using the middle 80% in that proceeding.[162] Thus, Joint Commenters contend that the Commission's established practice is to use the middle 50%.[163] Furthermore, Shippers argue that the mere fact that the middle 80% includes additional data does not support introducing the extraordinary cost changes in the incremental 30%.[164] Shippers state that Pipelines have not performed a detailed review of the incremental 30% to confirm that it does not include anomalous data.[165]

48. Finally, Shippers oppose Designated Carriers' proposal to trim the data set using the Ferguson Test. Shippers contend that this proposal departs from the Commission's longstanding use of statistical data trimming under the Kahn Methodology.[166] Moreover, Shippers state that the Ferguson Test only identifies statistical outliers in the tails of the distribution and does not assess whether cost changes are unrepresentative of normal experience because they resulted from idiosyncratic circumstances or data-reporting errors.[167]

3. Commission Determination

49. We adopt the NOPR's proposal to calculate the index level by trimming the data set to the middle 80%. In the NOPR, the Commission invited commenters to address whether the Commission should trim the data set to the middle 80% or adopt an alternative approach to data trimming.[168] Based on our review of the resulting record, we conclude that using the middle 80% is appropriate for this proceeding.

50. First, we continue to find that it is appropriate to consider more data in measuring industry-wide cost changes rather than less. The Kahn Methodology determines the index level by deriving the central tendency of a statistically trimmed data sample.[169] As the Commission explained in the 2020 Index Review, considering a larger data sample should enhance the calculation of the central tendency of industry cost experience.[170] In this proceeding, using the middle 80% incorporates the cost experiences of 155 pipelines out of 195 pipelines in the full data set, representing 94% of industry-wide barrel-miles.[171] Thus, the middle 80% provides a highly robust sample of industry cost trends during the 2019–2024 period. In contrast, confining our analysis to the middle 50% would exclude 58 additional pipelines (for a total of 98 pipelines excluded) and remove 10% of industry barrel-miles, providing a more limited representation of industry experience.[172]

51. Second, we conclude that for purposes of this index review, ''normal'' cost changes are best defined by incorporating the inclusive sample in the middle 80%.[173] As the Commission found in the 2020 Index Review, prematurely discarding data before determining the central tendency could skew the index such that it does not reflect industry-wide cost trends.[174] Using the more inclusive sample embodied by the middle 80% allows the Commission to accurately identify the central tendency of industry-wide cost changes that represents the ''normal'' cost changes recoverable through the index.[175]

52. Third, the middle 80% of this data set achieves a reasonable balance that incorporates a wide spectrum of industry experience while removing data that could distort the index calculation. As illustrated below, a scatter plot of the full data set indicates that the middle 80% sample (shown in orange) excludes cost changes in the left and right tails of the distribution (shown in blue) that diverge more significantly from the remainder of the dataset and could have a distorting effect on the mean and weighted mean, which comprise two-thirds of the composite measure of central tendency.

[162] *Id.* at 24–25; Joint Commenters Reply Comments at 6 (citing Supplemental NOPR, 189 FERC ¶ 61,030 at P 20).

[163] *Id.*

[164] STUSCO Initial Comments at 6; Joint Commenters Reply Comments at 6–7; STUSCO Reply Comments at 5.

[165] Joint Commenters Reply Comments at 5–9.

[166] Liquids Shippers Reply Comments at 13–14; STUSCO Reply Comments at 6–7.

[167] Joint Commenters Reply Comments at 8, 13–14 (citing Brattle Reply Report at P 60); STUSCO Reply Comments at 7.

[168] NOPR, 193 FERC ¶ 61,145 at P 11.

[169] 2020 Index Review, 173 FERC ¶ 61,245 at P 26.

[170] *Id.*

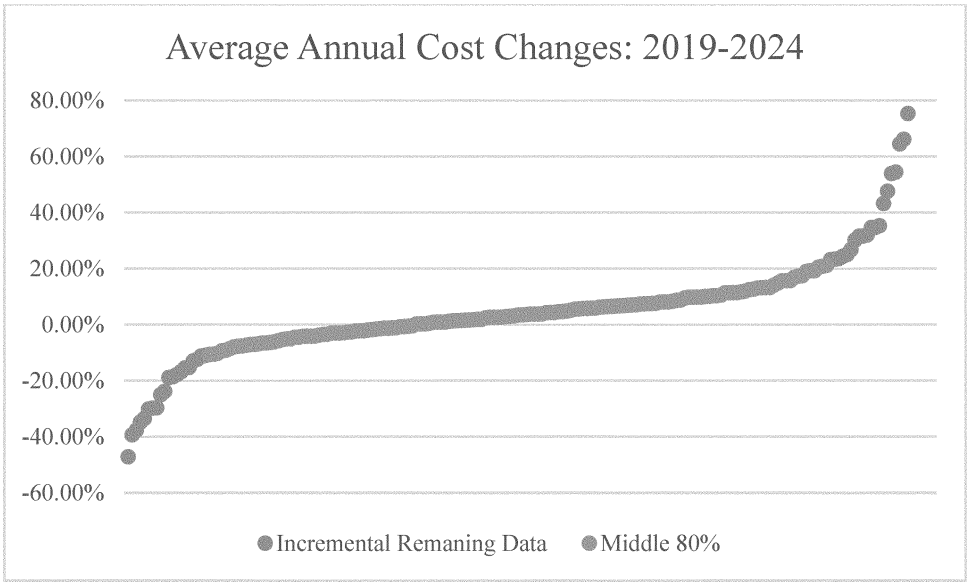
[171] *See* Attach. A at Ex. 3 tab.

[172] LEPA argues that the Commission should use the middle 80% because it conforms more closely to a lognormal distribution than the middle 50%. LEPA Initial Comments at 21–22 (citing Shehadeh Initial Decl. at 23–26); LEPA Reply Comments at 9–10, 15 (citing Shehadeh Reply Decl. at 6–7, 9–10, 21–22 & Exs. A17–A19). Shippers argue that conformity with a lognormal distribution does not establish that a sample excludes anomalous data. *E.g.,* Joint Commenters Reply Comments at 10–12; EPR Shippers Reply Comments at 3; STUSCO Reply Comments at 6. Given the objections in the record, we do not rely on this argument in deciding to use the middle 80% here. *See* 2020 Index Review, 173 FERC ¶ 61,245 at P 22 n.65 (declining to rely on this argument); 2015 Index Review, 153 FERC ¶ 61,312 at P 43 (same).

[173] 2020 Index Review, 173 FERC ¶ 61,245 at P 27.

[174] *Id.*

[175] *Id.*



53. We are not persuaded by Shippers' objections to using the middle 80%. Contrary to Shippers' claims,[176] using the middle 80% for this data set will not produce an index level that allows pipelines to recover extraordinary costs.[177] To the extent that the middle 80% includes relatively high cost changes near its upper bound, the index is set using the composite central tendency of the trimmed sample and thus will be significantly below the upper bound.[178]

54. Furthermore, Shippers' analyses of individual pipelines in the middle 80% do not persuade us to limit our analysis of industry cost experience to the middle 50%. Shippers contend that the middle 80% includes several individual pipelines reporting cost changes that result from idiosyncratic factors, including significant shifts in rate base or barrel miles.[179] However, as the Commission explained in the 2020 Index Review, the mere presence of pipelines with anomalous cost changes in a data sample is not sufficient reason to use an alternative sample.[180] We further conclude that Joint Commenters' analysis overstates the degree to which cost changes in the incremental 30% resulted from factors that they consider ''anomalous.'' For instance, Joint Commenters argue that cost changes are anomalous where the pipeline reported ''significant'' changes in rate base due to factors such as expansions or retirements, acquisitions or divestitures, inconsistent accounting or reporting practices, or other operational changes or irregularities.[181] However, for several of these pipelines, Dr. Webb explains that the change in rate base was largely attributable to normal depreciation,[182] which Joint Commenters acknowledge is not an ''anomalous'' event warranting exclusion from the data set.[183]

55. As a general matter, we disagree with Shippers' claims that the Commission should exclude pipelines from the data set merely because they experienced significant shifts in rate base or throughput during the review period. The industry-wide index level should reflect the diversity of industry cost experience. Changes in barrel-mile costs resulting from business circumstances such as rate base investments or volume shifts contribute to the industry-wide cost trends that the index seeks to capture.[184] We recognize that the Commission used the middle 50% in the 2015 and 2010 Index Reviews because it found that the middle 80% was more likely to include cost changes resulting from pipeline-specific factors.[185] However, the Commission reconsidered those decisions in the 2020 Index Review,[186] and we conclude based on this record that using a larger sample capturing a wider array of industry cost experience will produce a central tendency that better represents ''normal'' cost changes. Furthermore, where a pipeline experiences idiosyncratic cost changes that depart substantially from industry norms, that pipeline will not be

[176] *E.g.,* Joint Commenters Initial Comments at 26, 40–41 (citing *AOPL I,* 83 F.3d at 1434; Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097); EPR Shippers Initial Comments at 7–8 (citing Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097); STUSCO Reply Comments at 5 (same).

[177] 2020 Index Review, 173 FERC ¶ 61,245 at P 32. We observe, moreover, that the mean and weighted mean of the middle 80% represent the 55th and 53rd percentiles of the full data set. Furthermore, in a data set of 195 pipelines, the mean of the middle 80% is only 10 pipelines away from the median. This undermines Shippers' arguments that considering the additional data in the middle 80% will inflate the index level calculation.

[178] *Id.*

[179] Joint Commenters Initial Comments at 36–39; Brattle Initial Report, Attach. E at 1–10, 12–13; Liquids Shippers Initial Comments at 10–11; Crowe Initial Aff. 4–5 & Ex. 2.

[180] 2020 Index Review, 173 FERC ¶ 61,245 at P 28. In the 2015 and 2010 Index Reviews, the Commission recognized that the middle 50% likely includes pipelines with cost changes resulting from anomalous or pipeline-specific factors. 2015 Index Review, 153 FERC ¶ 61,312 at P 33 n.60 (observing that 26 of the 41 pipelines that commenters proposed to exclude for reporting ''non-comparable'' data were included in the middle 50%); 2010 Index Review, 133 FERC ¶ 61,228 at P 48 n.25 (observing that 7 of the 25 pipelines that a commenter proposed to exclude for experiencing rate base expansions were included in the middle 50%). Just as the presence of those pipelines did not preclude use of the middle 50% in earlier reviews, we conclude that the pipelines Shippers identify do not preclude use of the middle 80% in this proceeding.

[181] Joint Commenters Initial Comments at 36–39; Brattle Initial Report, Attach. E at 1–10, 12–13; *see also* Liquids Shippers Initial Comments at 10; Crowe Initial Aff. at 4–5.

[182] Webb Reply Aff. ¶¶ 14–19.

[183] Brattle Initial Report, Attach. E at 13 (stating that although Heartland Pipeline Company's rate base declined by over 50% between 2019–2024, this change was not anomalous because it ''appears due to normal depreciation of rate base'').

[184] *See* 2010 Index Review, 133 FERC ¶ 61,228 at P 51 (explaining that ''large rate base changes can reflect changing pipeline costs'' and that ''[t]he cost of new investment associated with rate base increases reflects industry cost experience related to pipeline infrastructure on a barrel-mile basis''); *see also* Webb Reply Aff. ¶ 33 (attesting that pipeline expansions, retirements, acquisitions, and divestitures constitute ''a regular part of the industry landscape for pipeline companies'').

[185] 2015 Index Review, 153 FERC ¶ 61,312 at P 44; 2010 Index Review, 133 FERC ¶ 61,228 at P 61.

[186] 2020 Index Review, 173 FERC ¶ 61,245 at P 30.

included within the middle 80% used to calculate the index.[187]

56. Moreover, Shippers' own evidence indicates that a significant number of the cost changes that they describe as anomalous are included in the middle 50% and are not restricted to the middle 80%.[188] Even if a higher number of Shippers' identified pipelines fall within the incremental 30%,[189] we are not persuaded to restrict our analysis to the middle 50% solely on that basis when that narrower sample includes pipelines with cost changes resulting from similar factors as those that affected the identified pipelines falling within the incremental 30%.

57. Shippers' remaining arguments for using the middle 50% are unpersuasive. Contrary to Shippers' claim that the Commission's established practice is to use the middle 50% to calculate the index level, the Commission trimmed the data set to the middle 80% in the 2020 Index Review,[190] and we find that the record supports adhering to that approach here. Moreover, while we recognize that the middle 50% includes a greater percentage of industry barrel-miles than in 2015 or 2010,[191] we find that using a broader sample that more fully reflects the diversity of industry cost experience will provide a better measure of normal cost changes in this proceeding.[192]

58. We are similarly unconvinced by Shippers' claims that the Commission should exclude the additional data in the middle 80% merely because it is more widely dispersed than the middle 50% in this proceeding or the middle 80% in the 2015 or 2010 Index Reviews.[193] Because the middle 80% includes cost changes further removed from the median, it is unsurprising that the middle 80% is more widely dispersed than the middle 50%.[194] Rather than justifying the exclusion of this additional data, the higher dispersion of the middle 80% here reflects that it captures a broader array of industry cost experience than the middle 50%. As discussed above, we find that using this more comprehensive sample will enhance the calculation of the central tendency of industry-wide cost changes. Additionally, we observe that the middle 80% of this data set is more narrowly dispersed than the data set in the 2020 Index Review where the Commission relied on the middle 80%.[195]

59. In addition, we are unpersuaded by Joint Commenters' reliance on the 2015 Index Review in arguing that the Commission must perform a manual, pipeline-by-pipeline examination of the incremental 30% to verify that it excludes anomalous cost changes.[196] As explained in the 2020 Index Review,[197] we have reconsidered the Commission's findings in the 2015 Index Review and now find based on the record here that the benefits of considering the additional data in the middle 80% outweigh concerns about introducing anomalous data. Accordingly, we find that it is unnecessary to undertake a manual examination of the incremental 30%.[198] Similarly, we find it unnecessary to perform a manual, pipeline-by-pipeline examination of the pipelines in the first and tenth deciles, which are excluded by our decision to trim the data set to the middle 80%.

60. We disagree with CAPP's argument that the middle 80% includes anomalous data because pipelines in the incremental 30% exhibited weak or negative correlations between changes in total costs and barrel-miles.[199] As an initial matter, CAPP does not provide workpapers or calculations to support their analysis. In any event, as discussed above, the index calculation should reflect a broad array of industry cost experience. Thus, to the extent that the correlation between costs and barrel-miles differs for pipelines in the incremental 30% compared to those in the middle 50%, it is not unreasonable for the index to reflect these differences. Moreover, CAPP's evidence indicates that for most pipelines in the incremental 30%, changes in total costs were positively correlated with changes in barrel-miles.[200]

61. We acknowledge that the dissent raises concerns with trimming the data set to the middle 80% as opposed to the middle 50%. However, we find that the reasoning in this section adequately addresses the dissent's contentions.

62. Finally, we decline to adopt Designated Carriers' proposal to trim the data set using the Ferguson Test. As an initial matter, using the Ferguson Test would depart from the Commission's longstanding practice under the Kahn Methodology of calculating the index level using the central tendency of a statistically trimmed data sample by removing an equal number of pipelines from the top and bottom of the data set.[201]

63. In addition, we find that using the Ferguson Test would risk incorporating data that distorts the index calculation. The Ferguson Test as applied by Dr. Webb identifies outliers based upon whether they conform to the data set's lognormal distribution.[202] However, given the lognormal distribution of the data set, inclusion of all or nearly all of

[187] *See id.* P 47.

