BP West Coast Productions, LLC v. Federal Energy Regulatory Commission: Using the Changed Circumstances Threshold for Oil Pipeline Rates to Re-Enforce the Terms of EPAct and to Further Its Policy Objectives

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BP WEST COAST PRODUCTS, LLC v. FEDERAL ENERGY REGULATORY COMMISSION: USING THE CHANGED CIRCUMSTANCES THRESHOLD FOR OIL PIPELINE RATES TO RE-ENFORCE THE TERMS OF EPAct AND TO FURTHER ITS POLICY OBJECTIVES

I. INTRODUCTION

The Energy Policy Act of 1992 (EPAct) was enforced to limit challenges to effective pipeline rates which shippers must pay an oil pipeline for its transportation services.\(^1\) A rate that meets EPAct's requirements is "deemed just and reasonable" and therefore, subject to grandfathering.\(^2\) Unless a shipper is able to meet one of the stringent substantial change exceptions delineated in EPAct, grandfathered rates may not be subject to challenge by shippers or revised by the Federal Energy Regulatory Commission (FERC).\(^3\) Grandfathering therefore precludes shippers from receiving the benefits of either a reduction in tariff rates or a refund from an unreasonable rate pursuant to a successful challenge to an expensive pipeline tariff.\(^4\) In effect, EPAct operates to reduce litigation concerning pipeline rates.\(^5\)

In *BP West Coast Products, LLC v. Federal Energy Regulatory Commission*,\(^6\) the United States Court of Appeals for the District of Columbia Circuit considered four principle issues: (1) whether adding a new origination point to an already existing pipeline con-


\(^{2}\) See *Energy Policy Act of 1992 § 1803, 42 U.S.C. § 7172 (2000)* (defining requirements for rates to be subject to grandfathering). To qualify for grandfathering, a rate must meet two requirements: (1) the rate must have been effective for one year prior to EPAct’s enactment, on October 24, 1992; and (2) the rate must not have been subject to “protest, investigation, or complaint” during that one year period. *Id.*

\(^{3}\) See *id.* (discussing that shippers may challenge grandfathered rates by presenting evidence of substantial change to FERC). Evidence of a substantial change is limited to: (1) the oil pipeline’s economic circumstances which were a basis for the rate; or (2) the nature of the services which served as the basis of the rate. *Id.*

\(^{4}\) See *id.* (noting that where FERC concludes rate is unreasonable, challenger may be entitled to refund or reduction from date complaint was filed).

\(^{5}\) See *BP West Coast Prods., 374 F.3d at 1275* (discussing Congress’ rationale behind EPAct).

\(^{6}\) 374 F.3d 1263 (D.C. Cir. 2004).
stituted a substantial change; (2) whether the grandfathering provisions applied to rates not filed with FERC; (3) whether transporting a new type of fuel constituted a substantial change; and (4) what acts constituted a "protest, investigation, or complaint." This case is significant because the court examined EPAct's threshold inquiry of changed circumstances.

In *BP West Coast Products*, the D.C. Circuit held that adding a new origination point to an already existing pipeline does not alter existing shipping rates or constitute a new tariff, making it therefore eligible for grandfathering. In contrast, the D.C. Circuit held that unfiled rates and rates for transporting a new fuel type were not eligible for grandfathering. Finally, the D.C. Circuit held that a rate was subject to protest, investigation or complaint, when the challenge specifically addressed the rate's reasonableness.

This Note analyzes the D.C. Circuit's holding in *BP West Coast Products*. Part II discusses the relevant facts in *BP West Coast Products*. Part III discusses the precedent and statutes relevant to the D.C. Circuit's analysis. Part IV describes the D.C. Circuit's analysis and holding. Part V critically analyzes the D.C. Circuit's holding. Lastly, Part VI discusses the impact of the D.C. Circuit's holding.

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7. See id. at 1272-78 (analyzing issues court reviewed).
8. See Oil Pipeline Regulation Committee, *Report of the Oil Pipeline Regulation Comm.*, 24 *Energy L.J.* 261, 261 (2003) (noting that this case represented first time changed circumstances standard was litigated before FERC); see also *BP West Coast Prods.*, 374 F.3d at 1271 (noting same for reason that issues presented were complicated).
9. See 374 F.3d at 1273 (comparing addition of new origination point to addition of on-ramp to highway).
10. See id. at 1273-75 (discussing how unfiled rates could not satisfy EPAct requirements and noting that transportation of turbine fuel was new and therefore precluded from grandfathering).
11. See id. at 1275-76 (distinguishing general protest, investigation or complaint from specific ones).
12. See id. at 1272-81 (discussing holdings for issues presented to court).
13. For a discussion of facts in *BP West Coast Products*, see infra notes 18-37 and accompanying text.
14. For a discussion of relevant precedent and statutes, see infra notes 38-64 and accompanying text.
15. For a discussion of court's analysis and holding, see infra notes 65-111 and accompanying text.
16. For a critical analysis of the holding, see infra notes 112-74 and accompanying text.
17. For a discussion of the impact of the holding, see infra notes 175-86 and accompanying text.
II. FACTS

Santa Fe Pacific Pipeline, L.P. (SFPP) operates pipelines which transport petroleum products throughout the country. SFPP’s operation includes an East Line and a West Line. The West Line consists of pipelines extending from Watson Station in Los Angeles, California to various western states. In 1989, SFPP decided to increase the minimum pumping rate and pressure from Watson Station. SFPP customers agreed to use its facilities at an additional cost. SFPP, however, never filed these new contracts with FERC.

In July 1992, SFPP revised Tariff Nos. 15, 16 and 17 to add a new origination point to its West Line, and a rate for shipping services from that origination point to Arizona. The added rate, however, was not new. In December 1992, SFPP filed Tariff No. 18, proposing to transport turbine fuel, a new type of fuel, on its West Line. Tariff No. 18’s rate for turbine fuel was equal to other grandfathered rates which had been effective since 1989.

FERC reached four distinct conclusions regarding each one of SFPP’s changes. First, FERC determined that Tariff Nos. 15, 16 and 17 qualified for grandfathering. Second, FERC concluded that Tariff Nos. 15, 16 and 17 qualified for grandfathering. Second, FERC concluded

19. See BP West Coast Prods., 374 F.3d at 1270 (describing SFPP’s East Line and West Line).
20. See id. at 1273 (noting that origination point on West Line for shipments to Phoenix and Tucson is Watson).
21. See id. (explaining that SFPP gave its shippers choice of either providing their own pressurization facilities or using SFPP built facility for surcharge).
22. See id. (discussing transportation charges for SFPP’s new enhancement services).
23. See id. (noting that SFPP failed to file enhancement contracts because it believed these contracts were beyond FERC’s jurisdiction).
24. See BP West Coast Prods., 374 F.3d at 1272 (discussing SFPP’s revisions to its West Line pipeline rates that went into effect in October of 1992 after grandfathering window had closed).
25. See id. (noting rate for new origination point was similar to SFPP’s rates for two other source points in Los Angeles area).
26. See id. at 1274 (explaining that turbine fuel is more commonly known as jet fuel).
27. See id. (noting rates that existed since 1989 were eligible for grandfathering).
28. See id. at 1272-81 (discussing FERC’s adjudications).
29. See BP West Coast Prods., 374 F.3d at 1272 (discussing FERC’s conclusion that SFPP’s revision to its rates “only added another tap within an existing rate cluster”).
that SFPP was required to file the contracts for its improved services.\textsuperscript{30} Third, FERC found that although Tariff No. 18 did not qualify for grandfathering, Tariff No. 18 was not subject to challenge because it was equal to other rates that were just and reasonable.\textsuperscript{31} Fourth, FERC concluded that EPAct section 1803 required that the protest, investigation or complaint should specifically challenge a rate's reasonableness.\textsuperscript{32}

