UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revisions to Indexing Policies and	**)**	
Page 700 of FERC Form No. 6	**)**	**Docket No. RM17-1-000**

REPLY COMMENTS OF THE ASSOCIATION OF OIL PIPE LINES

The Association of Oil Pipe Lines ("AOPL") hereby submits its reply comments with respect to the Advance Notice of Proposed Rulemaking issued herein, *Revisions to Indexing Policies and Page 700 of FERC Form No. 6*, 157 FERC ¶ 61,047 (2016) ("ANOPR"). AOPL specifically responds to the initial comments filed by the following groups of shipper interests (collectively, the "Shippers"): (1) Airlines for America, National Propane Gas Association, and Valero Marketing and Supply Company (collectively, the "Airlines"); (2) the Liquids Shippers Group; (3) the Canadian Association of Petroleum Producers ("CAPP"); (4) the Indicated Shippers, Chevron Products Company and XTO Energy, Inc. ("Chevron/XTO"); (5) Suncor Energy

Marketing Inc. ("Suncor"); (6) Sinclair Oil Corporation ("Sinclair"); and (7) R. Gordon Gooch.[1]

INTRODUCTION

As discussed in AOPL's Initial Comments, the ANOPR proposes a fundamental, unwarranted change in the regulatory regime that has governed oil pipelines for the past two decades. AOPL's Initial Comments explained that the Commission's well-established approach to regulating oil pipelines properly balances the interests of carriers and shippers, and that the ANOPR's proposed changes would (1) conflict with the intent of Congress regarding simplifying and streamlining oil pipeline regulation, (2) significantly impair the effectiveness of the indexing system and undermine the incentives it provides for cost efficiency and innovation on the part of pipelines, and (3) burden the entire oil pipeline industry with expensive and unnecessary accounting and reporting requirements. As AOPL stated in its Initial Comments, instead of reforming a flawed system, the ANOPR would undermine a system that has worked well for the vast majority of pipelines and shippers and which has encouraged much-needed investment in oil pipeline infrastructure.

[1] In addition to discussing the ANOPR, Mr. Gooch's comments address various issues not directly related to the ANOPR, including the income tax allowance that is the subject of the Notice of Inquiry in Docket No. PL17-1-000. *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 157 FERC ¶ 61,210 (2016) ("NOI"). AOPL addressed the income tax allowance issue in the NOI docket on March 8, 2017, when initial comments were filed.

Comments were also filed by the Texas Pipeline Association and the following individual pipeline companies: Buckeye Partners, L.P.; Colonial Pipeline Company; Delek Logistics Partners, LP; Enbridge Inc.; Enterprise Products Partners L.P., Enterprise TE Products Pipeline Company LLC, and Mid-America Pipeline Company LLC (collectively, "Enterprise"); Kinder Morgan, Inc.; Magellan Midstream Partners, L.P.; Marathon Pipe Line LLC; NuStar Logistics, L.P. and NuStar Pipeline Operating Partnership L.P (collectively, "NuStar"); Plains All American Pipeline, L.P.; and Shell Pipeline Company, L.P. The other pipeline commenters provided valuable context for the Commission regarding how the ANOPR's proposals would undermine Commission policies, adversely affect their businesses, and impose significant additional costs and regulatory burdens on their operations.

For example, with respect to the ANOPR's proposed changes to the standards for assessing indexed rate increases, Plains stated that the proposals are inconsistent with the goal of streamlining pipeline rate adjustments and decreasing rate litigation. Plains Comments at 2. Other commenters emphasized that the "ANOPR would arbitrarily diminish the [efficiency-enhancing] incentive at the heart of indexing," (Enterprise Comments at 3), and move "toward traditional utility regulation" that is not fitting for an oil pipeline regulatory approach that has yielded innovation and efficiencies. Kinder Morgan Comments at 5. With respect to the ANOPR's Page 700 reporting proposals, the pipeline commenters made clear that they do not keep information on an individual "system" basis and that the ANOPR's proposal "would impose a significant regulatory burden" and "fundamentally change [current pipeline] data collection and record-keeping structures." Buckeye Comments at 2, 15; *see also, e.g.*, Enterprise Comments at 6; Kinder Morgan Comments at 7. The individual pipeline commenters also discussed how the ANOPR's proposed definition of a "system" was ambiguous and failed to reflect the complexities of their pipeline operations. *See, e.g.*, Buckeye Comments at 5-9; Delek Comments at 7; Kinder Morgan Comments at 5-6; Magellan Comments at 1-4, 14-15; Marathon Comments at 16-17; NuStar Comments at 5-6; Plains Comments at 16-19.