[188] Specifically, while Shippers claim that 55 pipelines in the data set reported anomalous cost changes, only 30 of those pipelines fall within the incremental 30%, and of the remaining 25 pipelines, 22 are included in the middle 50%. *Compare* Attach. A at Ex. 13 tab (listing pipelines in the incremental 30%), *with* Brattle Initial Report, Attach. E at 1–13 (listing pipelines that Joint Commenters claim reported anomalous cost changes), *and* Crowe Initial Aff. 4 (listing pipelines that Liquids Shippers claim reported anomalous cost changes). The remaining three pipelines fall outside the middle 80% in the top or bottom 10% of the data set.

[189] *See* Joint Commenters Initial Comments at 30–31 (citing Brattle Initial Report at P 86 & fig. 13).

[190] As discussed above, we reject Shippers' arguments that the 2020 Index Review is no longer valid precedent because the Commission expressed concerns with that order's reasoning in the now-vacated January 2022 Rehearing Order and the now-withdrawn Supplemental NOPR. *See supra* note 83.

[191] *E.g.,* Joint Commenters Initial Comments at 28–29 (citing Brattle Initial Report at P 125 & fig. 25); Liquids Shippers Initial Comments at 11–12 (citing Crowe Initial Aff. 7).

[192] 2020 Index Review, 173 FERC ¶ 61,245 at P 31.

[193] *E.g.,* Joint Commenters Initial Comments at 34; Liquids Shippers Initial Comments at 11; EPR Shippers Initial Comments at 10–11; STUSCO Reply Comments at 5.

[194] *See* Webb Reply Aff. ¶ 38.

[195] The dispersion of the middle 80% here is 33.80%, compared to 35.17% in the 2020 Index Review.

[196] Joint Commenters Initial Comments at 24–27 (citing 2015 Index Review, 153 FERC ¶ 61,312 at PP 22–30, 42–44 & nn. 80, 83).

[197] 2020 Index Review, 173 FERC ¶ 61,245 at P 30.

[198] The Commission has previously expressed concerns that manual data trimming requires subjective decisions and would introduce biases and complexity to the index level calculation. 2015 Index Review, 153 FERC ¶ 61,312 at PP 34–36; 2010 Index Review, 133 FERC ¶ 61,228 at PP 49–50. The record here does not dispel these concerns.

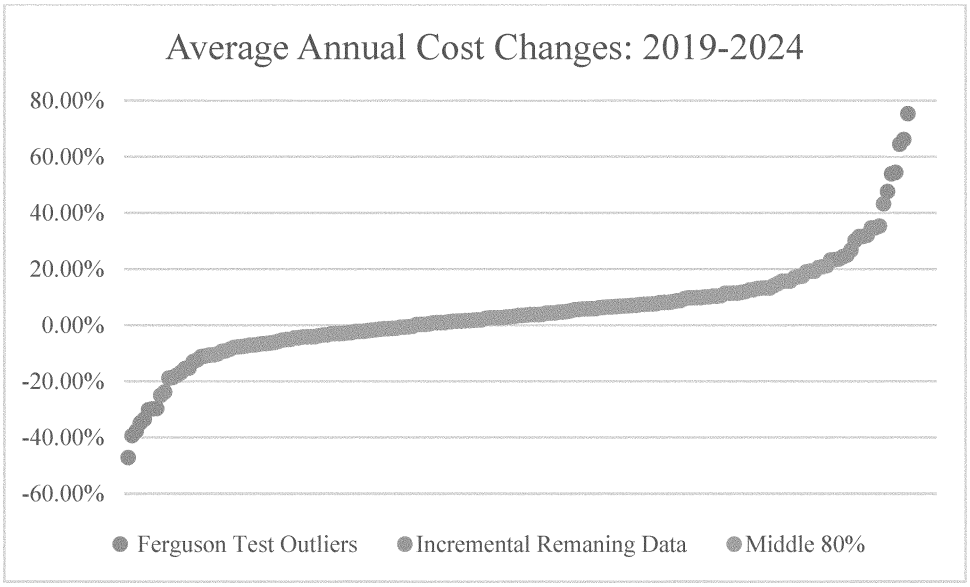
[199] CAPP Initial Comments, Christensen Initial Report at 18–19. A positive correlation indicates that the pipeline's total costs increased along with increases in barrel-miles, while a negative correlation indicates that total costs declined as barrel-miles increased. *Id.*

[200] *Id.* at 19, fig. 8. Only pipelines near the middle 80%'s upper bound exhibited negative correlations between total costs and barrel-miles. *Id.*

[201] 2020 Index Review, 173 FERC ¶ 61,245 at P 26. Thus, in Order No. 561 and in each successive index review, the Commission has determined the index level using the central tendency of the middle 50%, middle 80%, or an average of the middle 50% and middle 80%. 2020 Index Review, 173 FERC ¶ 61,245 at PP 25–32 (using middle 80%); 2015 Index Review, 153 FERC ¶ 61,312 at PP 42–44 (using middle 50%); 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63 (same); 2005 Index Review, 114 FERC ¶ 61,293 at P 28 (using average of middle 50% and middle 80%); 2000 Remand Order, 102 FERC ¶ 61,195 at P 24 (same); Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096–97 (using middle 50%).

[202] As discussed above, to apply the Ferguson Test, Dr. Webb transforms the data set from a lognormal distribution to a normal distribution by taking the natural logarithm of each cost-change observation. The Ferguson Test then removes cost changes in the extreme tails until the remaining data conforms with the expected distribution. *See* Webb Initial Aff. ¶¶ 29–30.

the long right and left tails can distort the measure of central tendency by incorporating cost changes that diverge significantly from the cost changes in the rest of the data set.[203] The scatter plot below illustrates this concern in the present record.



As shown above, using the Ferguson Test here would incorporate cost changes outside the middle 80% in the left and right tails (shown in orange) that diverge significantly from the upper and lower bounds of the middle 80%.[204] Including these additional pipelines would have a pronounced effect on the index level calculation, increasing the composite central tendency by 87 basis points relative to the middle 80% (from 4.06% to 4.93%).[205]

64. By contrast, as discussed above, trimming to the middle 80% achieves a reasonable balance that provides a broad sample of industry cost experience while excluding data in the distribution's tails that could skew the index. Because the middle 80% of this data set provides a highly robust sample comprising approximately 94% of industry barrel-miles,[206] it is unnecessary to use the Ferguson Test to obtain an adequate representation of normal industry cost experience.

D. CAPP's Proposal To Calculate Central Tendency Using the Geometric Mean

1. Comments

65. CAPP states that if the Commission calculates the index level by trimming the data set to the middle 80%, it should determine the sample's central tendency using the geometric mean,[207] rather than the composite that averages the median, simple mean, and weighted mean. According to CAPP, when determining the central tendency of a positively skewed distribution, the geometric mean is superior to the simple mean, which will overstate the sample's central tendency.[208] CAPP states that formal statistical tests demonstrate that the middle 80% reflects a positively skewed lognormal distribution.[209] Thus, if the Commission uses the middle 80% instead of the middle 50%, CAPP recommends that the Commission determine central tendency using the geometric mean alone.[210]

66. LEPA opposes CAPP's proposal to replace the composite central tendency with the geometric mean. LEPA contends that using the geometric mean of a trimmed sample like the middle 80% will bias the index downwards by understating pipeline cost changes.[211] By contrast, LEPA argues that the Kahn Methodology provides a balanced representation of industry cost experience by using the composite central tendency that averages the median, which is identical for the full data set and the middle 80%, with the simple mean and weighted mean.[212] LEPA further states that the Commission declined to use the geometric mean to determine central tendency in a prior index review.[213]

2. Commission Determination

67. We decline to adopt CAPP's proposal to calculate the central tendency of the middle 80% using the

[203] In trimming to the middle 80% in the 2020 Index Review, the Commission expressly declined to rely on arguments that the middle 80% excluded anomalous or extraordinary costs merely because it conformed to a lognormal distribution. 2020 Index Review, 173 FERC ¶ 61,245 at P 28 n.65.

[204] As applied by Designated Carriers, the Ferguson Test would retain all cost changes between the 5th–97th percentiles of the full data set, thus trimming less data than in any prior index review. *See supra* note 191; *see also AOPL II,* 281 F.3d at 245–46 (remanding the Commission's decision in the 2000 Index Review to use the full data set without trimming); 2000 Remand Order, 102 FERC ¶ 61,195 at PP 24–25 (calculating the index level on remand using an average of the middle 50% and middle 80%).

[205] *See* Attach. A, Ex. 12 tab.

[206] Shehadeh Reply Decl. at 13; Shehadeh Reply Workpapers at Ex. B2 tab.

[207] The geometric mean is a type of average for positive numbers, calculated by multiplying *n* numbers together and taking the *n*th root.

[208] CAPP Initial Comments at 3; Christensen Initial Report at 16.

[209] Christensen Initial Report at 14–16.

[210] *Id.* at 14–15; CAPP Initial Comments at 4.

[211] LEPA Reply Comments at 18–19 (citing Shehadeh Reply Decl. at 22–23). Specifically, Dr. Shehadeh states that because the cost-change data set is positively skewed with a long right tail, removing the top 10% of the data set to derive the middle 80% has a greater effect than removing the bottom 10%, thereby reducing the geometric mean. As a result, Dr. Shehadeh states that relying solely on the geometric mean will bias the index downwards. *See* Shehadeh Reply Decl. at 22–23. By contrast, Dr. Shehadeh states that the Kahn Methodology mitigates this effect by incorporating the median, which is identical for the full data set and the middle 80%, in the composite central tendency. *Id.* at 23.

[212] LEPA Reply Comments at 17–18; Shehadeh Reply Decl. at 21, 23.

[213] LEPA Reply Comments at 18–19; Shehadeh Reply Decl. at 22 n.56 (citing 2005 Index Review, 114 FERC ¶ 61,293 at PP 4, 17).

geometric mean. Replacing the composite central tendency with the geometric mean would depart from longstanding Commission practice. The Kahn Methodology calculates the median, simple mean, and weighted mean of the data sample and averages the results to derive a composite measure of central tendency.[214] In the rulemaking proceeding that established the indexing regime, Dr. Kahn explained that the composite ''represents a pragmatic effort to provide a single reflection of the behavior of 'industry' costs for comparison with the changes in the PPI–FG.'' [215] The Commission credited Dr. Kahn's testimony and has used the composite central tendency in all subsequent five-year reviews,[216] including in reviews where it considered the middle 80%.[217] The Commission has also specifically declined to calculate central tendency using the geometric mean.[218]

68. CAPP has not convinced us to depart from this longstanding consistent practice. We are unpersuaded by CAPP's argument that using the composite central tendency of the middle 80% will bias the index level calculation because it incorporates the simple mean. As explained by Dr. Kahn, the simple mean, along with the median and weighted mean, ''captures a significant aspect of the composite results from an industry perspective.'' [219] Although the Commission has recognized that the simple mean is sensitive to outlying data observations in a skewed distribution,[220] the simple mean receives only one-third weighting in the composite central tendency. Averaging the simple mean with the median, which is the same for the full data set and the middle 80%, and the weighted mean mitigates distortions that could result from using the simple mean alone.

69. Moreover, there are some concerns about adopting the geometric mean as the sole measure of central tendency in calculating the index level. Dr. Shehadeh asserts that because the cost-change values are independent observations, the geometric mean is not an appropriate measure of central tendency for pipeline cost changes.[221] Of course, we recognize that CAPP argues that the geometric mean provides the central tendency for a lognormal data set.[222] However, whatever arguments and counterarguments may be made regarding the adoption of the geometric mean, the record on these issues is limited.

70. Furthermore, if we were to adopt CAPP's proposal to use the geometric mean as the sole measure of central tendency, we would also be abandoning the use of the weighted mean.[223] As the Commission has explained, the weighted mean makes an important contribution because particularly large pipelines, which move a disproportionate amount of barrels and involve a particularly large proportion of industry investment, provide especially important insight into pipeline cost changes.[224]

71. In sum, we are not convinced to change our calculation of central tendency to adopt the geometric mean. Rather, we find that it is just and reasonable to maintain our current approach of determining the central tendency based upon a composite of median, simple mean, and weighted mean.[225]

E. Pipeline Cost Changes Resulting From Regulatory Obligations and Other Developments

1. Comments

72. Pipelines state that they have experienced significant increases in costs related to electric power, labor and materials, and pipeline safety and integrity requirements, and claim that these costs will likely continue to increase in the future.[226] In support of this argument, Designated Carriers submit affidavits from pipeline representatives attesting that their companies experienced substantial cost increases during the 2019–2024 period.[227] In addition, LEPA submits a declaration from William R. Byrd describing new and continuing regulatory obligations related to pipeline safety and integrity that have affected pipelines' costs.[228] Mr. Byrd also identifies proposed legislation that could increase pipelines' obligations and compliance costs in the future.[229] Pipelines argue that their ability to invest in new and existing pipeline infrastructure depends on the Commission adopting an index level that accurately reflects rising industry costs.[230]

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[214] *E.g.,* 2020 Index Review, 173 FERC ¶ 61,245 at P 5; 2015 Index Review, 153 FERC ¶ 61,312 at P 5; *see also AOPL I,* 83 F.3d at 1433.

[215] Crysen Refining Inc., Lion Oil Company, and Sinclair Oil Corporation, Testimony of Dr. Alfred E. Kahn, Docket No. RM93–11–000, at 9 (filed Aug. 12, 1993) (Kahn Testimony).

[216] 2020 Index Review, 173 FERC ¶ 61,245 at P 5; 2015 Index Review, 153 FERC ¶ 61,312 at P 5; 2010 Index Review, 133 FERC ¶ 61,228 at P 8; 2005 Index Review, 114 FERC ¶ 61,293 at P 28; *see also* 2000 Remand Order, 102 FERC ¶ 61,195 at P 23.

[217] 2020 Index Review, 173 FERC ¶ 61,245 at P 63; 2005 Index Review, 114 FERC ¶ 61,293 at P 28; 2000 Remand Order, 102 FERC ¶ 61,195 at P 23.

[218] 2005 Index Review, 114 FERC ¶ 61,293 at PP 34–36.

[219] Kahn Testimony at 9.

[220] *See* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097.

[221] *See* Shehadeh Reply Decl. at 22 (explaining that CAPP inappropriately applies the geometric mean ''across pipelines'' to determine central tendency as opposed to using the geometric mean to measure ''the average change in costs across time'' (emphases omitted)).

[222] *See* Christensen Initial Report at 16 & n.20.

[223] We acknowledge that in a lognormal distribution, the median is the equivalent to the geometric mean. However, the composite used in the Kahn Methodology already incorporates the median. Moreover, the Commission's methodology for calculating the index level has long relied on two additional measures of central tendency (mean and weighted mean) in addition to the median to obtain a more comprehensive measure of the central tendency. Kahn Testimony at 9 (explaining that the median, simple mean, and weighted mean each ''captures a significant aspect of the composite results from an industry perspective'').