On appeal, the D.C. Circuit held that SFPP's rates from its new origination point did not constitute a new rate.\textsuperscript{33} As a result, the court found that the rates qualified for grandfathering.\textsuperscript{34} The court also held that EPAct did not apply to unfiled rates because unfiled rates do not meet the statutory requirements.\textsuperscript{35} The court further held that FERC's decision that the turbine fuel tariff could not be challenged was "arbitrary and capricious."\textsuperscript{36} Finally, the court affirmed FERC's interpretation of the protest, investigation or complaint provision.\textsuperscript{37}

III. BACKGROUND


EPAct precludes shippers from challenging pre-existing pipeline rates.\textsuperscript{38} In order to qualify for grandfathering, an oil pipeline rate must meet two requirements: (1) the rate must have been in effect for one full year prior to EPAct's enactment on October 24, 1992; and (2) the rate must not have been subject to "protest, investigation, or complaint" during that one year period prior to EPAct's

\textsuperscript{30} See id. at 1273 (noting that enhanced services were within FERC's jurisdiction). As a result, FERC ordered SFPP "to file a rate equal to the historic charge in the shipper contracts." Id.

\textsuperscript{31} See id. at 1275 (noting that rate for new fuel service was equal to other grandfathered rates that were effective since 1989).

\textsuperscript{32} See id. at 1276 (rejecting shippers' argument that general attack is sufficient to challenge every aspect of tariff).

\textsuperscript{33} See id. at 1273 (discussing reasons for deferring to FERC adjudication).

\textsuperscript{34} See BP West Coast Prods., 374 F.3d at 1273 (noting that addition of new tap, without any changes to pre-existing rates, does not constitute new rate).

\textsuperscript{35} See id. at 1274 (noting that unfiled rates failed to meet EPAct's second requirement).

\textsuperscript{36} See id. at 1275 (noting that FERC's adjudication reached conclusion without considering underlying cost of service and rate of return).

\textsuperscript{37} See id. at 1275-76 (stating successful challenge to tariff by means of protest, investigation or complaint must allege unreasonableness of rate).

enactment. An oil pipeline rate that meets these requirements is "just and reasonable" and therefore entitled to grandfathering.

B. Standard of Review for Administrative Decisions

In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (*Chevron*), the Supreme Court established a two-part test to determine the level of judicial deference that a court should give to an administrative agency's statutory interpretation. First, a court must determine whether Congress has expressly addressed the issue before the court. If Congress' intent is clear, then both the court and the agency must adhere to the express intent of Congress. If, however, a court determines that Congress has not directly spoken to the issue, then the court must invoke the second step and consider whether the agency's construction of the statute is reasonable. The court should then give deference to an agency's reasonable interpretation since Congress entrusts administrative agencies with the authority to make policy decisions when a statute is silent. A court may not, however, impose its own construction of the statute.

In *United States v. Mead Corp.* (*Mead*), the Supreme Court held that an agency's interpretation qualifies for *Chevron* deference when it appears that Congress has delegated to the agency the authority to make rules carrying the force of law. In the context of agency adjudications, the court should defer to an agency's interpretations unless the interpretation is "procedurally defective, arbi-

39. See id. (discussing grandfathering requirement).
40. See id. (noting that rate is eligible for grandfathering if it meets both requirements).
42. See id. (noting judicial deference is limited because judiciary "must reject administrative constructions which are contrary to clear congressional intent").
43. See id. (discussing analysis used to determine proper amount of judicial deference).
44. See id. (noting that express congressional intent prevails over judicial and agency interpretations).
45. See id. at 843 (noting that court's inquiry is limited to whether agency's interpretation is reasonable choice within statutory gap).
46. See Chevron, 467 U.S. at 843 (explaining that for challenge to be successful it must state that agency's interpretation is unreasonable).
47. See id. (describing role of judiciary). The judiciary is responsible for reviewing agency adjudications and rejecting those that do not comply with congressional intent. Id.
49. See id. at 226-27 (noting limits of *Chevron* deference).
trary or capricious in substance, or manifestly contrary to the statute." 50

C. Procedure for Challenging a Pipeline Rate

FERC has the authority to establish rates and values for pipelines.51 The Fifth Circuit limited the applicable challenge shippers could bring in Mobil Alaska Pipeline Co. v. United States.52 If an individual wants to challenge a pipeline rate that was deemed just and reasonable, the individual must file a complaint with FERC showing that a substantial change has occurred since EPAct's enactment.53 If FERC determines that a rate is not just and reasonable, the rate will not be entitled to grandfathering.54

In BP West Coast Products, the D.C. Circuit defined the two step process for reviewing a challenge to an oil pipeline rate.55 First, FERC must determine whether the rate qualifies for grandfathering.56 Second, if the rate qualifies for grandfathering, FERC must determine whether the rate falls into one of the "substantially changed circumstances" exceptions: (1) a change in the economic circumstances that was the basis of the oil pipeline rate; or (2) a change in the nature of the services which underlined the rate.57

In Lakehead Pipe Line Co., L.P. (Lakehead),58 FERC concluded that allowing limited partnerships similar to SFPP to include income tax

50. See id. at 227 (explaining when agency's interpretation is binding). An agency's statutory interpretation is binding on the courts when Congress has left an explicit gap in the statute and has delegated the agency the authority to administer the statute. Id.


52. See 557 F.2d 775, 786 (5th Cir. 1977) (noting court's holding that pursuant to EPAct, challenge is limited to reasonableness of rate).


54. See Energy Policy Act of 1992 § 1803(b), 42 U.S.C. § 7172 (describing process for challenging grandfathered status of rate). FERC proceedings are instituted by a complaint and in those proceedings, FERC may conclude that a rate is not just and reasonable. Id.

55. See 574 F.3d at 1272 (discussing procedure for challenging pipeline rates).

56. See id. (noting that when deciding whether rate qualifies for grandfathering, FERC must consider requirements enumerated in EPAct).


58. 71 FERC P 61,338 (June 15, 1995).
allowances in their rates constituted a substantial economic change.\textsuperscript{59}

Courts usually give FERC substantial deference in adjudications, which is consistent with the policy objectives of EPAct.\textsuperscript{60} In Ass'n of Oil Pipe Lines v. Federal Energy Regulatory Commission,\textsuperscript{61} the D.C. Circuit noted that on appeal of a FERC adjudication, the inquiry is whether FERC's decision was "arbitrary and capricious."\textsuperscript{62} FERC's decision is deemed to be arbitrary and capricious if a court determines that there is no rational connection between the facts and the decision.\textsuperscript{63} The D.C. Circuit determined that FERC is entitled to judicial deference for reasonable conclusions because of the agency's expertise.\textsuperscript{64}

D. FERC'S Jurisdiction over Unfiled Rates

The Supreme Court held that a regulated entity may not charge service rates which are different than those properly filed with the appropriate regulatory authority in Arkansas Louisiana Gas Co. v. Hall.\textsuperscript{65} Despite the "filed rate" doctrine established in Arkansas Louisiana Gas Co., FERC concluded that unfiled rates were within its jurisdiction because FERC would have grandfathered the rates if filed because these rates were not challenged during the one year prior to EPAct's enactment.\textsuperscript{66}

\begin{itemize}
  \item \textsuperscript{59} See BP West Coast Prods., 374 F.3d at 1280 (discussing that Lakehead alone does not satisfy substantial change threshold).
  \item \textsuperscript{60} See Ass'n of Oil Pipelines v. Fed. Energy Regulatory Comm'n, 83 F.3d 1424, 1428-29 (D.C. Cir. 1996) (discussing how Congress transferred regulatory authority over pipeline rates to FERC).
  \item \textsuperscript{61} See id. (describing circumstances that encourage Congress to enact EPAct). In response to energy price shocks, Congress enacted EPAct as "part of a comprehensive bill to reform national energy policy" by allowing prices to fluctuate while simultaneously protecting shippers from paying excessive rates. \textit{Id.} at 1429.
  \item \textsuperscript{62} See \textit{id.} at 1431 (noting that judicial review of FERC's determinations are limited).
  \item \textsuperscript{63} See \textit{id.} (defining arbitrary and capricious).
  \item \textsuperscript{64} See \textit{id.} (explaining nature of FERC's adjudications requires certain skills and experience).
  \item \textsuperscript{66} See Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 577-78 (1981) (clarifying scope of authority). Pursuant to the filed rate doctrine, an entity may only charge rates properly filed with the appropriate agency, and may not charge other rates. \textit{Id.}
\end{itemize}
IV. NARRATIVE ANALYSIS

A. New Origination Point

In *BP West Coast Products*, the D.C. Circuit held that adding a new origination point did not constitute a new tariff. In analyzing FERC's conclusion that the new origination point's rates qualified for grandfathering, the D.C. Circuit determined that the essential issue was FERC's interpretation of the term "rate." The D.C. Circuit began by applying the *Chevron* test to determine the level of deference it should give to FERC's interpretation. Although EPAct did not expressly grant FERC rulemaking authority, the D.C. Circuit concluded that EPAct section 1803 contemplated that FERC would enforce EPAct through formal adjudications. Remaining consistent with its precedent, the D.C. Circuit concluded that FERC's interpretation of EPAct was entitled to *Chevron* deference.

To be eligible for grandfathering, a pipeline rate must have been effective before and through EPAct's enactment. The D.C. Circuit affirmed FERC's conclusion that the new rates were subject to grandfathering, even though the new rates were not effective before Congress enacted EPAct. The D.C. Circuit explained that

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67. See 374 F.3d at 1272 (explaining that new origination point did not constitute new tariff because it was similar to rates of two other source points).

68. See id. (noting that level of deference in this case is particularly important because this was case of first impression under EPAct's standards).

69. See id. at 1272-73 (determining whether D.C. Circuit should apply *Chevron* deference to FERC's adjudications).

70. See Energy Policy Act of 1992 § 1803(b), 42 U.S.C. § 7172 (determining when rate shall not be deemed just and reasonable). The D.C. Circuit refers to the language of the statute that sets out that a challenge to a grandfathered rate is "instituted as a result of a complaint." *BP West Coast Prods.*, 374 F.3d at 1272; see also Energy Policy Act of 1992 § 1803, 42 U.S.C. § 7172. Generally, when Congress empowers an agency to adjudicate statutory challenges, the agency's adjudicatory interpretations are entitled to *Chevron* deference. See *United States v. Mead Corp.*, 533 U.S. 218, 229 (2001). In *Chevron*, the court created a two-part test to determine the level of judicial deference that a court should give to an agency's interpretations. *Chevron*, 467 U.S. 837, 842-43 (1984). Under the *Chevron* analysis, if Congress has not precisely addressed the issue, the court should defer to the agency's reasonable statutory interpretations. *Id.*

71. See *BP West Coast Prods.*, 374 F.3d at 1273 (applying *Chevron* two-part inquiry to this case). In EPAct, Congress did not explicitly address whether the adding of a new origination point would constitute a new rate. *Id.*


73. See *BP West Coast Prods.*, 374 F.3d at 1272 (noting that rate at issue was similar to other source rates in area). FERC suggested that a new origination point that does not change the products shipped or services provided does not constitute a new rate change. *Id.*
FERC's conclusion was neither arbitrary nor capricious because SFPP completed the additions without changing the then existing rates. The D.C. Circuit thus found that FERC's interpretation was reasonable, and therefore, the rates qualified for grandfathering.

B. Unfiled Rates Under EPAct

Next, the D.C. Circuit reviewed FERC's order requiring SFPP to “file a rate equal to the historic charge in shipper contracts” for its enhanced services. The D.C. Circuit vacated part of the order because FERC's reasoning was fundamentally flawed. FERC's reasoning was fundamentally flawed because EPAct section 1803 only applies to filed rates. FERC, therefore, could not assume that no one would have challenged these rates had they been filed in order to grandfather these rates. In conclusion, the D.C. Circuit noted that FERC “must take the rates as it finds them, and here, FERC found them unfiled.”

The D.C. Circuit also noted various problems that would arise if unfiled rates received grandfathering treatment. In particular, the court would have the difficult task of determining whether the unfiled rate was effective for an entire year preceding EPAct's enactment. Since it would be hard to prove that the rates qualified

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74. See id. at 1273 (analogizing adding new origination point to adding on-ramp to highway).
75. See generally id. (noting that rate qualified for grandfathering so long as there was no substantial change).
76. See id. (discussing FERC's conclusion). FERC concluded that SFPP's enhanced services contracts were within FERC's jurisdiction, so FERC ordered SFPP to file those contracts with it. Id.
77. See id. at 1274 (criticizing FERC's assumptions and reasoning). According to the court, "[t]he Commission [FERC] may not regulate rates as if they existed in a world that never was." Id. Even if FERC concluded that the contracts existed for one year prior to EPAct's enactment, the rates did not qualify for grandfathering because these rates failed to satisfy the requirement that they were unchallenged for that period. Id.
78. See BP West Coast Prods., 374 F.3d at 1274 (noting that FERC may not grandfather unfiled rates based on speculation).
79. See id. (noting that FERC is precluded from grandfathering unfiled rates).
80. See id. (noting that D.C. Circuit was not required to decide whether EPAct section 1803 applied solely to filed rates because other ambiguities would have precluded these rates from being grandfathered).
81. See id. (discussing that FERC may not rely on speculation).
82. See id. (discussing difficulty in distinguishing which rates were actually in effect one year prior to enactment of EPAct from those that were not in effect).
83. See BP West Coast Prods., 374 F.3d at 1274 (implying that FERC's conclusion suggests that any rate enacted prior to October 1992 qualified for grandfathering). Further, the D.C. Circuit reasoned that allowing any rate effective before EPAct's enactment to be grandfathered would undermine EPAct's purpose, which is "to insulate pipelines from challenges to . . . rates." Id.
for grandfathering, the D.C. Circuit refused to affirm FERC's conclusion that the new rate was subject to grandfathering.\textsuperscript{84}