[224] *E.g.,* 2020 Index Review, 173 FERC ¶ 61,345 at P 37 (''[T]he Kahn Methodology strikes a balance between large and small pipelines by determining the central tendency of the cost data using two measures that do not take pipeline size into account (the median and the mean) together with the weighted mean, which weights each pipeline's cost change by its transported volumes. Including the weighted mean in this analysis ensures that the cost-change calculation takes sufficient account of pipeline size so that 'minor pipelines do not skew' the result.'' (quoting *AOPL II,* 281 F.3d at 241)).

[225] CAPP states that the Commission should consider adopting periodic rate rebasing, whereby the Commission would reset pipeline rates to the cost-of-service level on a recurring basis through conventional rate proceedings. Christensen Initial Report at 24–25, 28; CAPP Initial Comments at 5. Alternatively, CAPP suggests that the Commission adopt an earnings-sharing mechanism, which would require pipelines to share with shippers a percentage of their earnings that exceed a specified level, or an off-ramp mechanism, where the Commission would evaluate a pipeline's rates in a cost-of-service rate proceeding when the pipeline's ROE exceeds a specified threshold. Christensen Initial Report at 25–26. LEPA urges the Commission to reject CAPP's proposals as outside the scope of the five-year review. LEPA Reply Comments at 32. We decline to adopt periodic rate rebasing or an earnings-sharing or off-ramp mechanism. CAPP's proposals are outside the scope of this proceeding, which addresses the appropriate index level that pipelines may use to adjust their rates over the 2026–2031 period.

[226] LEPA Initial Comments at 8, 23–26 (citing Declaration of William R. Byrd at 2, 9–14 (Byrd Decl.)); Designated Carriers Initial Comments at 11–14 (citing Webb Aff. ¶¶ 40–41; Exs. MJW–D1, MJW–D2, MJW–D3, MJW–D4, and MJW–D5).

[227] Designated Carriers Initial Comments, Ex. 2 at PP 2–5 (Aff. of Shane Brock on behalf of Colonial); *id.,* Ex. 3 at P 2 (Aff. of Justify Kleiderer on behalf of Enterprise (Kleiderer Aff.)); *id.,* Ex. 5 at PP 3–5 (Aff. of Todd Stamm on behalf of Energy Transfer).

[228] Byrd Decl. at 2–12.

[229] *Id.* at 12–13.

[230] LEPA Initial Comments at 8, 27 (citing 2005 Index Review, 114 FERC ¶ 61,293 at PP 60, 63); Designated Carriers Initial Comments at 9–10, 15–16. In particular, Designated Carriers state that existing returns on rate base may be insufficient to justify capital investment. Designated Carriers Initial Comments at 14–17 (citing *id.,* Ex. 3 at P 3 (Aff. of Sharon Spurlin on behalf of Plains); Kleiderer Aff. ¶ 3; Stamm Aff. ¶ 6). In addition, Designated Carriers state that pipelines may decline to propose cost-of-service rate changes to recover their increased costs due to the burdens and uncertainty associated with rate litigation. *Id.* at 16–17.

73. Pipeline Safety Trust and EIC make similar assertions. Pipeline Safety Trust states that pipeline safety requirements have increased over the past five years and that the Commission should adopt an index level that enables necessary investments in pipeline maintenance and integrity.[231] EIC concurs with Pipelines' arguments regarding increasing costs and states that pipelines' ability to invest in building and operating facilities requires a predictable regulatory environment.[232] EIC represents that various factors, including the COVID–19 pandemic, have restricted pipelines' access to capital.[233] Thus, EIC encourages the Commission to adopt an index level that enables pipelines to attract investment in new and existing infrastructure, which EIC states will benefit consumers and help the United States meet rising global energy demand.[234]

74. PHMSA states that although it takes no position on the specific index level the Commission should adopt, it urges the Commission to advance policies that will encourage investment in the maintenance and integrity of oil pipelines and provide incentives to repair and replace higher-risk infrastructure.[235]

75. Shippers dispute Pipelines' and EIC's contentions and state that the Commission has previously found that future costs are speculative and inappropriate for inclusion in the index level calculation.[236] Shippers contend that cost increases related to power, labor, and pipeline safety or integrity measures incurred during the 2019–2024 period are already reflected in the page 700 data used to derive the index.[237] In addition, Shippers argue that future cost increases will be captured in future index reviews and that pipelines may seek to recover those costs in the interim through cost-of-service rate filings, where appropriate.[238] Finally, Shippers state that a higher index is not necessary to encourage investment in pipeline infrastructure and, in any case, the Commission must avoid setting the index at a level that produces unjust and unreasonable rates.[239]

2. Commission Determination

76. We decline to alter our calculation of the index level based upon commenters' general arguments concerning pipeline cost changes during the 2019–2024 period or in future periods. To the extent that pipelines incurred increased power, labor and materials, or regulatory compliance costs during the 2019–2024 period, those cost changes are reflected in pipeline cost data reported on FERC Form No. 6, page 700.[240] We likewise decline to adjust the index level calculation based upon projections of future cost changes occurring after the conclusion of the 2019–2024 period. As the Commission has explained, future cost projections related to regulatory changes or other developments are speculative and inappropriate for inclusion in the index.[241] Changes to pipeline costs that occur after the 2019–2024 period concluded on December 31, 2024 are outside the scope of this index review and will be incorporated as reflected in the page 700 data used in future index calculations.[242]

F. Other Proposed Adjustments to Data Set

1. Comments

77. LEPA proposes to modify the data underlying the Commission's proposal in the NOPR in several respects.[243] First, whereas the Commission's proposal only includes pipelines that filed page 700 cost data for every year of the 2019–2024 period, LEPA states that the Commission should include all pipelines that filed cost data for 2019 and 2024, even if they did not file data for one or more years between 2020–2023.[244] LEPA contends that the absence of cost data between 2020–2023 does not preclude the Commission from comparing the pipeline's cost changes from 2019–2024.[245] Second, LEPA states that the Commission's proposal improperly excludes ExxonMobil Pipeline Company (ExxonMobil) on the basis that it transports volumes related to TAPS.[246] LEPA argues that the Commission should include ExxonMobil in the data set because the significant majority of its volumes in 2019 and 2024 did not relate to TAPS.[247] Third, LEPA proposes to adjust the 2019 cost data reported by four pipelines to correct errors or reflect subsequently filed updates.[248] Fourth, whereas the NOPR's proposal excluded CITGO Pipeline Company (CITGO Pipeline) and CITGO Products Pipeline Company (CITGO Products Pipeline), LEPA proposes to include these pipelines and to adjust their reported 2024 cost data to correct alleged data discrepancies.[249]

78. Joint Commenters oppose LEPA's proposal to include pipelines that did not file page 700 cost data for one or more years between 2020–2023. Joint Commenters contend that this approach would incorporate data filed by pipelines that did not operate continuously throughout the 2019–2024 review period.[250] In addition, Shippers disagree with LEPA's proposal to include ExxonMobil.[251] Shippers contend that even if TAPS-related transportation represents a small portion of ExxonMobil's operations, the Commission has consistently excluded pipelines with any TAPS-related

[231] Pipeline Safety Trust Comments at 1–2.

[232] EIC Comments at 9, 18.

[233] *Id.* at 10–14.

[234] *Id.* at 2–3, 5–6, 8–10, 15–17.

[235] PHMSA Comments at 1.

[236] Joint Commenters Reply Comments at 32 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 58); Liquids Shippers Reply Comments at 18–19 (citing 2020 Index Review, 173 FERC ¶ 61,245 at P 58; 2010 Index Review, 133 FERC ¶ 61,228 at P 125); *see also* EPR Shippers Reply Comments at 5 (citing *AOPL II,* 281 F.3d at 247).

[237] Joint Commenters Reply Comments at 32–35; Liquids Shippers Reply Comments at 16; STUSCO Reply Comments at 11.

[238] Joint Commenters Reply Comments at 28–30; Liquids Shippers Reply Comments at 17; STUSCO Reply Comments at 12; CAPP Reply Comments at 6.

[239] Joint Commenters Reply Comments at 36–38; Liquids Shippers Reply Comments at 19–20; EPR Shippers Reply Comments at 5.

[240] If a pipeline experiences a substantial divergence between its actual costs and the rate resulting from application of the index, it may file to change its rate using the Commission's cost-of-service methodology. 18 CFR 342.4(a); *see also* Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,957 (explaining that ''such circumstances as increased safety or environmental regulations may justify the use of a cost-of-service methodology'').

[241] 2020 Index Review, 173 FERC ¶ 61,245 at P 58; 2010 Index Review, 133 FERC ¶ 61,228 at P 125; *see also AOPL II,* 281 F.3d at 247 (affirming the Commission's practice of calculating the index level based upon historical cost experience rather than predictions about future cost changes).

[242] Cost changes experienced during the 2024–2029 period will be addressed in the 2030 index review.

[243] LEPA Initial Comments at 9–10; LEPA Reply Comments at 30–31. Designated Carriers support LEPA's proposed revisions to the data set. Designated Carriers Reply Comments at 8–9.

[244] LEPA Initial Comments at 9; Shehadeh Initial Decl. at 15–16, 44–45.

[245] *Id.*

[246] LEPA Initial Comments at 10; Shehadeh Initial Decl. at 15 n.23, 45.

[247] Shehadeh Initial Decl. at 45 (stating that approximately 95% of ExxonMobil's throughput in 2019 and 2024 did not relate to TAPS operations).

[248] LEPA proposes to adjust the 2019 cost data reported by (a) Contango Resources, LLC, (b) Enterprise Crude Pipeline LLC, (c) Enterprise Interstate Crude LLC, and (iv) Oryx Southern Delaware Oil Gathering & Transport LLC. Shehadeh Initial Decl. at 45, Ex. A7 & A11a.

[249] *Id.* at 46–47; Shehadeh Suppl. Reply Workpapers at Ex. B7 & Ex. B11a tabs.

[250] Brattle Reply Report at P 153. For instance, Joint Commenters state that LEPA's approach would include Chisholm Pipeline Company (Chisholm), whose 2024 cost data only reflects a partial year of operations between March–December 2024. *Id.* Although CAPP agrees with LEPA's proposal, it argues that the Commission should exclude Chisholm because it reported partial-year 2024 cost data. CAPP Reply Comments at 6; Christensen Reply Report at 14.

[251] Brattle Reply Report at P 156; CAPP Reply Comments at 6; Christensen Reply Report at 14.

operations from the data set used to calculate the index level.[252] Moreover, CAPP opposes LEPA's proposal to include CITGO Pipeline in the data set,[253] while Joint Commenters support including CITGO Pipeline.[254] Both Joint Commenters and CAPP oppose LEPA's proposed adjustments to CITGO Pipeline's and CITGO Products Pipeline's reported 2024 cost data.[255] Joint Commenters and CAPP contend that even if there are discrepancies in those pipelines' reported 2024 cost data, there is no evidence that these discrepancies affected their reported total costs of service.[256] Shippers do not oppose LEPA's proposed adjustments to the four pipelines' 2019 cost data.[257]

79. Joint Commenters propose adjustments related to the treatment of mergers and divestitures and to incorporate updated Form No. 6 data where available.[258] LEPA contends that Joint Commenters incorrectly decline to reflect a merger between Targa Gulf Coast NGL Pipeline LLC (Targa Gulf Coast) and Targa NGL Pipeline Company LLC (Targa NGL). LEPA otherwise supports Joint Commenters' proposed data adjustments.[259]

2. Commission Determination

80. We adopt Joint Commenters' unopposed adjustments to the data set and LEPA's unopposed adjustments to four pipelines' 2019 cost data.[260] Furthermore, we adopt LEPA's proposal to reflect the merger between Targa Gulf Coast and Targa NGL. In October 2020, Targa NGL submitted a tariff filing canceling its last remaining transportation service because Targa Gulf Coast had leased 100% of the capacity on Targa NGL's pipeline.[261] Accordingly, we revise the data set to combine these pipelines' cost data as appropriate.

81. We likewise adopt LEPA's and Joint Commenters' proposals to include CITGO Pipeline and CITGO Products Pipeline in the data set. Although the Commission's proposal in the NOPR excluded these pipelines because they did not report updated cost data for 2020 or 2023 in the previous-year column of their Form No. 6 filings submitted in the following years,[262] we conclude that they are appropriately included in the data set using their originally reported 2020 and 2023 cost data reported in the current-year column of their originally submitted Form No. 6 filings for those years.[263] However, we decline to adopt LEPA's proposed adjustments to CITGO Pipeline's and CITGO Products Pipeline's 2024 cost data. To the extent that these pipelines' 2024 cost data reflect discrepancies, we find that these discrepancies did not affect the page 700 total cost-of-service values that the Commission uses to calculate the index level.

82. We decline to adopt LEPA's proposal to adjust the data set by including pipelines that did not file page 700 cost data for one or more years between 2020–2023. The Commission's practice is to calculate the index level using a data set composed of pipelines that filed Form No. 6 data for the full five-year review period at issue.[264] Adopting LEPA's proposal would only introduce one additional pipeline, Wildrose Pipeline Company (Wildrose), to the data set.[265] However, Wildrose's predecessor entity reported zero barrel-miles for 2022,[266] indicating that Wildrose and its predecessor were not in continuous operation throughout the 2019–2024 review period. On balance, we conclude that the record does not support departing from the Commission's established practice to include Wildrose in the data set.[267]

83. We are likewise not persuaded to adopt LEPA's proposal to include ExxonMobil in the data set. Congress specifically excluded TAPS and ''any pipeline delivering oil directly or indirectly into [TAPS]'' from the provisions of EPAct 1992.[268] Accordingly, the Commission has consistently excluded pipelines that transport TAPS-related volumes, including ExxonMobil,[269] from the data used to derive the index level.[270] Because the record establishes that ExxonMobil transported volumes associated with TAPS operations during the 2019–2024 period,[271] we exclude ExxonMobil from the data set in accordance with the Commission's established practice.

IV. Determination of Prospective Oil Pipeline Index Level

84. Based on the foregoing, we calculate as follows the index level to determine annual changes to oil pipeline rate ceilings for the five-year period July 1, 2026 through June 30, 2031. First, as shown in Attachment A (Exhibit 4, Check tab), we assemble a data set of pipeline cost data from FERC Form No. 6 annual reports, excluding TAPS pipelines and those pipelines that did not file Form No. 6, page 700 data or filed incomplete data. Second, as shown in Attachment A (Model tab), we calculate each pipeline's cost change on a per barrel-mile basis over the prior

[252] Brattle Reply Report at P 156; Christensen Reply Report at 14.

[253] Christensen Reply Report at 14. CAPP argues that the Commission should exclude CITGO Pipeline because its reported 2024 cost data is identical to its reported 2023 cost data.

[254] Brattle Initial Report at P 200, Attach. D at 3; Brattle Reply Report at P 159.

[255] Brattle Reply Report at P 159; CAPP Reply Comments at 6; Christensen Reply Report at 14.

[256] *Id.*

[257] Brattle Reply Report at PP 157–158.

[258] Joint Commenters Initial Comments at 51; Brattle Initial Report at PP 200–202 & Attach. D (listing Joint Commenters' proposed data adjustments); *see also* Attach. A, Ex. 2 (listing 17 mergers and acquisitions reflected in the data set).

[259] LEPA Reply Comments at 30–31; Shehadeh Reply Decl. at 16–19.

[260] *See* Brattle Initial Report, Attach. D at 1–4 (listing Joint Commenters' unopposed adjustments); Shehadeh Suppl. Workpapers at Ex. B11a tab, rows 3–9 (listing LEPA's unopposed adjustments).

[261] Targa NGL Pipeline Co., Tariff Filing, Docket No. IS21–45–000 at 1 (filed Oct. 30, 2020).

[262] *See* NOPR, 193 FERC ¶ 61,145, Workpapers at Model tab (stating that both CITGO Pipeline and CITGO Products Pipeline were excluded from the data set underlying the NOPR proposal).

[263] *See* Brattle Initial Report, Attach. D at 3.

[264] *E.g.,* 2005 Index Review, 114 FERC ¶ 61,293 at P 41 (''Without complete data for [the full review period], a company cannot be included in the dataset.'').

[265] LEPA states that adopting its proposal would introduce three additional pipelines to the data set: (a) Chisholm; (b) BP Pipelines (North America), Inc.; and (c) Wildrose (including its predecessor entity, Hawthorn Oil Transportation (North Dakota), Inc.). Shehadeh Initial Decl. at 15 n.25. However, we exclude Chisholm from the data set because its 2024 cost data reflects a partial year of operations. *See* Attach. A at Exh. 4 tab & Check tab. Moreover, BP Pipelines (North America), Inc. is included in the data set through its merger with BP Midstream Partners LP Company and BP Midwest Product Pipelines Holdings LLC. Thus, adopting LEPA's proposal to include pipelines that filed cost data in 2019 and 2024 but did not file cost data for at least one year between 2020–2023 would only introduce Wildrose to the data set.

[266] Brattle Reply Report at P 153.

[267] In any case, excluding Wildrose from the data set produces no material change in the resulting index level.

[268] EPAct 1992 1804(2)(B).

[269] *E.g.,* 2020 Index Review, 173 FERC ¶ 61,245, Attach. A at TAPS tab (including ExxonMobil among pipelines excluded from data set as TAPS pipelines); 2015 Index Review, 153 FERC ¶ 61,312, Attach. A at Company Exclusions tab (excluding ExxonMobil from the data set used to calculate the index level in the 2015 Index Review). We observe that LEPA's witness Dr. Shehadeh proposed to exclude ExxonMobil as a TAPS asset in prior index reviews. Ass'n of Oil Pipe Lines, Decl. of Ramsey D. Shehadeh, Ph.D., Docket No. RM15–20–000, Workpapers at Ex. A9 tab (filed Aug. 24, 2015) (including ExxonMobil among the ''TAPS Assets'' excluded from proposed data set); Ass'n of Oil Pipe Lines, Decl. of Ramsey D. Shehadeh, Ph.D., Docket No. RM10–25–000, Workpapers at Ex. A13 tab (filed Aug. 20, 2010) (same).

[270] *See, e.g.,* 2010 Rehearing Order, 135 FERC ¶ 61,172 at P 16 (''[T]he TAPS pipelines are . . . not subject to the index adjustment due to the provisions of the EPAct.'').

[271] Shehadeh Initial Decl. at 45 (acknowledging that approximately 5% of ExxonMobil's transported volumes in 2019 and 2024 related to TAPS operations); Brattle Reply Report at P 156 (stating that in 2024, ExxonMobil reported a higher number of barrel-miles associated with TAPS operations (23.8 billion barrel-miles) than with non-TAPS operations (22.4 billion barrel-miles)).

five-year period, 2019–2024. Third, we adjust pipelines' 2019 cost data to account for the ROE Policy Change, as discussed above in section III.A. Fourth, to remove statistical outliers and potentially spurious data, we trim the data set to those pipelines in the middle 80% of cost changes. Fifth, as shown in Attachment A (Exhibit 1), we calculate three measures of the trimmed dataset's central tendency: the median, the mean, and a weighted mean. Sixth, we calculate a composite central tendency by averaging the median, mean, and weighted mean, as shown in Attachment A (Exhibit 1). Finally, we compare this composite to the change in PPI–FG over the same 2019–2024 period and set the index level at PPI–FG minus this differential. Using these calculations, we establish an index level of PPI–FG—0.55% for the five-year period beginning July 1, 2026.

V. Information Collection Statement

85. The information collection requirements contained in this final order are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[272] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[273]

86. This final order affects a currently approved information collection. Changes described in this final order are non-substantive and do not change any filing requirements; rather, this final order adjusts an aspect of the calculation that is used in an annual tariff filing that FERC-jurisdictional oil pipelines are required to submit to the Commission. This aspect of the calculation is reviewed and updated every five years.

Summary of Information Collection

Title: FERC–550, Oil Pipeline Tariff Filings & Depreciation Studies.

Action: Non-substantive change adjusting an aspect of the calculation that is used in annual oil pipeline tariff filings.

OMB Control Nos.: 1902–0089 (FERC–550).

Respondents: Oil Pipelines.

Frequency of Information Collection: On occasion in compliance with requirements.

Necessity of Information: The reforms in this proposed rule are necessary to ensure that the rates of oil pipelines are just and reasonable.

Public Reporting Burden: The burden and cost related to filing an oil pipeline tariff will not change due to this final order. The currently approved hourly burden for submitting a tariff filing is 7 hours ($721).[274]

VI. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation).

87. Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14215 (Ensuring Accountability for All Agencies) and supplemented by Executive Order 13563 (Improving Regulation and Regulatory Review), directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs (OIRA) has designated this final order a ''significant regulatory action'' that is economically significant under section 3(f)(1) of Executive Order 12866. Accordingly, OMB has reviewed this final order. The regulatory impact analysis (RIA) associated with this rulemaking can be found in this docket on the Commission's eLibrary system. The following represents a summary of the aforementioned regulatory impact analysis.

88. The index level established in this final order will influence rates for interstate oil pipeline transportation service, which will affect the interests of interstate oil pipelines and shippers on interstate oil pipelines.[275] The RIA considers the potential impacts of the index level established herein relative to two baselines.[276] The first baseline (Baseline 1) assumes that a final rule establishing a new index level for the 2026–2031 time period is not issued and assumes that the index level established for 2021–2025 would remain effective for 2026–2031. The second baseline (Baseline 2) assumes that a final rule establishing an index level for the 2026–2031 time period is not issued, and that there is no effective index level and pipelines are thus precluded from changing their rates pursuant to the Commission's indexing regulations for the 2026–2031 period. The index level established in this final order will reduce interstate oil pipeline transportation revenues during the five-year period that the index would be effective as compared to Baseline 1 and will increase oil pipeline revenues during the five-year period that the index would be effective as compared to Baseline 2.[277]

89. As discussed in the RIA, this final order will not create any measurable costs or benefits outside of these effects experienced by pipelines and shippers. While there are circumstances in which pipeline transportation rates can indirectly affect financial interests outside of pipelines and shippers (for example, lower pipeline transportation rates could affect commodity prices for refineries, prices of petroleum, or pipeline infrastructure investment), these impacts are sufficiently attenuated or otherwise so minimal as to not result in significant costs.[278]

90. The RIA also describes the regulatory alternatives that the Commission considered and the estimated effects of alternative index levels on annual interstate oil pipeline transportation revenues as compared to the baselines. The alternative index levels reflect different combinations of regulatory alternatives proposed by commenters, including different approaches to the three issues on which the Commission requested comment in the NOPR.[279] Two index levels that result from regulatory alternatives considered in the RIA are higher compared to the index level established herein, and two index levels that result from regulatory alternatives are lower than the index level established herein.

91. This final order is considered to be a *de minimis* regulatory action under Executive Order 14192.

VII. Executive Order 13132 (Federalism)

92. Executive Order 13132 (Federalism) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to

[272] 44 U.S.C. 3507(d).

[273] 5 CFR 1320.11.

[274] The hourly cost used in this calculation is based on the estimated average annual cost per FERC FTE, including salary + benefits of $103 per hour, or $214,093 per year.

[275] Approximately 350 pipelines file tariff rates with the Commission for interstate transportation of crude oil and petroleum products, and approximately 86% of rates are set under the indexing method. For more information about who is affected by the NOPR, *see* section II.C of the RIA.

[276] *See* RIA, section II.E.

[277] For more information about the effects of the NOPR as compared to Baseline 1 and Baseline 2, *see* RIA, section II.F. *See also* RIA, Appendix.

[278] *See id.* section II.G.

[279] For further details about the regulatory alternatives considered by the Commission and their estimated effects on annual interstate oil pipeline transportation revenues, *see* RIA, section II.H & Appendix.

examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions.

93. The Commission has examined the final rule and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Commission has not prepared a federalism assessment.

VIII. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

94. Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use) requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action that promulgates or is expected to lead to promulgation of a final rule, and that: (a) is a significant regulatory action under Executive Order 12866, or any successor order, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (b) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

95. The Commission has determined that this final order would not have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, the Commission has not prepared a Statement of Energy Effects.

IX. Environmental Analysis

96. 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.[280] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in this exclusion are final rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[281] The action taken herein falls within this categorical exclusion in the Commission's regulations.

X. Regulatory Flexibility Act

97. The Regulatory Flexibility Act of 1980 (RFA)[282] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[283] The SBA defines a small oil pipeline company as one with less than 1,500 employees.[284] Based on this definition, the Commission identified 43 small entities that the final rule will affect. As discussed above, the burdens and costs associated with filing oil pipeline tariffs will not change as a result of the final rule. The currently approved hourly burden for submitting a tariff filing is 7 hours ($721). We view this as a minimal economic impact for each entity. Accordingly, we certify that the final rule will not have a significant economic impact on a substantial number of small entities. Thus, no regulatory flexibility analysis is required.

XI. Document Availability

98. 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 the Commission's Home Page (*http://www.ferc.gov*).

99. From the Commission'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.

100. User assistance is available for eLibrary and the Commission's website 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,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

XII. Effective Date and Congressional Notification

101. This final order is effective June 29, 2026. The Commission has determined, with the concurrence of the Office of Information and Regulatory Affairs of OMB, that this rule is a ''major rule'' as defined in Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).

The Commission Orders

Consistent with the discussion in this order, the appropriate oil pipeline index level for the five-year period from July 1, 2026, through June 30, 2031 is PPI–FG–0.55%.

By the Commission. Chairman Swett is concurring with a separate statement attached.

Commissioner Rosner is concurring with a separate statement attached.

Commissioner See is concurring with a separate statement attached.

Commissioner Chang is dissenting with a separate statement attached.

Commissioner LaCerte is concurring with a separate statement attached.

Issued: April 24, 2026.

Debbie-Anne A. Reese,

Secretary.

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM26–6–000

(Issued April 24, 2026)

SWETT, Chairman, *concurring:*

1. Today's order should not raise gas prices at the pump, or the price of airfare for ordinary Americans. The reality is that pipeline transportation costs represent a tiny fraction of the total price of fuel from an end-use consumer's perspective.[1]

2. This order is no windfall for the pipelines, but rather a routine mechanism to make them *whole* by ensuring that the rates they receive for a critical national service reflect industry cost increases. Consistent with our well-established practice in conducting five-year index reviews, our task is to ensure that the index continues to ''accurately track cost changes in the pipeline industry''—using PPI–FG as a baseline measure for inflation, appropriately ''adjusted to

[280] *Reguls. Implementing the Nat'l Env't Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[281] 18 CFR 380.4(a)(2)(ii).

[282] 5 U.S.C. 601–612.

[283] 13 CFR 121.101.

[284] *Id.* 121.201, Subsector 486 (Pipeline Transportation).

[1] Moreover, this proceeding concerns only marginal adjustments to the rate at which pipelines may raise their rates under indexing (itself just one of multiple methods oil pipelines may use when changing rates). Thus, from an end-use consumer's perspective, the contested issues here would at most implicate small differences to an already minuscule cost component (*i.e.,* pipeline transportation).

account for actual cost changes experienced by the oil pipeline industry.'' [2]

3. That is a largely technical and data-driven exercise. In this instance, the primary points of contention revolve around (1) whether to adjust the data used to calculate the index level to account for the 2020 change in Commission policy for determining oil pipelines' allowed rate of return on equity, (2) whether the index calculation should incorporate resubmitted 2019 cost data, and (3) whether ''trimming'' the data set to the middle 80%, or instead the middle 50%, provides a more representative picture of industry cost experience.

4. I will not reprise in detail the reasons for our resolution of those issues here, which are fully explained in the order. Suffice to say that our decision on each of those points is consistent with Commission precedent, amply supported by the record, and—most importantly—advances the index's basic cost-tracking purpose. But because the bottom-line result of our index review is likely to loom larger than the technical details of how we reached that result, I write separately to contextualize today's order in the bigger picture of our rate regulation under the Interstate Commerce Act (ICA).

5. Our important but limited charge under the ICA is to ensure that interstate oil pipeline rates are just and reasonable.[3] At the broadest level, carrying out that statutory responsibility entails balancing the need to protect shippers from excessive rates—particularly rates that may reflect abuses of market power—and the need to ensure that pipelines receive fair returns, which is in turn a prerequisite to the long-term health of (and adequate future investment in) the nation's oil pipeline infrastructure. We have sought to strike that balance, consistent with our other statutory obligations,[4] through the detailed ratemaking system established under our regulations—including the indexing methodology introduced in Order No. 561.

6. The purpose of our five-year index reviews is not to revisit that balance. We are simply making incremental adjustments to the index level to reflect cost changes in the industry. While that inevitably involves some judgment calls, those judgment calls are guided by a concern for empirical and economic accuracy. In short, our narrow task in this proceeding is to faithfully advance the cost-tracking purpose of our index review, not to pick economic winners or losers.

7. Finally, it bears keeping in mind that, insofar as end-use consumers have a stake in the outcome of our index reviews, it is by no means a one-sided equation. Although the benefits of lower-priced services are self-explanatory, ordinary Americans' interests are not served by *excessively low* pipeline rates. That would risk disincentivizing investment in the infrastructure that provides the least expensive and safest method of transporting the energy products our day-to-day lives and economy depend on.[5]

8. Today's order faithfully holds the line we established when we created the indexing system, ensuring—as promised in Order No. 561—that the index keeps apace with industry cost trends. Broader policy questions about whether our approach to oil pipeline rates under the ICA is well-adapted to today's economic realities, and whether that overall approach best balances and serves the competing interests at stake, are for another day.

For these reasons, I respectfully concur.

Laura V. Swett,

Chairman.

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM26–6–000

(Issued April 24, 2026)

ROSNER, Commissioner, *concurring:*

1. I concur with today's order because, while I may have preferred different decisions on some of the inputs to the index, I believe the oil index finalized today meets the Commission's obligation under the Interstate Commerce Act (ICA): to create and apply a ''simplified and generally applicable ratemaking methodology for oil pipelines.'' [1] And while I applaud the thorough and comprehensive statement from my colleague Commissioner Chang and am sympathetic to her well-made points, I believe we have met the ICA's standard. I write separately because the Commission is at its strongest, particularly in complex, historically controversial rulemakings like this one, when our five-member Commission is able to meet in the middle to accommodate differing perspectives, and we are able to act by consensus.