C. New Type of Fuel

The D.C. Circuit held that Tariff No. 18, concerning the new product turbine fuel, was not subject to grandfathering because the rate was initiated after the time period for grandfathering expired.\textsuperscript{85} FERC previously determined that Tariff No. 18 qualified for grandfathering because the rate was equal to other rates that FERC had considered just and reasonable.\textsuperscript{86} FERC thus concluded that there was no reason to apply a different rate for turbine fuel.\textsuperscript{87}

FERC recognized that the revision of Tariff No. 18 in December 1992, effected to accommodate the transportation of turbine fuel, could not be grandfathered because this service was new.\textsuperscript{88} Nonetheless, FERC reasoned that because the turbine fuel rate was equal to other Tariff No. 18 rates that had been deemed just and reasonable, "there [was] no basis for providing a different rate level for turbine fuel at this time."\textsuperscript{89} The D.C. Circuit rejected this conclusion.\textsuperscript{90}

Instead, the D.C. Circuit determined that Tariff No. 18's other rates were deemed just and reasonable by operation of law because those rates were not challenged during the one year prior to EPAct's enactment.\textsuperscript{91} This, however, is merely a requirement for grandfathering; it does not measure a rate's actual reasonable-

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\item \textsuperscript{84} See id. (noting that in absence of confirmation that rate was effective one year prior to EPAct's enactment, court could not extend grandfathering benefits). FERC indicated that the parties voluntarily entered into the contracts prior to 1992 and were executed prior to June 1, 1992. \textit{Grayling Generating Station, L.P.}, 86 FERC P 61,075 (Jan. 28, 1999).
\item \textsuperscript{85} See \textit{BP West Coast Prods.}, 374 F.3d at 1275 (concluding that rate did not meet grandfathering requirements).
\item \textsuperscript{86} See id. at 1274-75 (concluding that rate for new service precluded from grandfathering because it constituted substantial change).
\item \textsuperscript{87} See id. (discussing that Tariff No. 18 rates were deemed just and reasonable by operation of law because they were not challenged during one year period prior to EPAct's enactment). FERC concluded that the turbine fuel rates were just and reasonable because they were equal to rates that met the statutory requirements. \textit{Id.}
\item \textsuperscript{88} See id. (explaining that D.C. Circuit concluded that rate for new service was precluded from grandfathering because it constituted substantial change).
\item \textsuperscript{89} See id. (holding rates deemed just and reasonable by operation of law because they were not challenged during one year period prior to EPAct's enactment).
\item \textsuperscript{90} See \textit{BP West Coast Prods.}, 374 F.3d at 1274-75 (stating court's reason for lack of judicial deference).
\item \textsuperscript{91} See id. (explaining that Tariff No. 18 rates were not actually just and reasonable simply because they were deemed just and reasonable). Further, the D.C.
ness. The fact that the rates were deemed just and reasonable does not mean that the rates actually are just and reasonable. The D.C. Circuit determined that FERC's analysis failed to address the turbine fuel rate's substantive reasonableness. Therefore, this rate was not eligible for grandfathering.

D. Protest, Investigation or Complaint

The shippers alleged that the rates were "subject to protest, investigation or complaint" during the one year period prior to EPAct's enactment. The D.C. Circuit deferred to FERC's conclusion that these rates were not subject to protest, investigation or complaint during the one year period prior to EPAct's enactment. FERC concluded that to challenge rates that had been deemed just and reasonable, one would need to show more than a general protest, investigation or complaint. To successfully challenge a rate, one would need to show that the rate's reasonableness had been subject to protest, investigation or complaint.

Circuit stated that if FERC conducted a substantive review of rates, then its conclusion may have been valid. See id. at 1275 (holding that FERC's conclusion undermined nature and purpose of EPAct's grandfathering provisions).

92. See id. at 1275 (holding that FERC's conclusion undermined nature and purpose of EPAct's grandfathering provisions).

93. See id. (holding that new rates, such as turbine fuel, are not eligible for grandfathering). Since the rate cannot be grandfathered on its own merits, the rate cannot "simply piggyback on the grandfathered status of other rates." Id.

94. See id. (noting that judicial deference could not be extended because FERC's interpretation of EPAct was arbitrary and capricious).

95. See BP West Coast Prods., 374 F.3d at 1275 (discussing that D.C. Circuit determined FERC's decision was arbitrary and capricious because FERC did not conduct substantive review of the rate).

96. See id. at 1276 (noting in pleadings that West Line rates were challenged based on flow, reversal, prorationing and existing East Line rates). The D.C. Circuit determined that these pleadings did not violate § 1803 because they failed to challenge the reasonableness of the new rates. Id.

97. See id. (challenging West Line rates based on flow reversal, prorationing and existing rates on SFPP's East Line, court concluded, failed to challenge reasonableness of West Lines rates in protests to Tariff Nos. 15 and 16 and, therefore, had not violated requirements of § 1803). In addition, the court rejected the shippers' argument that the West Line rates were subject to investigation. Id. at 1278. Assuming that the Oil Pipeline Board Investigation was vacated but technically left open, the scope of the Board's investigation is limited to newly filed rates or practices. Id. Therefore, because no changes were made to the West Line rates, except the addition of a new origination point and transportation of new fuel, the Board would have been precluded from investigating the West Line rates. Id. The court thus concluded that the rates, except for the new origination point and fuel rates, were subject to grandfathering, and therefore, deemed just and reasonable pursuant to § 1803(a). Id.

98. See id. (noting that D.C. Circuit did not review all West Line rates).

99. See id. (noting that general attack on validity of rate does not satisfy EPAct requirements for challenging grandfathered rate).
The D.C. Circuit concluded that FERC's interpretation was not an unreasonable statutory interpretation, and so deferred to FERC's interpretation. Thus, the D.C. Circuit held that this provision was limited to specific protests, investigations or complaints challenging a rate's reasonableness.

E. Shippers' Challenges Pursuant to EPAct

The D.C. Circuit held that the time period for demonstrating substantial economic change was clear on the face of the statute. In response to the shippers' argument that the challenged rates fell within the substantial change exception, FERC concluded that a substantial change is a heightened standard which the shippers failed to meet. The shippers did not meet the changed circumstances threshold because increased usage is not a fundamental component of a rate whose change would result in a substantial economic change. Further, FERC determined that the shippers used an improper time period to calculate the substantial change in economic circumstances.