2. My concurrence is informed by the recent history of the Commission's prior oil index. The divided Commission's fracture in that proceeding produced tremendous uncertainty for both oil pipelines and their customers, and ultimately resulted in a D.C. Circuit remand, vacatur, scores of refund applications, and overall volatility associated with the Commission's oil ratemaking regime. This did not yield the clarity and dependability of a Commission work product that unlocks certainty and investment for the oil industry, or for anyone—whether associated with downstream economic sectors, or everyday American consumers.

3. The outcome of this proceeding matters, and in my view, would be best served with the strength and clarity that comes from a unanimous, compromise outcome. We are engaged here in far more than a mathematical exercise, and we do so during a moment when energy prices, particularly gasoline prices, are high across the country, with material impacts to oil pipeline customers, including airlines, small refiners, independent gas stations, and end use customers. On an annual basis, the index adopted here allows oil pipeline revenues to increase by a maximum of about 4 percent per year, a value that is largely based on actual inflation over the prior 5 years. The specific changes we have made since the unanimous NOPR proposal cost an additional $4.5 billion, cumulatively, about 2.5% of estimated industry-wide revenue of $176.6 billion over the next 5 years.

4. The Commission embarked on this new oil index rulemaking intent on leaving the chaos of the prior index behind us. Our unanimous vote on the underlying NOPR proves that we are capable of doing so. I continue to believe that our deliberative panel could have found a way to reach a compromise, and achieve a final rule with five votes, and with it unlock the benefits of unanimity for all who

[2] *Ass'n of Oil Pipe Lines* v. *FERC,* 876 F.3d 336, 340 (D.C. Cir. 2017) (cleaned up).

[3] 49 U.S.C. app. 1(5).

[4] Notably, the Energy Policy Act of 1992's mandate to develop a ''simplified and generally applicable'' ratemaking methodology. Public Law 102–86, 1801(a), 106 Stat. 3010 (Oct. 24, 1992), *codified at* 42 U.S.C. 7172 note.

[5] *See, e.g.,* Kenneth P. Green & Taylor Jackson, *Pipelines Are Safer Than Rail in the Transportation of Oil and Gas,* Manhattan Institute (Aug. 12, 2015), *https://manhattan.institute/article/pipelines-are-safer-than-rail-in-the-transportation-of-oil-and-gas;* Tracy Johnson, *Pipelines vs. Trains: Which Is Better for Moving Oil?,* CBC News (Mar. 10, 2015), *https://www.cbc.ca/news/business/pipelines-vs-trains-which-is-better-for-moving-oil-1.2988407.*

[1] Pursuant to authority granted to it under the ICA, see 49 U.S.C. app. § 15(1) (1988), and the Energy Policy Act of 1992, see Public Law 102–486, 1801(a), 106 Stat. 2776, 3010 (codified at 42 U.S.C. 7172 note (2006)), the Commission employs an indexed ratemaking system to govern oil pipeline rates.

depend on a durable oil index. However, I support the order as meeting both our statutory mandate and the need to provide rate clarity for the next five years to America's oil industry.

For these reasons, I respectfully concur.

David Rosner,

Commissioner.

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM26–6–000

(Issued April 24, 2026)

SEE, Commissioner, *concurring:*

1. Today's order exists because Congress directed the Commission to implement a ''simplified and generally applicable ratemaking methodology'' for oil pipelines as an efficient way to uphold the Interstate Commerce Act's just and reasonable standard.[1] So every five years we undertake a rigorous and data-driven analysis of the industry-wide cost changes that pipelines experience in an effort to recalibrate the index to current market conditions. Our aim is to reasonably align pipeline ceiling rates with the oil sector's economic realities in an administratively streamlined fashion, as an alternative to case-by-case rate cases. This practice supports fair compensation for carriers, promotes incentives for investing in critical infrastructure, and maintains reliable price signals for oil transportation. The results of the index itself are a small part of overall consumer rates, but our regular indexing effort is an important tool within the sector. Indexing works in practice because it is transparent, repeatable, and predictable, all of which ultimately supports fair compensation for carriers and reliable price signals for shippers and investors.

2. It's easy to agree on those goals behind periodic indexing. But in practice, applying a transparent indexing process is still a technical and highly record-driven task. Reasonable minds can draw potentially different outcomes from the data before us within a given cycle, and reasonable minds can take different approaches within the Commission's overall methodology across cycles, too. I leave to the Final Rule to explain in detail why the Commission landed on the specifical technical judgments in this index iteration. I write here briefly to underscore that some variation across index cycles can be a feature, not a bug, when it comes to applying Commission expertise to a record that's grounded in the unique circumstances and policies inherent to any five-year stretch of time.

3. Focusing on our decision to trim to the middle 80%: The Commission has long recognized that we must do some statistical trimming to keep outliers from distorting industry cost trends. The decision where to trim oil pipeline cost data is record driven.[2] It may not always be true that more data is better than less, but in this cycle it is. Here, using the middle 80% provides a robust and representative sample of pipeline cost experience, avoids prematurely discarding relevant observations, and better reflects the diversity of operations and barrel-mile coverage than narrower bands would. The middle 80% of the data set comprises 94% of industry-wide barrel miles, which helps give confidence that the index is representative while omitting true outlying data that would distort the calculation. This approach also aligns with Commission practice in the most recent five-year review cycle.

4. True, the Commission has not always trimmed to 80%. But data trimming is as much a record-grounded art as a math equation. Different trimming bands (50%, 80%, or otherwise) could be reasonable in different cycles depending on the nature of industry activity during the measurement period that bears on how reported cost changes are distributed. Our choice of an 80% trimming band here reflects our judgment that this record warrants broader representativeness; it doesn't imply that narrower trimming would be unreasonable in future cycles. For example, if we see more pipeline construction and targeted expansions of existing systems in the next five years—and given our nation's infrastructure needs, I hope that we do—those operational- and market-driven changes would likely bring more outlier pipelines to our cost change analysis. Faced with a record like that, a narrower trimming band might end up better capturing the ''normal'' industry experience by eliminating any non-representative cost spikes.

5. What matters most to my mind is consistency in methodology, not necessarily in outcome. Our goal in applying the Commission's methodology is to fairly collect and validate cost experience, then remove outliers to avoid distortion, and finally set an index that credibly tracks central tendencies over the last five years. As industry conditions change, the precise trimming band the method yields can change, too. And in cases where the record could potentially support multiple outcomes, we're called to apply our judgment in choosing where best to draw the line given the record before us. In this proceeding, trimming to the middle 80% meets that responsibility.

Given the facts of this case, I respectfully concur with today's order.

Lindsay S. See,

Commissioner.

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM26–6–000

(Issued April 24, 2026)

CHANG, Commissioner, *dissenting:*

1. In today's order,[1] the Commission establishes the five-year oil pipeline index as (PPI–FG)—0.55%. I dissent from that result because I disagree with the order's decision to (1) apply a uniform return on equity (ROE) modification to account for changes in the Commission's ROE policy, and (2) adopt a data set trimmed to the middle 80% of cost changes rather than the middle 50%. Instead, I would establish the five-year index value as (PPI–FG)—1.68%, which is consistent with relevant precedent and supported by the record.

I. Background

2. The Commission's oil pipeline indexing methodology is a ratemaking construct unique to its regulation of transportation rates under the Interstate Commerce Act (ICA). Developed in response to Congress' directive in the Energy Policy Act of 1992 to establish a ''simplified and generally applicable'' ratemaking methodology,[2] the index allows pipelines to annually adjust their rates subject to a cap rather than relying on lengthy, complex cost-of-service proceedings.[3] While the index is the

[1] 49 U.S.C. app. § 1 *et seq.* (1988).

[2] *See, e.g., Five-Year Review of Oil Pipeline Index,* 133 FERC ¶ 61,228, at PP 61–63 (2010) (explaining that data trimming to the middle 50 percent of pipelines is appropriate based on the record); *Five-Year Rev. of the Oil Pipeline Index,* 173 FERC ¶ 61,245, at PP 25–32 (2020) (explaining that it is preferable to consider additional data and trim to the middle 80 percent of pipelines because it more fully reflects the diversity of cost experiences based on the record).

[1] *Five-Year Rev. of the Oil Pipeline Index,* 195 FERC ¶ 61,062 (2026) (Final Rule).

[2] Public Law 102–486, 1801(a), 106 Stat. 2776, 3010 (Oct. 24, 1992), codified at 42 U.S.C. 7172 note.

[3] *Revisions to Oil Pipeline Regulations Pursuant to Energy Pol'y Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,947 (1993) (cross-

predominant method used to set rates under the ICA, pipelines have multiple options for establishing and updating their rates, including cost-of-service filings, qualifying for market-based rates, and the use of negotiated or settlement rates, particularly for the development of new infrastructure.[4]

3. In 1993, Order No. 561 set the ''Kahn Methodology'' as the approach that the Commission uses to collect and trim cost data provided by the pipelines [5] and to compare their cost changes against an inflation rate in the economy, as measured by the Producer Price Index—Finished Goods (PPI–FG) set by the Bureau of Labor Statistics. The Commission updates the resulting oil pipeline index every five years through a review of industry-wide cost changes over the preceding five-year period. The Final Rule succinctly summarizes how the calculation works:

> Each pipeline's cost change is calculated on a per-barrel-mile basis over the previous five-year period (*e.g.,* the years 2019–2024 in this proceeding). To remove statistical outliers and potentially spurious data, the resulting data set is trimmed (*e.g.,* to the middle 80% or middle 50%) by removing an equal number of pipelines from the top or bottom of the distribution. The Kahn Methodology then calculates three measures of the trimmed dataset's central tendency: median, mean, and weighted mean.[ ] The Kahn Methodology calculates (a) a composite central tendency by averaging the median, mean, and weighted mean and (b) the difference between the composite central tendency of per-barrel-mile cost changes and the percentage change in PPI–FG over the prior five-year period.[ ]

4. This measurement, the difference between observed pipeline cost changes and PPI–FG, generates an index that the Commission applies for the prospective five-year period, that is PPI–FG *plus* or *minus* a percentage.[6] This means that if PPI–FG were 3% in a particular future year, the pipelines' rates are allowed to increase by 3% *plus* or *minus* the amount set by the 5-year oil pipeline index.[7] Each year, effective July 1, pipelines are allowed to adjust their ceiling rate using that index,[8] which sets the maximum rate that a pipeline can charge for transportation services if it is using the indexing methodology.

5. This proceeding addresses the index for the upcoming five-year period (July 1, 2026–June 30, 2031), relying on data submitted by jurisdictional pipelines for the 2019–2024 period. Among the issues raised in the record are: (1) whether the Commission should adopt changes to pipelines' filed 2019 ROEs to account for a change in the Commission's oil pipeline ROE policy; and (2) a standing question in each five-year cycle, of what data trimming the Commission should apply.[9]

II. The Order Errs by Adopting a Uniform ROE Modification To Diverse Pipelines' Reported 2019 ROEs

6. As discussed below, I disagree with the order's adoption of a proposal by the Liquid Energy Pipeline Association (LEPA) to apply a uniform ROE modification to the wide ranging and diverse pipelines' 2019 reported cost data. LEPA's proposal is conceptually flawed, conflicts with relevant Commission precedent, and is inconsistent with the pipelines' independent derivation of their own reported ROEs. As a result, LEPA's proposal does not yield a credible ROE value to be included in the 2026–2031 oil pipeline index.

A. Background

7. Beginning with the 2015 index cycle, the Commission has used data from page 700 of Form No. 6 as the basis for its index calculation. Whereas the Commission's prior calculations relied on alternative proxies for each pipeline's cost of capital (including ROE),[10] the data includes a calculated cost-of-service for each oil pipeline based on inputs including expenses, depreciation, and return based on the rate base of investments net of depreciation and the rate of return, which itself includes each pipeline's reported ROE. This cost-of-service rate is then divided by the pipeline's total barrel-miles to determine the cost per barrel-mile. The Commission then compares that cost per barrel-mile of the two end points of the study period (here 2019 and 2024) to calculate the cost growth rates for each pipeline. After trimming the data set, the Commission calculates the average of the mean, weighted mean, and median growth rates in cost per barrel-mile of all applicable pipelines minus the then relevant PPI–FG to determine the index level to be applied to the next five years. These steps were specified in the Kahn Methodology.

8. In 2019, the Commission revised its ROE policy for electric utilities to, among other revisions, combine use of its existing Discounted Cash Flow (DCF) methodology with the Capital Asset Pricing Model (CAPM) methodology.[11] In 2020, it extended that methodology to oil pipeline and natural gas rates, which previously relied only on the DCF methodology.[12] As a result, following issuance of the ROE Policy Statement, each oil pipeline is required to annually derive and report its ROE on page 700 using the average of ROEs calculated using the DCF and CAPM methodologies (ROE Policy Change).

9. In the ROE Policy Statement, the Commission recognized that the ROE

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referenced at 65 FERC ¶ 61,109), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[4] *E.g.,* 18 CFR 342.4 (specifying cost-of-service rates, market-based rates, and settlement rates as alternative rate methodologies to indexing); *see also* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (''Extraordinary costs can be recovered through either of the alternate rate change means—cost of service or settlement rates—as provided in [Order No. 561].''); *Saddlehorn Pipeline Co., LLC,* 169 FERC ¶ 61,118 (2019) (approving rates, terms, and conditions established through an open season for a system expansion).

[5] Since 2015, the Commission has relied upon data submitted by pipelines via page 700 of Form 6 to calculate the industry-wide cost changes used to establish the index. *Five-Year Rev. of Oil Pipeline Index,* 153 FERC ¶ 61,312, at PP 12–18 (2015) (2015 Final Rule), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 876 F.3d 336 (D.C. Cir. 2017) (*AOPL III*).

[6] If pipelines' observed cost changes are *lower* than inflation as measured by PPI–FG, then the index will be a negative number. If pipelines' observed cost changes are *higher* than inflation as measured by PPI–FG, then the index will be a positive number.

[7] These multipliers are posted each year by the Commission. FERC, *Oil Pipeline Index Indexing Methodology—Indices to be Used, https://www.ferc.gov/general-information-1/oil-pipeline-index.* The posted multiplier can vary significantly, largely driven by whether inflation (as measured via PPI–FG) is higher or lower. For example, the multiplier for July 1, 2021–June 30, 2022 (derived during the first year of the COVID pandemic, when inflation was very low) was 0.994188, *i.e.,* a *reduction* in the pipelines' ceiling rates. By comparison, the multiplier for July 1, 2022–June 20, 2023 (*i.e.,* derived as the economy emerged from the COVID pandemic, when inflation was high) was 1.097007, *i.e.,* a nearly 10% increase in the pipelines' ceiling rates.

[8] So, for example, assume the Commission adopted an index of +1%. If the PPI–FG inflation measure for year one of the five-year cycle was 2%, then the annual multiplier would be 1.03, *i.e.,* a 3% increase in pipelines' ceiling rates. If the PPI–FG measure for year two was 3%, then the multiplier for that year would be 1.04%, and the net increase of pipelines' ceiling rates across both years would be 7.12% (*i.e.,* 1.03 * 1.04).

[9] Before turning to the merits of these issues, I have one point of clarification. My assessment of this proceeding is informed and bound by the Commission's adoption of the Kahn Methodology, applied to pipelines' filed page 700 data, as its chosen means of satisfying Congress' mandate for a ''simplified and generally applicable'' ratemaking methodology. I am under no illusion that this methodology or data set are perfect, and both contain analytical or evidentiary shortcomings. I am open to future refinements to the methodology and data set to ensure that subsequent index cycles are as analytically sound as possible.

[10] 2015 Final Rule, 153 FERC ¶ 61,312 at P 14 (noting that the Commission previously ''used net carrier property as a proxy for capital costs and income taxes'').

[11] *Ass'n of Bus. Advocating Tariff Equity* v. *Midcontinent Indep. Sys. Operator, Inc.,* Opinion No. 569, 169 FERC ¶ 61,129 (2019).

[12] *Inquiry Regarding the Comm'n's Pol'y of Determining Return on Equity,* 171 FERC ¶ 61,155 (2020) (ROE Policy Statement).

Policy Change could have implications for the upcoming 2020 index cycle, which was based on filed page 700 data from 2014–2019.[13] The Commission expressly ''encourage[d] oil pipelines to file updated FERC Form No. 6, page 700 data for 2019 reflecting the revised ROE methodology established herein,'' and noted that ''[a]lthough the Commission will address this issue further in the five-year review, reflecting the revised methodology in page 700 data for 2019 may help the Commission better estimate industry-wide cost changes for purposes of the five-year review.'' [14] The Commission subsequently issued a notice, establishing July 21, 2020 as the deadline for pipelines to voluntarily submit updated 2019 data reflecting the ROE Policy Change and clarify how they derived their filed 2019 ROEs.[15] Only two pipelines submitted updated 2019 data in response to this invitation, and as a result, the vast majority of pipelines did not revise their 2019 data to incorporate the ROE Policy Change. However, pipelines presumably began calculating and reporting their ROEs prospectively to reflect the ROE Policy Change (*i.e.,* reporting ROEs that averaged values derived using both the DCF and CAPM methodologies, including for the year 2024, the end point of the period under consideration in this index cycle).

10. The current five-year index cycle relies on the pipelines' cost data from 2019–2024. In the NOPR,[16] the Commission proposed to calculate the index level with the pipelines' reported 2019 data, without having the Commission adjust the 2019 data to reflect the ROE Policy Change. The NOPR recognized that the ''Commission has never adjusted ROE in a prior index proceeding,'' and stated its ''concern[] that adjusting the data in light of the ROE Policy Change would be a complex and difficult endeavor that would be inconsistent with index's purpose as a simplified and streamlined process.'' [17]

11. In response, LEPA submitted a proposal specifically designed to account for the ROE Policy Change, *i.e.,* that each oil pipeline's ROE will be determined by averaging ROEs derived using the CAPM and DCF methodologies. LEPA proposes a modification to each pipeline's FERC Form No. 6, page 700, filed ROE for 2019 for purposes of calculating the index. Specifically, instead of using each applicable pipeline's 2019 filed ROE, LEPA proposes to average each pipeline's originally-filed ROE, which varies by pipeline, with a single CAPM-derived ROE of 8.3% (ROE Modification). This value resulted from the methodology and proxy group from a litigated proceeding involving a single pipeline, Colonial, with adjustments for different financial conditions for the test year of that proceeding and the 2019 Form No. 6 data.[18] The effect of the ROE Modification would be to blend a uniform, industry-wide ROE value with each pipeline's reported ROE for 2019, and to then use that blended value and compare it to the pipeline reported data for 2024, to set the index.

B. Commission Precedent and the Record Do Not Support Adoption of a Uniform ROE Modification To Address the ROE Policy Change

12. My assessment of the record on the ROE Modification is guided by the following analysis: (1) is it appropriate to adjust the originally-filed 2019 data to account for the ROE Policy Change; (2) if yes, does the record establish that there is a methodologically-sound and generally-applicable modification that is consistent with the simplified design of the Commission's indexing methodology; and (3) if yes, does the record establish what that generally-applicable modification should be. The Commission should only adopt a proposal if that modification satisfies all three questions. LEPA's proposal does not. Instead, the order's tinkering with the index methodology through the *ex post* application of the ROE Modification introduces methodological infirmities, is inconsistent with Commission precedent, and is unsupported by the record. Accordingly, I would use the pipelines' filed 2019 data to determine the index, rather than making a modification to account for the ROE Policy Change.[19]

1. The Use of a Uniform ROE for Oil Pipelines Is Conceptually Flawed

13. As a threshold matter, the ROE Modification rests on a simple but incorrect premise: that a single ROE can be derived for an industry as diverse as the oil pipeline sector. This premise conflicts with the basic design of the Commission's ROE policy.

14. An oil pipeline's risk profile is central to the Commission's ROE analysis. As the Commission explained in the ROE Policy Statement:

> Because most . . . oil pipelines are wholly owned subsidiaries and their common stocks are not publicly traded, the Commission must use a proxy group of publicly traded firms *with corresponding risks* to set a range of reasonable returns. The firms in the proxy group must be *comparable to the pipeline whose ROE is being determined,* or, in other words, the proxy group must be ''risk-appropriate.'' The range of the proxy group's returns produces the zone of reasonableness in which the pipeline's ROE may be set *based on specific risks.* Absent unusual circumstances showing that the pipeline faces anomalously high or low risks, the Commission sets the pipeline's cost-of-service nominal ROE at the median of the zone of reasonableness.[20]

15. These statements emphasize certain critical elements of the ROE analysis: (1) these assessments are pipeline-specific; (2) the proxy group and corresponding zone of reasonableness for each pipeline must be composed of publicly traded firms with comparable risk profiles to the pipeline; and (3) the specific pipeline's relative risk profile within that zone of reasonableness will determine the placement of the pipeline's ROE in that zone. And these requirements make sense, as a pipeline's rate of return should be tailored to the level needed to secure capital investment. That level will naturally and properly vary based on a pipeline's specific characteristics and risks, which could include, among others: (1) the level of competition that it faces; (2) whether its revenues vary significantly or are relatively stable; (3) the age, condition, and location of its system; (4) the types of products it transports; and (5) physical or cyber risks to its system.

16. LEPA's proposal turns this analysis on its head. Instead of tailoring an ROE analysis to pipelines' specific risk profiles, LEPA compresses the entire industry into a single, uniform proxy group and risk profile, then assigns the entire industry a single CAPM-based ROE. A simple example highlights the defects in this approach. Take two companies that are part of the data set: (1) South Bow, which operates a major interstate pipeline system that runs from Canada to the Gulf and reports earnings in excess of $1.3 to $1.4

[13] Pursuant to the schedule provided in the section 357.2(b)(2) of the Commission's regulations, oil pipelines submitted their 2019 page 700 data in April 2020, one month prior to the Commission's announcement of the ROE Policy Change.

[14] ROE Policy Statement, 171 FERC ¶ 61,155 at P 92.

[15] *Inquiry Re: the Commission's Policy for Determining Return on Equity; Five-Year Review of the Oil Pipeline Index,* Docket Nos. PL19–4–000 and RM20–14–000 (July 7, 2020).

[16] *Five-Year Rev. of the Oil Pipeline Index,* 193 FERC ¶ 61,145, at P 6 (2025) (NOPR).

[17] *Id.* P 13.

[18] Final Rule, 195 FERC ¶ 61,062 at P 12.

[19] As discussed below in section II.C.5, use of the pipelines' filed 2019 data is consistent with the Commission's broader reliance on the accuracy of page 700 data and is an appropriate resolution on this record, given that the pipelines' election *not* to update their filed ROEs following the ROE Policy Change.

[20] ROE Policy Statement, 171 FERC ¶ 61,155 at P 6 (emphasis added).

billion in revenues; and (2) Andeavor Gathering, which operates a small gathering system and reports annual revenues between $3.5 and $5.6 million. These pipeline companies face very different risks: they operate in geographically different markets, have drastically divergent level of revenues, and operate in different sectors of the industry (long-distance transportation versus localized gathering). Yet, under LEPA's proposal, these pipelines are deemed to face comparable risk and are assigned an identical CAPM-based ROE value.

17. LEPA's proposed approach is at odds with the Commission's ROE policy. And as discussed in the next section, the Commission recognized the inherent contradictions and complications created by imputing a single ROE to the entire industry when it rejected a similar proposal from shippers in the last index cycle.

2. The Commission Has Considered and Rejected Application of a Uniform, Industry-Wide ROE for Oil Pipelines

18. As the NOPR and Final Rule acknowledge,[21] this is not the first time the Commission has considered a proposal to adopt a uniform ROE for purposes of the five-year index. For reasons that apply with equal force to this proceeding, the Commission rejected that previous proposal as inconsistent with its ROE precedent and the simplified and streamlined design of the oil pipeline indexing methodology.

19. In the most recent 2020 cycle, Liquid Shippers proposed to replace the pipelines' self-reported ROEs (which presumably reflected the pipelines' own assessment of their relative risk profiles) with a single, industry-wide ROE values for both 2014 and 2019.[22] Echoing arguments raised in this proceeding, Liquid Shippers claimed that ''if all oil pipeline rates were litigated at the same time, absent unusual circumstances, the Commission would adopt the same ROE for every pipeline because regulated pipelines typically fall within a broad range of average risk,'' and that the pipelines' ''reported ROEs conflict with this principle because they vary substantially.'' [23] Liquid Shippers further argued, citing the ROE Policy Statement, that ''the uncertainty surrounding the Commission's oil pipeline ROE policy undermines the reliability of the reported ROEs for 2019.'' [24] The pipelines, including LEPA (then known as the Association of Oil Pipe Lines (AOPL)), opposed the Liquid Shippers' proposal by: (1) disputing that the reported ROEs were unreliable, (2) noting the Commission's finding that statistical data trimming is sufficient to remove outlying equity cost changes, and (3) asserting that adopting Liquid Shippers' proposal would ''complicate the five-year review by introducing complex cost-of-service ratemaking issues.'' [25]

20. The Commission rejected Liquid Shippers' proposal. First, the Commission held that Liquid Shippers had failed to demonstrate that the pipelines' self-reported ROEs are unreliable, and emphasized that those ROEs are based upon ''established ratemaking techniques.'' [26] The Commission rejected the premise that variation among page 700 ROEs renders them unreliable, and observed that ''although the Commission typically sets the real ROE for oil pipelines at the median of the proxy group results, it may set the ROE above or below the median where the record demonstrates that the pipeline faces anomalously high or low risks.'' [27] With respect to Liquid Shippers' proposed standardized ROEs at that time, the Commission held that ''Liquid Shippers [did] not demonstrate that this figure accurately measure[d] the investor-required cost of equity *for all pipelines in the data set,*'' and stated that ''[g]iven that oil pipelines have diverse business models and different risks levels, *we simply cannot assume that any single ROE could reflect the investor-required return for all pipelines in the data set.*'' [28] Finally, the Commission concluded that ''adopting Liquid Shippers' proposal would undermine indexing's purpose as a simplified and streamlined ratemaking regime,'' noting that ''[d]etermining a just and reasonable ROE, *particularly on an industry-wide basis,* would be a complex and fact-intensive inquiry'' and the Commission's previously-expressed concern that ''addressing such complex cost-of-service issues would improperly complicate and prolong the five-year review process *in violation of EPAct 1992's mandate for simplified and streamlined ratemaking.*'' [29]

21. The Commission's reasoning in the 2020 Final Rule was sound and, facing a proposal with the same fundamental flaws, is equally compelling now.[30] As in 2020, LEPA's ROE Modification proposal purports to demonstrate that a ''single ROE could reflect the investor-required return for all pipelines in the data set,'' [31] a premise that the Commission previously rejected. In so doing, using the proposed ROE Modification sands down the Commission's use of pipeline-specific risk assessment into a rote mathematical exercise, then imputes a single risk profile and associated ROE to an entire industry.[32] This inherent flaw is no different than that which the Commission rightly rejected in the 2020 Final Rule.

22. While the order acknowledges and attempts to distinguish this precedent, the distinctions are not compelling. The order concludes that this situation is different because ''the reported data for 2019 and 2024 reflect different ROE policies,'' while the Liquid Shippers' prior proposal involved a single ROE policy.[33] That distinction has no relevance to the concerns articulated by the Commission in the 2020 Final Rule, which were inherent to the exercise of calculating a single, industry-wide ROE. The order then states that LEPA's proposal to calculate an industry-wide ROE ''coheres with EPAct 1992's mandates for simplified and streamlined ratemaking,'' [34] notwithstanding that Liquid Shippers' similar proposal ran afoul of that same concern in the 2020 Final Rule.[35] At its core, the order does not actually distinguish the 2020 Final Rule, but instead concludes that the ''benefits'' of an ''apples to apples'' comparison between 2019 and 2024 ROE data warrant overlooking the

[21] NOPR, 193 FERC ¶ 61,145 at P 13, n.31; Final Rule, 195 FERC ¶ 61,062 at PP 28, 31.

[22] *Five-Year Rev. of Oil Pipeline Index,* 173 FERC ¶ 61,245, at P 41 (2020) (2020 Final Rule), *order on reh'g,* 178 FERC ¶ 61,023 (2022) (2022 Rehearing Order), *reh'g denied,* 179 FERC ¶ 61,100 (2022), *vacated sub nom. Liquid Energy Pipeline Ass'n* v. *FERC,* 109 F.4th 543 (D.C. Cir. 2024), *order following vacatur,* 188 FERC ¶ 61,173 (2024), *order on reh'g,* 193 FERC ¶ 61,137 (2025).

[23] *Id.*

[24] *Id.* P 42.

[25] *Id.* P 44.

[26] *Id.* P 46.

[27] *Id.* P 47.

[28] *Id.* P 49 (emphasis added).

[29] *Id.* P 50 (emphasis added).

[30] Ironically, LEPA (then known as AOPL) objected to the Commission's 2015 decision to use page 700 data in part because of its concern about the *volatility* of pipeline ROEs, yet now argues it is reasonable to apply a single ROE value to roughly 150 pipelines, representing approximately 75% of the relevant data set. 2015 Index Final Rule, 153 FERC ¶ 61,312 at P 10.

[31] 2020 Final Rule, 173 FERC ¶ 61,245 at P 49.

[32] As discussed below, the record also contains substantial and compelling evidence that this imputed ROE has no correlation to the pipelines' assessment of their own risk profiles and resulting ROEs.

[33] Final Rule, 195 FERC ¶ 61,062 at P 28.

[34] *Id.* P 31.

[35] 2020 Final Rule, 173 FERC ¶ 61,245 at P 50. Compounding matters, the order then notes that *shippers* ''have not proposed a superior alternative adjustment'' to LEPA's proposal, notwithstanding (1) they had no obligation to do so, (2) the NOPR proposed *not* to make an adjustment for reasons consistent with the Commission's findings in the 2020 Final Rule, and (3) the Commission soundly rejected their *last* attempt to propose a uniform ROE in 2020. Final Rule, 195 FERC ¶ 61,062 at P 31.

shared flaws of LEPA and Liquid Shippers' proposals.[36] I disagree that a single ROE could reflect the diverse risk profiles and associated investor-required return for all pipelines.

3. The Pipelines' Own Reported ROEs Undermine the Premise That a Single Industry-Wide ROE Can or Should be Applied

23. Even if the order adequately distinguished Commission precedent that is squarely on point, it would still need to establish that LEPA's proposed modification using a uniform 8.3% ROE reflects the risk profile and associated equity return for the roughly 150 pipelines to which it would apply.[37] The order does not. Notwithstanding LEPA's effort to substantiate that its proposed 8.3% ROE is a reasonable industry-wide estimate, there is a more compelling data set that rebuts the premise of LEPA's proposal: the pipelines' own reported ROEs.