In response, the shippers did not challenge the substantial economic change threshold. They maintained, however, that FERC employed a "newly articulated standard" in its ruling and, therefore, the D.C. Circuit should remand the case to allow the shippers to demonstrate the substantial change circumstances threshold.

100. See BP West Coast Prods., 374 F.3d at 1276 (refuting shippers' argument). The shippers argued that FERC's interpretation was erroneous because it added a requirement not contained in the text. Id. Yet, the D.C. Circuit determined that FERC's interpretation was reasonable. Id.

101. See id. (noting that D.C. Circuit determined that statutory language required protest, investigation or complaint to concern rate).

102. See id. at 1279-80 (discussing reasons for not permitting shippers to demonstrate substantial change circumstances).

103. See id. at 1279 (noting that shippers failed to use correct time period when determining increased throughput).

104. See 1999 Comm. On Oil Pipeline Reg. Ann. Rep., A.B.A Sec. Pub. Util., Comm. And Transp. L., http://www.abanet.org/pubutil/oil.html (discussing FERC's interpretation of EPAct language regarding grandfathered rates and substantially changed circumstances). To satisfy the substantially changed circumstances threshold, a challenger must demonstrate that a material change has occurred to one of the following elements that was the basis for the grandfathered rate: (1) volumes; (2) asset base; (3) operating costs; (4) capital costs. Id.

105. See id. (describing appropriate time periods of comparison for measuring substantially changed circumstances). FERC concluded that to establish a substantial change, the shippers should have compared the period before the West Line rates became effective in 1989 to the period between EPAct's enactment and the date of a filed complaint. Id.

106. See BP West Coast Prods., 374 F.3d at 1279 (noting that shippers proposed that they should be allowed to litigate under newly articulated evidentiary requirement).
an opportunity to litigate under this new standard.\textsuperscript{107} The court rejected the shippers’ argument by concluding that the statutory language was sufficiently clear concerning the time period in a substantial change analysis.\textsuperscript{108} The D.C. Circuit did not remand the case on this claim because the statute provided the shippers with “adequate notice” of the statutory standards.\textsuperscript{109}

The D.C. Circuit remanded the case based on the shippers’ alternative claim that SFPP’s inclusion of income tax allowances in its rates constituted a substantial economic change.\textsuperscript{110} In Lakehead, FERC held that limited partnerships may include certain income tax allowances in their cost of service.\textsuperscript{111} In BP West Coast Products, FERC refused to apply Lakehead because the shippers did not prove how the Lakehead policy would affect the economic basis for the rates and so this did not constitute substantially changed circumstances.\textsuperscript{112} The court remanded the claim for further consideration because it deemed certain “aspects of the Commission’s Lakehead policy [to be] arbitrary and capricious.”\textsuperscript{113}

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\textsuperscript{107}. See id. (noting that shippers did not contest FERC’s interpretation of EPAct’s substantial change provision or FERC’s holding that shippers failed to meet substantial change standard).

\textsuperscript{108}. See id. (noting that statutory text supports FERC’s holding). To prove changed economic circumstances, a shipper must show that the economic circumstances underlying the rate have changed. Id.

\textsuperscript{109}. See id. at 1279-80 (noting clear textual support on statute’s face). EPAct provides that the complaint must show that a substantial change occurred after EPAct’s enactment. Id.; see also Energy Policy Act of 1992 § 1803, 42 U.S.C. § 7172. The D.C. Circuit held that pursuant to the statute, the first time when a shipper can prove a substantial change is after EPAct’s enactment. BP West Coast Prods., 374 F.3d at 1279-80. The statutory language providing that “no ‘complaint’ may be filed unless ‘evidence is presented’ with the complaint that demonstrates that a substantial change ‘has occurred’” meant that the last day for evidence to be presented is the day the complaint is filed. Id.; see also Energy Policy Act of 1992 § 1803, 42 U.S.C. § 7172.

\textsuperscript{110}. See BP West Coast Prods., 374 F.3d at 1280 (noting that D.C. Circuit concluded that certain aspects of FERC’s Lakehead adjudication were arbitrary and capricious). The D.C. Circuit rejected FERC’s conclusion that the mere existence of the Lakehead policy, in the absence of showing how the policy affected the rates’ economic basis, did not constitute evidence of substantially changed circumstances. Id.


\textsuperscript{112}. See BP West Coast Prods., 374 F.3d at 1280 (noting that policy by itself is not evidence of substantial change because FERC must show how policy’s application constituted substantial change).

\textsuperscript{113}. See id. (noting that D.C. Circuit’s reasoning was based on its analysis of contractual prohibition).
V. CRITICAL ANALYSIS

The D.C. Circuit Court correctly interpreted EPAct's grandfathering provisions because the court strictly adhered to the statute's requirements for grandfathering. 114

A. Chevron Deference

The D.C. Circuit conferred substantial deference to FERC's interpretation of the word "rate." 115 Applying Chevron deference was proper in this instance because, through EPAct, Congress impliedly delegated to FERC the authority to administer the grandfathering clause. 116 In Mead, the Supreme Court determined that when a statute contains gaps which the agency must fill, Congress is deemed to have delegated to the agency the authority to create regulations to fill the gap. 117 Congress thus impliedly delegated to FERC the authority to administer EPAct's grandfathering provisions. 118

EPAct states that when challenging a rate that is deemed just and reasonable, a person must present evidence to FERC "which establishes that a substantial change has occurred after the date of the enactment of this Act." 119 Moreover, the statute states that "[i]f the Commission determines pursuant to a proceeding instituted as

115. See Ass'n of Oil Pipe Lines v. Fed. Regulatory Comm'n, 83 F.3d 1424, 1429 (D.C. Cir. 1996) (discussing how substantial deference to FERC's adjudications is consistent with Congress' policy objectives behind EPAct). EPAct was enacted to reform America's energy policy objectives "in response to energy price shocks in the prior two decades." Id. Those objectives were to streamline regulation and provide price flexibility, while preventing excessive rates. Id. Therefore, courts give deference to FERC to further the statutory objective and avoid unnecessary cost, delays and charges against any captive shippers on oil pipelines. Id.
116. See BP West Coast Prods., 374 F.3d at 1273 (concluding that FERC's interpretation of rate was just and reasonable).
117. See United States v. Mead Corp., 533 U.S. 218, 227 (2001) (discussing that when Congress expressly delegates authority to agency, agency's adjudications are binding "unless procedurally defective, arbitrary or capricious in substance, or manifestly contrary to the statute"). Courts should give substantial deference to FERC's adjudications because this is consistent with policy objectives behind EPAct. Ass'n of Oil Pipe Lines, 83 F.3d at 1429.
118. See Energy Policy Act of 1992, 42 U.S.C. § 7172 (outlining FERC's authority to adjudicate). EPAct states that in addition to FERC's specific statutory functions, "[t]he Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission." 42 U.S.C. § 7172(a)(2).
119. See id. (enumerating statutory requirements to challenge grandfathered rate).
a result of a complaint . . . that the rate is not just and reasonable, the rate shall not be deemed just and reasonable." 120 This statutory language suggests that Congress intended that shippers would file complaints with FERC and that FERC would then review the evidence and decide the case consistent with the terms and conditions of EPAct's grandfathering provisions. 121

In addition to this grant of authority, the courts give great deference to an agency's interpretation of the statute it administers. 122 Therefore, the D.C. Circuit properly applied Chevron deference because Congress impliedly delegated to FERC the authority to adjudicate disputes concerning the grandfathering provisions. 123

B. East Hynes Station

In EPAct, Congress did not directly speak to the issue of whether adding a new origination point, East Hynes Station, on an already existing pipeline constitutes a new rate. 124 Rate is defined in EPAct as "all charges that an oil pipeline requires shippers to pay for transportation services." 125 The definition, however, remains silent with respect to the issue of adding new origination points. 126

120. See id. (describing weight of agency adjudication).
121. See BP West Coast Prods., 374 F.3d at 1272 (discussing reasoning for conferring Chevron deference).
122. See Mead, 533 U.S. at 227 (describing reasons for extending judicial deference to administrative agency's statutory interpretations). Judicial deference is reasonable because an agency's statutory interpretations are based on the agency's experience and informed judgment. Bragdon v. Abbott, 524 U.S. 624, 642 (1998).
123. See Chevron U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842 (1984); see also Ass'n of Pipe Lines v. Fed. Energy Regulatory Comm'n, 83 F.3d 1424, 1428 (D.C. Cir. 1996) (discussing history of oil pipeline rate regulation). Since the Hepburn Act of 1906, oil pipelines were regulated under the Interstate Commerce Act (ICA). Ass'n of Oil Pipe Lines, 83 F.3d at 1428. In the Department of Energy Organization Act, FERC was delegated the authority to regulate the oil pipelines. Id. In accordance with FERC's authority, Congress directed FERC to devise its own rules consistent with § 1(5) of the ICA which requires just and reasonable rates. Id. The authority Congress delegated to FERC to promulgate final rules for ratemaking and procedures is an example of the explicit agency authority necessary for Chevron deference. Chevron, 467 U.S. at 842.
124. See Chevron, 467 U.S. at 842 (noting that where agency's interpretation is reasonable, judicial deference will be given). Id. With respect to the issue of whether the addition of a new origination point constitutes a new rate, Congress has not directly spoken to the issue, therefore, the court must determine whether FERC's interpretation of the statute was reasonable. BP West Coast Prods., 374 F.3d at 1273.
126. See id. § 1804 (stating statutory definition). The issue of whether the addition of a new origination point constituted a new rate ineligible for grandfathering centered on the definition of the term rate. BP West Coast Prods., 374 F.3d at 1272.
Due to this silence, the court properly deferred to FERC's reasonable statutory interpretation.\(^\text{127}\)

Based on FERC's interpretation of rate, FERC concluded that the new rate from East Hynes Station was still subject to grandfathering for two reasons: (1) the rate from the new origination point was not new; and (2) there was no change to the service being provided from this new point.\(^\text{128}\) Although SFPP revised Tariff Nos. 15, 16 and 17 in July 1992 after the one year period had already begun to run, FERC concluded that the addition of a rate for shipping services from a new origination point to Arizona was not new because it was equal to SFPP's rates at two of its other source points.\(^\text{129}\) Also, there was no change since EPAct's enactment in the services being provided.\(^\text{130}\) The rate from East Hynes station, therefore, was subject to grandfathering.\(^\text{131}\)

The D.C. Circuit affirmed FERC's interpretation of the rate as reasonable because absent a change to existing shipping rates, a rate is not considered new.\(^\text{132}\) Further, EPAct also states that any rate effective for the one year period prior to EPAct's enactment is deemed just and reasonable, regardless of whether a new rate has been filed during this period.\(^\text{133}\) Therefore, since the rate for East

\(^{\text{127}}\) See *Chevron*, 467 U.S. at 842 (holding courts must give judicial deference to reasonable agency interpretations). Congress has not directly spoken to the issue of whether adding a new origination point constituted a new rate, therefore the D.C. Circuit had to determine whether FERC's statutory interpretation was reasonable. *BP West Coast Prods.*, 374 F.3d at 1273.

\(^{\text{128}}\) See *BP West Coast Prods.*, 374 F.3d at 1272-73 (discussing FERC's adjudications).

\(^{\text{129}}\) See *id.* at 1272 (discussing new origination point rate). The rate from the new origination point qualified for grandfathering because it was equal to SFPP's other filed rates and did not involve a change in rate or services SFPP provided prior to EPAct's enactment. *id.*

\(^{\text{130}}\) See *id.* (discussing FERC's reasons for extending grandfathering benefits to rate of new origination point).

\(^{\text{131}}\) See *id.* at 1273 (concluding that adding new origination point to already existing rate structure, without changing existing shipping rates, was not new rate).

\(^{\text{132}}\) See *id.* (affirming FERC decisions on new origination point). The D.C. Circuit held that FERC's statutory interpretation was permissible and, therefore, the D.C. Circuit affirmed the conclusion that the East Hynes shipping rate qualified for grandfathering. *id.*

\(^{\text{133}}\) See *Energy Policy Act of 1992 § 1803(a)(2)*, 42 U.S.C. § 7172 (discussing requirements for rate to be deemed just and reasonable). The improvements to the West Line made after October 1991 were eligible for grandfathering because the revised rates satisfied the statutory requirements. *BP West Coast Prods.*, 374 F.3d at 1273. The revised rate already was effective prior to EPAct's enactment. *id.* Also, the revised rate was neither a substantial change in the economic circumstances nor in the nature of the services provided, which were the basis of the rate. *id.* Therefore, the statutory requirements to challenge the reasonableness of a rate were not met. *id.*
Hynes was equal to two of SFPP's other source points that were effective since 1989, and both the product and service being provided had not changed, the D.C. Circuit concluded that pursuant to EPAct's terms, the rate was just and reasonable, and thus, eligible for grandfathering.\textsuperscript{134}

C. Unfiled Rates

The "filed rate" doctrine gives FERC "an opportunity in every case to judge the reasonableness of the rate."\textsuperscript{135} Since most of SFPP's rates were unfiled, FERC was precluded from judging their reasonableness during the one year period prior to EPAct's enactment.\textsuperscript{136}

By November 1, 1991, most of SFPP's shippers had entered into contracts with new, unfiled rates for enhanced shipping services.\textsuperscript{137} These rates were not filed with FERC by October 1991, and this precluded FERC from having an opportunity to review the reasonableness of the rate during the 365-day period prior to EPAct's enactment.\textsuperscript{138} Despite the statutory requirements, FERC concluded that these unfiled rates qualified for grandfathering.\textsuperscript{139}

\textsuperscript{134} See BP West Coast Prods., 374 F.3d at 1273 (holding rate for new origination point is just and reasonable). The D.C. Circuit denied the shippers' challenge to the eligibility for grandfathering of improvements to the West Line. \textit{Id.}


\textsuperscript{136} See BP West Coast Prods., 374 F.3d at 1273 (discussing reasons for not affirming FERC's adjudication regarding this issue).