24. If it were reasonable to assume that the oil pipeline industry as a whole is largely homogenous and reflects companies of the same investment risks, then one would expect the *pipelines themselves* to report largely similar ROEs in their annual page 700 filings. Yet, the pipelines' filed page 700 data show *precisely the opposite,* with wide-ranging ROEs that presumably reflect *the pipelines' own assessment* that their risk profiles differ because their businesses, sources of revenue, and cost drivers vary greatly. The pipeline's own reported ROEs thus contradict the notion that they face comparable investment risks such that it is reasonable to use the same 8.3% 2019 ROE for all of them. For instance, even trimming the data set to the middle 50%, the pipelines' filed 2019 ROEs included 8.4% for Yellowstone Pipeline LLC and 16.2% for Tallgrass Pony Express Pipeline LLC. Similarly, the 2024 ROEs filed by pipelines in the middle 50%, which presumably incorporated the CAPM-based ROEs, included similar variation such as 8.39% for Valero Partners PAPS LLC and 16.2% for Caliber Bear Den Interconnect LLC. Moreover, illustrating the wide range of investment risks faced by various pipelines, the *betas* (representing each company's volatility of performance relative to the overall stock market's) in the Order No. 586 proxy group range from 0.780 for Magellan Pipeline to 1.041 for Enbridge Pipeline.[38] These *betas* do not represent values of a relatively homogenous group of pipelines that face the same risks and thereby justifies using a single ROE applied across roughly 150 pipelines.

25. Simply put, both things—that the pipelines' self-reported but divergent ROEs are reasonable and reliable, and a single 8.3% ROE value reasonably reflects their uniform risk profile—cannot simultaneously be true. Through multiple five-year index proceedings over the last decade, the Commission has relied upon the accuracy of the pipelines' own filed ROE data.[39] We and the pipelines cannot have it both ways. If we are to rely on the accuracy of the pipelines' filed page 700 data as a foundation for the index itself, then we cannot simultaneously conclude that it is appropriate to use a uniform, industry-wide ROE in the index for this cycle.

26. I respect and understand the desire to fix the asymmetry in the data set. Accurate and transparent data are foundational to good ratemaking, and I take seriously the task of getting the index right. While the Commission does not need to demonstrate that a solution is perfect, adopting a single CAPM-based ROE that is methodologically flawed and rebutted by substantial evidence elsewhere in the record is not a viable solution to the asymmetry. The Commission is governed by its precedent and bound by the record before it, and I believe neither supports adoption of LEPA's proposal in this case.

4. The ROE Modification Creates Inconsistent and Unreliable Results

27. While the ROE Modification purports to solve the asymmetry, it also creates other methodological problems that undermine the reliability of the index.

28. First, in attempting to address one asymmetry—that pipelines' reported 2019 ROEs do not incorporate CAPM while their 2024 reported ROEs presumably do—the order creates other problematic asymmetries in the ROE data. Under LEPA's proposal, the 2019 data now blend pipeline-specific ROEs (reflecting each pipeline's assessment of its own risk profile) with a uniform 8.3% CAPM-derived ROE (premised on the idea that every pipeline faces identical level of investment risks). The order then compares the blended 2019 ROEs with the pipeline's reported 2024 ROEs that presumably reflect each pipeline's assessment of its own risk profile under *both* DCF *and* CAPM. This approach is not a methodologically-sound ''apples to apples'' assessment of comparable starting and end points, which introduces further methodological inconsistencies into the index analysis.

29. Furthermore, in attempting to create more of an ''apples-to-apples'' comparison for the 2019 and 2024 ROEs, the ROE Modification creates a ''stitching problem'' or a discontinuity between the current and prior index periods. Specifically, Figure 1 below illustrates that the 2014–2019 data used to derive the prior index included the higher DCF-only ROE for the year 2019. The ROE Modification applied to the 2019 data used for the 2019–2024 index comparison at issue here is predicated on the fiction that the 2019 ROE was significantly lower.[40] As a result of the ROE Modification, the pipelines' calculated cost per barrel-mile at end of the first index period would be higher than that at beginning of the second index period, even though both purport to measure data for the same year (2019), creating an inconsistency and a ''stitching problem'' or an analytical discontinuity. Because the indices for every five years create a cumulative effect, with the indices building on the previous ones, the net effect of the discontinuity is an upward bias to the index. The combined impact of using LEPA's proposed ROE Modification would cause the cost changes over the ten years between 2014–2024, and the associated rate increases authorized by the indices relying upon data from this

[36] Final Rule, 195 FERC ¶ 61,062 at P 27 (''Although we recognize that any changes to the reported page 700 introduce a degree of additional complexity, we conclude that *the benefits of more accurately measuring actual industry cost changes* during the five-year review period by using consistent ratemaking policies *support adjusting the reported data notwithstanding these concerns.*'' (emphasis added)); *id.* P 31 (''To the extent that LEPA's proposed CAPM return does not precisely measure the cost of equity for all pipelines in the data set, this imprecision *is justified by the need to resolve the data incongruities resulting from the ROE Policy Change.*'' (emphasis added)).

[37] 2020 Final Rule, 173 FERC ¶ 61,245 at P 49 (rejecting Liquid Shippers' uniform ROE proposal because they ''do not demonstrate that this figure accurately measures the investor-required cost of equity *for all pipelines in the data set*'' (emphasis added)).

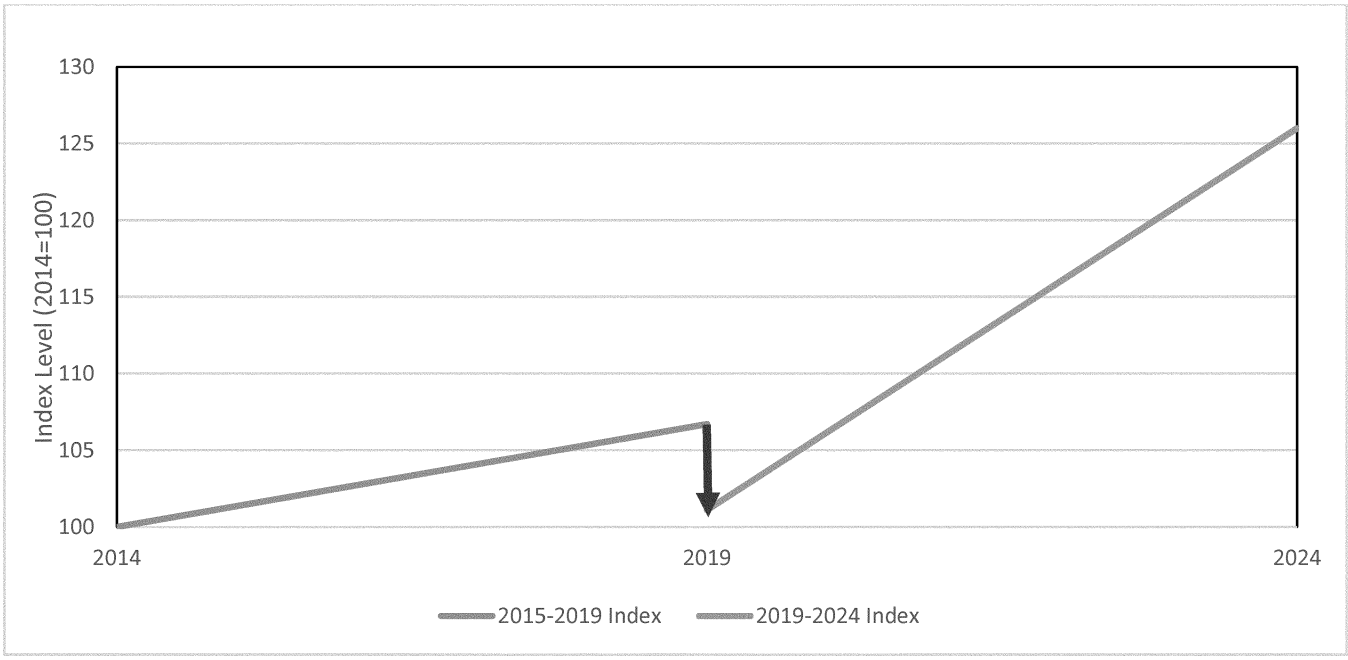
[38] LEPA Dec. 29, 2025 Initial Brief, Ex. No. MJW–L2—ROE Results at CAPM Results tab.

[39] *See, e.g.,* 2020 Final Index, 173 FERC ¶ 61,245 at P 46 (recognizing that pipelines submit their page 700 data under oath and rejecting arguments that the submitted data are unreliable); 2015 Final Index, 153 FERC ¶ 61,312 at PP 12–18 (explaining benefits of page 700 data as a ''superior data source for use in the Kahn Methodology''). The D.C. Circuit Court of Appeals has also affirmed the Commission's decision to use these filed data for the index. *AOPL III,* 876 F.3d at 344–46 (rejecting challenge to Commission's adoption of page 700 data in the 2015 Final Rule).

[40] Figure 1 is derived from the Brattle Group Reply Report appended to the Joint Commenters' Reply Brief. Joint Commenters Jan. 20, 2026 Reply Br., Brattle Group Reply Report at PP 86–87, Fig. 6.

time period, to be much higher than having a consistent approach for the whole period.

Figure 1: 2014–2019 and 2019–2024 Index Levels With ROE Modification Applied to the 2019–2024 Index



5. The Commission Can and Should Rely on the Pipelines' Filed 2019 Data, as Any Methodologically Correct Solution Requires Pipeline-Specific Analysis

30. Having explained why the ROE Modification is flawed as a matter of policy, precedent, and record, I want to address what an appropriate remedy to the asymmetry would look like. This requires additional context about how the Commission ended up where we are.

31. As discussed above,[41] the Commission's ROE Policy Change in May 2020 altered how each pipeline was required to determine its ROE and thus impacted how certain cost data are reported on page 700. Since the index is derived by measuring cost changes over a five-year period, in a perfect world, the starting and end points of that five-year period would be calculated using largely consistent approaches. The Commission recognized as much in the ROE Policy Statement, as it *expressly* ''encourage[d] oil pipelines to file updated FERC Form No. 6, page 700 data for 2019 reflecting the revised ROE methodology established herein.'' [42] *This* solution—specific adjustments to the pipelines' reported ROEs, based on each pipeline's assessment of its risk profile—was and is the methodologically-appropriate way to capture any effects of the ROE Policy Change. Had the pipelines updated their ROEs as the Commission encouraged,[43] then the asymmetry would have been solved and we would not be in our current predicament.

32. Unfortunately, almost all jurisdictional pipelines declined the Commission's invitation, without explanation or justification, to update their ROE to reflect the ROE Policy Change. Only a minority of pipelines *ever* sought to revise their ROEs, and most of those waited roughly five years to do so, right before the commencement of the current index cycle.[44] And it is this combination of events—the ROE Policy Change, coupled with the pipelines' subsequent decision *not* to timely revise their filed 2019 ROE data—that created the problem now before the Commission.[45]

33. So, given the record before us, the Commission must decide how to proceed. The order incorrectly *presumes* that the ROE Policy Change requires a change to the pipelines' filed 2019 ROEs and applies the flawed ROE Modification to implement that change. Instead, the more defensible approach is that Commission should simply rely on the pipelines' filed 2019 ROEs, which the pipelines represented under oath were accurate and declined to update

[41] *Supra* at section II.A.

[42] ROE Policy Statement, 171 FERC ¶ 61,155 at P 92.

[43] As the order observes, subsequent to the ROE Policy Change, the Commission issued Opinion No. 586, which ''further refined its ROE methodology. . . .'' Final Rule, 195 FERC ¶ 61,062 at n.117. While the order characterizes these refinements as ''not reflect[ing] the same ROE policy'' as the ROE Policy Statement, these changes were incremental rather than substantial. *Id.* In any event, pipelines also did not propose to revise their 2019 ROE data following the issuance of Opinion No. 586.

[44] In the NOPR, the Commission preliminarily addressed updated 2019 data submitted by 61 pipelines beginning in April 2025, five years after these cost data were originally due, by proposing to exclude those data from its calculation of the index. NOPR, 193 FERC ¶ 61,145 at PP 15–16. The Final Rule largely sustains this proposed finding by rejecting the non-ROE related ''corrections'' and excluding those data from the final index value adopted in the order. Final Rule, 195 FERC ¶ 61,062 at PP 40–41. I agree with that decision for the reasons stated in the order, and the Commission should expect pipelines to submit timely revisions to page 700 data if the information on file is incorrect. With respect to the pipelines' ROE-related adjustments, the Final Rule finds that the ROE Modification ''sufficiently and more effectively'' addresses the ROE Policy Change, as ''using the ROEs in the resubmitted filings and making the [ROE Modification] for the remaining pipelines could lead to inconsistent treatment of the ROEs across the whole data set.'' *Id.* P 42. For the reasons articulated in the NOPR, I would also exclude the pipelines' late-filed attempt to update their 2019 ROE-related data.

[45] Unfortunately, I think the order misdiagnoses the issue before us as simply the asymmetry resulting from the ROE Policy Change, while failing to account for the contributing role of the pipelines' own inaction. This assessment then leads the order to assume responsibility for fixing a problem that the Commission did not solely create, while absolving the pipelines of their role and adopting their preferred but fundamentally flawed solution instead.

when encouraged to do so. This conclusion would be consistent with the Commission's broader reliance on page 700 data as a reliable foundation for the index, and would send an appropriate signal to the industry that the Commission expects them to maintain accurate and up-to-date information in their page 700s.[46]

III. The Order Errs by Deriving the Index Using the Middle 80 Data Set Rather Than the Middle 50

34. As discussed below, the record and Commission precedent support adoption of the middle 50% data set, rather than the middle 80% data set reflected in the Final Rule.

A. Background

35. As the Commission has explained, the ''purpose of the index is to permit a simplified recovery for normal cost changes, not to enable recovery for extraordinary cost increases or decreases.'' [47] Data trimming helps the Commission achieve that purpose. Specifically, under the Kahn Methodology, after each pipeline's cost change on a per barrel-mile basis is determined, the Commission trims the data set to remove statistical outliers and spurious data. While the Commission has adopted different data trimming approaches, its most common approach has been to trim to the middle 50% of reported data, which the Commission has found effectively removes pipelines with anomalous changes from the data set.[48]

36. In the NOPR, the Commission proposed to use the middle 80% of reported data. Noting that the Commission used the middle 80% in the most recent 2020 index review, the NOPR preliminarily concluded that ''it is appropriate to consider more data in measuring industry-wide cost changes rather than less,'' and that '' 'normal' cost changes are best defined using the inclusive data sample embodied in the middle 80%.'' [49] The Commission affirms these findings in the Final Rule, while also concluding that the middle 80% ''achieves a reasonable balance that incorporates a wide spectrum of industry experience while removing data that could distort the index calculation.'' [50]

B. Commission Precedent and the Record Support Adoption of the Middle 50% Data Set

37. Based on my assessment of the record, I conclude that the middle 50% data set better aligns with the logic and purpose of the indexing methodology, as well as relevant Commission precedent.