\textsuperscript{137} See id. (explaining enhanced shipping service contracts). In 1989, SFPP notified its shippers that Watson's (the West Line's primary origination point), minimum pumping rate and pressure would increase. \textit{Id.} SFPP gave its shippers the option of providing their own pressurization facilities or using one of SFPP's facilities for a surcharge. \textit{Id.} The majority of SFPP's shippers had entered into contracts to use SFPP's enhanced services. \textit{Id.} On November 1, 1991, SFPP began its new enhanced facility. \textit{Id.} SFPP, however, never filed the enhanced services contracts with FERC because it believed these contracts were beyond FERC's jurisdiction. \textit{Id.}

\textsuperscript{138} See id. (discussing that FERC did not become aware of these contracts until 1991). When FERC found out about the enhanced services contracts, it required SFPP to file a rate equal to historic charge in the shipper contracts. \textit{Id.}

\textsuperscript{139} See id. (explaining FERC's decision to grandfather unfiled rates). FERC reasoned that enhanced services contracts qualified for grandfathering because the contracts were enforceable, the contract rates were equal to an enforceable rate and the contracts were effective prior to EPAct's enactment. \textit{Id.} at 1273-74. As a result, FERC concluded that to challenge the enhanced services contract rates, the shippers must present evidence of a substantial change because these rates qualified for grandfathering as they were not challenged during the one year period prior to EPAct's enactment. \textit{Id.} at 1274. Thus, FERC denied the shippers' challenge to the rates because they were not filed. \textit{Id.}
In *BP West Coast Products*, the D.C. Circuit used the statutory language to conclude that the unfiled rates did not qualify for grandfathering because they failed to meet the statutory requirements.\(^{140}\) The D.C. Circuit's conclusion that the rates could not be grandfathered because it was impossible to ascertain whether all of the contracts met the requirements for grandfathering, proved just.\(^{141}\)

The statutory requirements for grandfathering are clear.\(^{142}\) A rate must be effective for at least one year prior to EPAct's enactment and, during this time, the rate must not be subject to protest investigation or complaint.\(^{143}\) The effective date of the unfiled rates was unknown, so some may have come into effect after the one year period lapsed, precluding the rates from qualifying for grandfathering.\(^{144}\) To conclude otherwise would undermine EPAct's purpose to streamline litigation over pre-existing EPAct rates.\(^{145}\)

Further, the D.C. Circuit should not extend judicial deference to FERC's reasoning that had the rates been filed, they would not have been subject to protest, investigation or complaint.\(^{146}\) Judicial deference is accorded where FERC's adjudication is reasonable.\(^{147}\) FERC's factual determinations are conclusive if they are supported by substantial evidence.\(^{148}\) Here, FERC's conclusion is not sup-
ported by substantial evidence because its conclusion was based on pure speculation.\textsuperscript{149}

EPAct was designed to streamline litigation for rates that were deemed just and reasonable prior to its enactment.\textsuperscript{150} Permitting FERC to deviate from EPAct's requirements would allow FERC to extend the benefits of grandfathering arbitrarily and allow shippers to entirely circumvent litigation.\textsuperscript{151} The D.C. Circuit thus properly concluded that FERC's reasoning was "fundamentally flawed," and properly vacated FERC's determination.\textsuperscript{152}

D. Transportation of Turbine Fuel

The D.C. Circuit's conclusion that the new fuel rate could not be grandfathered because this rate was not filed during the one year period prior to EPAct's enactment, was reasonable because the tariff was not actually reviewed prior to a determination that it was just and reasonable.\textsuperscript{153} Pursuant to EPAct, FERC has a dual responsibility: (1) to ensure just and reasonable pipeline rates; and (2) to simplify and streamline ratemaking through generally applicable procedures.\textsuperscript{154} Although FERC has attempted "to conduct only very light-handed regulation," the court has required FERC "to comply . . . with its duty to ensure that oil pipeline rates 'shall be just and reasonable.'"\textsuperscript{155} Despite the statutory requirements, FERC concluded that the rate for turbine fuel was unchallengeable because it was equal to other Tariff No. 18 rates that were deemed just and reasonable.\textsuperscript{156}

\textsuperscript{149. See \textit{BP West Coast Prods.}, 374 F.3d at 1273-74 (stating FERC's reasoning for grandfathering unfiled rates). FERC reasoned that the unfiled rates qualified for grandfathering because the rates were unchallenged during the one year period prior to EPAct's enactment. \textit{Id.}}

\textsuperscript{150. See \textit{Ass'n of Oil Pipe Lines v. Fed. Energy Regulatory Comm'n}, 83 F.3d 1424, 1429-30 (D.C. Cir. 1996) (discussing Congress' reasons behind EPAct).}

\textsuperscript{151. See \textit{BP West Coast Prods.}, 374 F.3d at 1272-73 (discussing D.C. Circuit's reasons for not according judicial deference to FERC's adjudications). If FERC could extend grandfathering at its discretion, FERC would violate its purpose to enforce the terms and conditions of EPAct. \textit{Id.}}

\textsuperscript{152. See \textit{id.} at 1274 (stating D.C. Circuit's holding).}

\textsuperscript{153. See \textit{id.} at 1275 (discussing turbine fuel rates). It was noted that the turbine fuel rates having been "deemed just and reasonable does not mean that the rates actually are just and reasonable." \textit{Id.}}

\textsuperscript{154. See \textit{Ass'n of Oil Pipe Lines}, 83 F.3d at 1428 (discussing Congress' purpose for enacting EPAct).}

\textsuperscript{155. See \textit{id.} at 1429 (citing \textit{Farmers Union Cent. Exch. v. Fed. Energy Regulatory Comm'n}, 734 F.2d 1486, 1500-10 (D.C. Cir. 1978)).}

\textsuperscript{156. See \textit{BP West Coast Prods.}, 374 F.3d at 1275 (noting that rate did not qualify for grandfathering because it was considered new).}
This conclusion is contrary to the intent of EPAct to streamline litigation regarding just and reasonable oil pipeline rates.\textsuperscript{157} Congress transferred regulatory authority to FERC in EPAct, while also working in conjunction with FERC to create EPAct provisions, both of which affirm FERC's adjudicative authority.\textsuperscript{158} Despite FERC's duty to ensure that oil pipeline rates are just and reasonable, the grandfathered status of rates is subject to specific narrow exceptions enumerated in the statute.\textsuperscript{159} As a result, FERC is precluded from departing from the statutory exceptions and creating its own \textit{ad hoc} determinations.\textsuperscript{160}

The rate was not just and reasonable because the turbine fuel rate was new and the time had lapsed for it to be protected by the provision.\textsuperscript{161} The turbine fuel service itself was new and would likely result in increased cost for operating pipelines or volumes which are two basic elements of the economic basis for a rate to qualify as a substantial change precluding the rate from grandfathering.\textsuperscript{162}

The D.C. Circuit properly vacated FERC's conclusion and required it to enforce the statutory terms and conditions.\textsuperscript{163} Consistent with the holding of the D.C. Circuit, FERC cannot extend the protections of grandfathering to rates that were not effective one year prior to EPAct's enactment even if FERC's rationale is to further the purpose of EPAct to reduce litigation.\textsuperscript{164}

Further, the D.C. Circuit precluded FERC from reaching a conclusion that was inconsistent with the evidence presented.\textsuperscript{165} In

\textsuperscript{157. See Ass'n of Oil Pipe Lines, 83 F.3d at 1429-30 (describing how EPAct was formulated to execute Congress' intent).}
\textsuperscript{158. See id. at 1428-29 (discussing delegation of regulatory authority to FERC, as well as Congress' requirement that FERC execute EPAct to further national energy policy).}
\textsuperscript{159. See id. at 1429 (noting that Congress enacted EPAct to streamline process for challenging grandfathered rates to avoid unnecessary litigation).}
\textsuperscript{160. See Energy Policy Act of 1992 § 1803, 42 U.S.C. § 7172 (enumerating limited challenges that one may bring under EPAct); see also BP West Coast Prods., 374 F.3d at 1272 (noting only grandfathered rates falling within exception may be altered by FERC).}
\textsuperscript{161. See BP West Coast Prods., 374 F.3d at 1275 (discussing FERC's flawed conclusion).}
\textsuperscript{162. See id. (noting that with regard to turbine fuel, FERC determined that service was new and therefore did not qualify for grandfathering).}
\textsuperscript{163. See generally Energy Policy Act of 1992 § 1803, 42 U.S.C. § 7172 (describing statutory grandfathering requirements rate must meet).}
\textsuperscript{164. See BP West Coast Prods., 374 F.3d at 1271-72 (discussing that turbine fuel was new product and its transportation was new service provided after EPAct's enactment).}
\textsuperscript{165. See id. (noting that FERC concluded that turbine fuel could not be grandfathered). In general, a court should give deference to an agency's statutory
BP West Coast Products, the turbine fuel rate was new, and the time had lapsed for it to be protected by the provision.166 If the D.C. Circuit deemed the rate just and reasonable solely because it was equal to other rates that had been legitimately deemed just and reasonable under EPAct, the court would create a slippery slope whereby FERC would be responsible for determining under what circumstances a rate that fails the statutory requirements is still entitled to grandfathering benefits.167 These arbitrary adjudications would undermine the purpose of EPAct’s requirements for grandfathering.168

EPAct serves to protect pipeline rates that have undergone substantive review and have satisfied the specific requirements enumerated in the statute to be considered just and reasonable.169 Allowing a rate to receive the protections of EPAct without undergoing a substantive review of a rate’s reasonableness would permit FERC to arbitrarily decide which rates are grandfathered without adhering to the terms of EPAct and thus circumvent litigation entirely.170

Congress gave FERC regulatory authority in the administration of EPAct, but Congress did not grant FERC discretionary power to deem any rate just and reasonable.171 In BP West Coast Products, the D.C. Circuit correctly concluded that grandfathering benefits did not extend to the turbine fuel rate because it was impossible to ascertain whether the turbine fuel rate met the statutory requirements.172

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166. See BP West Coast Prods., 374 F.3d at 1275 (noting that turbine fuel could not be grandfathered because it failed to meet EPAct’s requirements).
167. See id. (noting that FERC is prohibited from making arbitrary adjudications about substantive reasonableness of rates).
168. See id. at 1271 (discussing how EPAct limits shippers’ ability to challenge pipeline rates that were effective prior to EPAct’s enactment).
169. See id. at 1275 (discussing requirements for rate to be considered just and reasonable).
170. See id. at 1271 (noting that FERC “may not alter a grandfathered rate that does not fall within an exception”).
172. See BP West Coast Prods., 374 F.3d at 1271 (discussing rates deemed just and reasonable must meet statutory requirements). The evidence presented was inconclusive because it did not confirm when the turbine rates became effective. Id. The D.C. Circuit properly noted that the evidence presented did not support FERC’s conclusion. Id. at 1275-78. The shippers’ evidence was inconclusive because it was evidence of a general challenge to the rates. Id.
E. Protest, Investigation or Complaint

The D.C. Circuit properly interpreted the statutory language concerning the specificity required to successfully challenge the statute. Pursuant to EPAct, a rate that has satisfied the one year requirement period and "has not been subject to protest, investigation, or complaint during such 365-day period" is deemed just and reasonable. The D.C. Circuit's holding is consistent with the statutory language and purpose because a grandfathered rate is a rate that has already been deemed just and reasonable. To successfully challenge a grandfathered rate, a shipper must present evidence that establishes that the rate is not reasonable and should not be protected by EPAct.

VI. IMPACT

BP West Coast Products represents the principle that if FERC's decisions are considered arbitrary and capricious, a court will strictly adhere to EPAct. Courts have recognized this proposition, noting that when reviewing grandfathered rates, a court's main inquiry is whether FERC's action was arbitrary and capricious. Courts' limited review of FERC's determinations serves as a check on FERC's regulatory authority and ensures that FERC adheres to its duties to enforce the terms and conditions of EPAct.

By strictly adhering to EPAct's requirements, the D.C. Circuit has clarified the changed circumstances threshold, and consequently furthered EPAct's objective to streamline litigation in four
ways. First, the D.C. Circuit held that adding a new origination point to an already existing pipeline does not constitute a substantial change. This determination will help reduce unnecessary litigation premised upon this argument in the future and further EPAct's policy objectives.

Second, although FERC's adjudication was not appealed, it is important to note that FERC's definition of a substantial change has also provided clarity for potential future challengers. Third, in order to meet this heightened threshold, a shipper must show that the substantial change occurred during the stipulated time period. The D.C. Circuit, adhering to FERC's conclusion, held that the requisite time period to demonstrate a substantial change is the period before the rate became effective, the basis of the rate, and anytime throughout the rate's effectiveness until the complaint is filed.

Fourth, the D.C. Circuit limited challenging a grandfathered rate based on protest, investigation or complaint to those that had previously challenged the rates' reasonableness. Since this is the first time that the changed circumstances standard has been litigated, these determinations are important as they shed light on the burden of proof necessary to challenge a grandfathered pipeline rate.

Clarifying the requirements of the statute not only provides a potential challenger with the appropriate threshold requirements necessary to bring a claim, but it also helps owners of pipelines de-
termine changes that would terminate grandfathered status of rates. Further, by strictly adhering to the terms of EPAct and preventing FERC from arriving at unfounded conclusions, the D.C. Circuit has provided some legal certainty necessary to determine the outcome of challenges to future rates.188

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188. See id. (noting that although it is too early to determine impact of FERC's decision on industry, FERC's decisions have provided legal clarity).