38. In each five-year index cycle, the Commission must first decide the appropriate data set to use, which it determines through assessment of the pipelines' calculated per-barrel-mile cost changes. On this record, the middle 50% data set is the superior distillation of representative cost changes across the industry. First, that data set conforms with the index's stated purpose of reflecting normal industry-wide cost changes through its identification of the data set's central tendency. Furthermore, the middle 50% data set captures 82% of all reported barrel miles, demonstrating that it is broadly representative of the cost of transporting oil and refined products across jurisdictional pipeline systems.[51]

39. Furthermore, the weight of Commission precedent supports adoption of the middle 50%, as the Commission's reasoning in those proceedings aligns with the record evidence here. The Commission has repeatedly recognized the benefits of trimming to the middle 50% compared to other approaches, including the middle 80% alternative.[52] The Commission has also emphasized that ''statistically trimming the data set to the middle 50 percent already removes anomalous cost/barrel-miles changes,'' [53] which reduces the need for manual trimming or data adjustments. This approach is thus better aligned with Congress' statutory directive to develop a streamlined and simplified ratemaking design.

40. I also disagree with the order's conclusion that the middle 80% represents a superior data set for capturing normal industry cost changes. While this data set incorporates a substantial number of additional pipelines, it adds only a relatively marginal increase in barrel miles, which increases the risk that anomalous or non-representative data are introduced into the central tendency analysis. Were the data distributed in a statistically normal manner, the difference between data trimming to the middle 50% would not differ materially from trimming to the middle 80%. However, because the data set is skewed to the right with more outliers with costs higher than the mean or median, leaving a greater number of outliers upwardly biases the result. Because the index is intended to reflect typical pipeline costs increases, more substantial trimming is particularly important where the distribution is shifted rightward or leftward. Adding more data does not necessarily improve the data set, and reliance on the middle 50% avoids these unnecessary risks.

41. I am similarly not persuaded by the order's reliance on the 2020 Final Rule as support for deviating from the Commission's reliance on the middle 50% data set in the 2010 and 2015 index cycles. The most recent 2020 index cycle was an unusually unstable exception to the Commission's use of the middle 50%,[54] so I assign the Commission's adoption of the middle 80% in that proceeding limited

[46] This approach also would be consistent with the Commission's reasoning for declining to apply the ROE Modification to pipelines that reported an identical ROE across the full 2019–2024 data set. Final Rule, 195 FERC ¶ 61,062 at P 25 (electing not to apply the ROE Modification to pipelines that reported the same ROE because ''the ROE Policy Change does not appear to have affected how the pipeline reported its ROE on page 700, and it is not clear that each of these pipeline's 2019 data reflect different Opinion No. 154–B policies than their 2024 data.'').

[47] *Five-Year Rev. of Oil Pipeline Pricing Index,* 133 FERC ¶ 61,228, at P 61 (2010) (2010 Index Review), *reh'g denied,* 135 FERC ¶ 61,172 (2011).

[48] *Infra* P 39.

[49] NOPR, 193 FERC ¶ 61,145 at PP 9–10.

[50] Final Rule, 195 FERC ¶ 61,062 at PP 49–52.

[51] This sample size captures an even larger percentage of barrel miles than prior instances in which the Commission relied on the middle 50 data set. *See, e.g.,* 2010 Final Rule, 133 FERC ¶ 61,228 at P 63 (finding that the ''middle 50 percent of pipelines represents 76 percent of total barrel-miles in 2004 subject to the index, and thus for this index calculation, the Commission finds it unnecessary to include the middle 80 percent to obtain a representative sample of the data''); 2015 Final Rule, 153 FERC ¶ 61,312 at n.85 (noting that ''the statistically trimmed data set includes more than 50 percent of industry barrel-miles'').

[52] *See, e.g.,* 2015 Final Rule, 153 FERC ¶ 61,312 at PP 42–44; 2010 Final Rule, 133 FERC ¶ 61,228 at P 61 (''The middle 50 percent more appropriately adjusts the index levels for 'normal' cost changes as opposed to the middle 80 percent, which, by definition, includes pipelines relatively far removed from the median.''); *id.* (''Even when accurate data is reported, pipelines in the middle 80, as opposed to the middle 50, are more likely to have cost changes resulting from factors particular to that pipeline, such as a rate base expansion plant retirement, or localized changes in supply and demand. Using the middle 50 ensures that pipelines with relatively large cost increases or decreases do not distort the index.'').

[53] 2015 Final Rule, 153 FERC ¶ 61,312 at P 23.

[54] While it is true that the ultimate outcome of the 2020 index review cycle was the adoption of the middle 80% data set, the actual story is far more complicated. In the 2020 Final Rule, the Commission adopted the middle 80% data set on a split Commission vote. 2020 Final Rule, 173 FERC ¶ 61,245. Via a subsequent bipartisan vote on rehearing, the Commission reverted to the middle 50% data set, consistent with longstanding precedent. 2022 Rehearing Order, 178 FERC ¶ 61,023. That order was vacated on appeal on procedural grounds, and the Commission subsequently elected, for prudential reasons, to leave the 2020 Final Rule intact. *Supplemental Review of the Oil Pipeline Index Level,* 193 FERC ¶ 61,136, at P 20 (2025) (Supplemental Order). Shippers' appeals of the 2020 Final Rule and the Supplemental Order are pending before the D.C. Circuit. As a result, no court has actually assessed, let alone affirmed, whether the Commission's adoption of the middle 80% in the 2020 cycle was appropriate.

precedential weight, particularly given that the Commission's adoption of the middle 50% was repeatedly affirmed on appeal.[55]

IV. The Record Supports an Index of (PPI–FG)—1.68%

42. Given my disagreement with two critical determinations in the Final Rule and based on my review of the record, I support adoption of a final index level of (PPI–FG)—1.68%.[56] As discussed above, I believe this value is consistent with Commission precedent and supported by the full record before us. I take this opportunity to address two additional points regarding the index: (1) the implications of a ''PPI–FG *minus*'' index value, and (2) the alternative ratemaking options available to pipelines.

A. The Appropriate Approach Yields an Index Lower Than PPI–FG Due to Inflationary Period Between 2019 Through 2024

43. All but one of the index proposals in the record—even that from LEPA—result in an index lower than PPI–FG. This reflects the fact that pipelines' reported costs were less than inflation over the relevant preceding five-year period. Given the well-documented, economy-wide inflation experienced between 2019 and 2024, the resulting negative index is simply an artifact of the approach used in setting the index relative to the inflation rate in the preceding five years. For instance, the Commission's adopted index levels for 2021–2026 authorized pipelines to increase their ceiling levels by roughly 30% over just that five year period,[57] with the overwhelming majority of that increase driven by the PPI–FG index itself, rather than the Commission's annual +0.78% index adjustment. Thus, the level below the PPI–FG properly reflects the oil pipelines' cost changes relative to the *past* five years' inflation rate and therefore carried forward using future inflation rates. Should pipelines' reported costs exceed inflation in this upcoming five-year period, then that differential will be captured in the next index cycle, as contemplated through the simplified index design.

B. Pipelines Have Multiple Ratemaking Options, Including for the Development of System Expansions

44. Finally, the indexing methodology is designed to approximate a simplified cost-of-service framework,[58] through which the Commission considers the interests of both pipelines and shippers in setting rates. I conclude that the alternative index value of (PPI–FG) – 1.68% that relies on the middle 50% dataset and pipelines' self-reported ROE values is consistent with Commission precedent, supported by the record before us, and reasonably balances those competing interests. To the extent that an individual pipeline experiences abnormally high expenses that exceed recovery through the index framework, then it may pursue a cost-based rate. Furthermore, major pipeline expansions can be developed through negotiated and settlement rates that deviate from indexed rates, consistent with longstanding Commission precedent.[59]

V. Conclusion

45. Action on the five-year oil index is among the most consequential decisions any Commissioner issues during his or her tenure. Today's order will likely shift billions of dollars between pipelines and shippers over the next five years, and given the cumulative nature of the index, will have repercussions long past this cycle. Furthermore, higher transportation costs via indexed rates will have a real-world financial impact, including to consumers that use oil or other petroleum-derived products. The result reached in today's order is not adequately supported by the record or Commission precedent.

46. While I disagree with today's order, I respect my colleagues' assessment of the record and the different conclusion that they reached; our disagreement followed robust internal discussions, and resolution of this proceeding will presumably rest with the appellate courts. In the meantime, I look forward to collaborating with my colleagues through other proceedings to continue to faithfully implement our responsibility to ensure cost-effective and non-discriminatory transportation service under the ICA.

For these reasons, I respectfully dissent.

Judy W. Chang,

Commissioner.

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM26–6–000

(Issued April 24, 2026)

LACERTE, Commissioner, *concurring:*

1. It is imperative that the oil index ensure that pipeline owners and operators can charge a just and reasonable rate for the important public service which they provide to our nation. The index must also send the right price signal to ensure market stability and achieve economic growth for years to come. Today's final rule, which I completely support, fully achieves these purposes. I write separately to underscore the importance of today's action, given the recent history of missteps with the oil index.[1]

2. The Interstate Commerce Act (ICA) requires that oil pipelines charge ''just and reasonable'' rates.[2] And the Energy Policy Act of 1992 (EPAct) requires the Commission to establish a ''simplified and generally applicable'' ratemaking methodology [3] that is consistent with the just and reasonable standard of the ICA. Based on these directives, the Commission issued Order No. 561, adopting an indexing methodology that allows oil pipelines to change their rates subject to certain ceiling levels, as opposed to making complex, individual cost-of-service filings and mandating annual reporting of summary cost and

[55] *E.g., Flying J Inc.* v. *FERC,* 363 F.3d 495 (D.C. Cir. 2004) (affirming the Commission's decision, following remand, to adopt a middle 50 data set); *AOPL III,* 876 F.3d at 342–44.

[56] I derived this index level by modifying the Final Order's adopted data set by (1) removing the ROE Modification and instead relying on the pipelines' filed ROE data, and (2) using the middle 50% instead of the middle 80% data set. Otherwise, my analysis relies upon the data set approved by the Final Rule, including the accuracy of limited data corrections and assumptions incorporated into the data set. Specifically, I eliminated the addition of the 8.3% ROE Modification the New_Normalized Data tab and the Refile Adjust tab, in both cases leaving the originally filed ROEs.

[57] FERC, *Oil Pipeline Index Indexing Methodology—Indices to be Used, https://www.ferc.gov/general-information-1/oil-pipeline-index.* I derived this value simply by multiplying each of the authorized index values from July 1, 2021 through June 30, 2026. That inflation was particularly pronounced in the two years from July 1, 2022 through June 30, 2024, in which the annual index increases were 9.7% and 14.3%, respectively.

[58] *See, e.g.,* 2015 Index Review, 153 FERC ¶ 61,312 at P 13 (finding that ''the index is meant to reflect changes to recoverable pipeline costs, and, thus, the calculation of the index should use data that is consistent with the Commission's cost-of-service methodology'').

[59] *See, e.g., Saddlehorn Pipeline Co., LLC,* 169 FERC ¶ 61,118 (2019); *see also* 18 CFR 342.2 (providing that a carrier must justify an initial rate for new service by either submitting ''cost, revenue, and throughput data supporting such rate'' or ''[f]iling a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question'').

[1] *See, e.g., Five-Year Rev. of the Oil Pipeline Index,* 173 FERC ¶ 61,245 (2020), *order on reh'g,* 178 FERC ¶ 61,023 (2022), *vacated sub nom. Liquid Energy Pipeline Ass'n* v. *FERC,* 109 F.4th 543 (D.C. Cir. 2024).

[2] 49 U.S.C. app. 1 *et seq.; see also Tex. & Pac. Ry. Co.* v. *ICC,* 162 U.S. 197, 233 (1896) (explaining that the ICA's purpose is to ''make charges for transportation just and reasonable'' and ''forbid undue and unreasonable preferences or discriminations'').

[3] Public Law 102–486, 1801(a), 106 Stat. 3010 (Oct. 24, 1992).

throughput data in pipeline annual reports.[4] In other words, instead of the Commission setting pipeline rates, it allows pipelines to simply adjust their rates annually by following an index, reviewed every five years, guided by a government-published inflation measure (here, the Producer Price Index for Finished Goods).[5]

3. This process is akin to a rent escalation clause in a lease. The landlord (here, the pipeline in this analogy) does not have to negotiate a new lease every year to raise rent; instead, the contract specifies how often and by how much the rent may increase over time, sometimes involving a set percentage increase over time or by incorporating a variable percentage increase based on, for example, the Consumer Price Index. The Commission's oil index works in a similar fashion: As long as a pipeline stays within its indexed ceiling, as adjusted year-to-year, it can raise or lower rates without needing to engage in a lengthy cost-of-service proceeding.

4. This method reasonably balances precision and simplicity[6] and results in a reduced administrative burden. Pipelines get rate certainty and creditworthiness. Shippers get predictability. Consumers reap the benefits of additional pipeline capacity over time while costs are kept in check. And the Commission avoids adjudicating hundreds or perhaps thousands of individual pipeline rate cases every year (which could go on for years).[7] All parties get to avoid the cost and uncertainty of litigating those cases individually. The tradeoff is that the index may over- or under-compensate any given pipeline, depending on whether its actual costs track the index, which is an inherent source of litigation and strife from economically opposed, sophisticated actors.

5. My colleague's dissent raises various objections to the final rule, but these objections are, as I read them, a fundamental disagreement with the pillars of a periodic index itself. While appearing to acknowledge that something must be done here,[8] in the absence of a perfect (or at least more granularly precise) solution, the dissent would prefer that the Commission continue to chase the rabbit of perfection. I respectfully disagree.

6. In my view, inexactness is an inherent feature of the index, not a flaw. Imprecision, uniformly applied, strikes an appropriate balance between ensuring the index reasonably reflects pipeline cost increases, on the one hand, and maintaining a simple and generally applicable methodology, on the other. But endless tinkering with data sets in search of a desired, or perfect, outcome belies the purpose of the index altogether.

7. Consensus-driven orders at the Commission have been and will remain a priority of mine, but in the absence of consensus, and where required to act, action and progress must continue, as it does here. Commissioners often are frustrated by endless rounds of stakeholder process outside of 888 that fail to produce a pencils-down moment; we should practice what we preach and that moment is now. Action is required in this case, and perfection cannot be the enemy of the good.

8. Balance in the oil value chain is paramount. To that end, I look forward to considering efforts and reforms to maintain that balance in the coming days, weeks, and years, as we continue to take a closer look at our oil regulations beyond the oil index.

For these reasons, I respectfully concur.

David LaCerte,

Commissioner.

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[4] *Revisions to Oil Pipeline Reguls. Pursuant to Energy Pol'y Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985 (1993) (cross-referenced at 65 FERC ¶ 61,109), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996).

[5] *See Five-Year Rev. of the Oil Pipeline Index,* 195 FERC ¶ 61,062, at P 3 n.7 (2026).

[6] Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,946; *id.* at 30,940 (indexing provides ''a simplified and generally applicable methodology for regulating oil pipeline rates. . .'').

[7] *Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d at 1430 (''As the Commission explained, simplification results from the elimination, with rare exceptions, of rate-specific examinations of costs.'').

[8] *See, e.g.,* Dissent at P 26 (''I respect and understand the desire to fix the asymmetry in the data set.'').