In addition, Enbridge, which is one of the many oil pipeline companies to make "massive capital investments in new and expanded pipeline facilities over the past 20 years (and particularly in the last decade)," provided its perspective that "stability and predictability are essential for investors seeking to manage their risk in building long-life assets such as pipelines." Enbridge Comments at 4, 11. Enbridge explained that the ANOPR proposals "would bring disruptive change to a system that functions well today," "heighten the barriers to constructing new infrastructure," and "undermine the longer-term public interest in the adequacy of sufficient capacity," resulting in "reduced investment in new infrastructure, creating bottlenecks for shippers and disruptions to vital oil and products markets." *Id.* at 3, 4, 11.

The Shipper commenters, by contrast, generally support the ANOPR, but also suggest various changes and additional proposals, many of which were raised previously in connection with the petition for rulemaking in Docket No. RM15-19-000 and appropriately rejected in the ANOPR. As discussed further below and in AOPL's comments in Docket No. RM15-19-000,[2] the Shippers' various additional proposals regarding (1) indexing, (2) Page 700 reporting, and (3) the provision of pipeline workpapers would significantly compound the problems with the ANOPR and, if adopted, would result in an inefficient and burdensome regulatory structure that is inappropriate for the oil pipeline industry and inconsistent with longstanding Congressional and Commission policy.

With respect to indexing, Shippers seek to limit the ability of oil pipelines to increase their rates to keep pace with inflation if revenues exceed the Page 700 cost of service by various thresholds. By attempting to effectively impose utility-type, cost-of-service regulation on the industry-wide rate index, Shippers' proposals would eviscerate the efficiency incentives of the indexing methodology, which encourage pipelines to manage their costs effectively and tend to reduce future index levels for the long-term benefit of pipelines and shippers alike. Shippers' arguments fail to acknowledge that indexing encourages efficiency by permitting pipelines to retain profits from cost savings while ensuring that shipper interests are protected by limiting rates through the use of an index cap and lowering rate ceilings when inflation is low. As the Commission has long recognized, it is inherent that under an industry-wide index some pipelines will earn more than an allowed cost-of-service and some will earn less. Shippers' "over-recovery"

---

[2] AOPL's comments and reply comments in Docket No. RM15-19-000 are included herewith at Attachments A and B.

arguments also ignore that the Page 700 data may include revenue from non-cost-based rates established under other just and reasonable ratemaking methods (*i.e.*, market-based rates, settlement rates or grandfathered rates), and that, even from a purely cost-based perspective, the Commission has long-explained that Page 700 is simply a preliminary screening tool and not the ultimate measure of a pipeline's cost of service. Further, the record shows there is no systemic problem to be addressed, since the oil pipeline industry has been under-earning on a Page 700 basis every year going back to at least 1993, and by more than $1 billion annually in the vast majority of those years.

In urging the Commission to require separate Page 700 reporting for each individual pipeline system or segment, Shippers fail to present any relevant changed circumstance or other compelling reason for the Commission to depart from its established requirement for more than two decades that Page 700 be reported on a total-carrier basis. Such proposals have been rejected by the Commission in the past for good reason – 1) requiring oil pipelines to prepare disaggregated Page 700 reports would transform the Form No. 6 from an annual financial report into a document whose preparation would encompass many of the burdens involved in a full-blown, cost-of-service rate case, 2) the governing statutes require limited cost-of-service regulation of oil pipelines, and 3) given the industry dynamics, oil pipeline rate disputes occur infrequently. Indeed, as discussed below, the U.S. Court of Appeals for the D.C. Circuit has explained that cost-of-service rates are intended to be "the exception, rather than the rule" in the oil pipeline industry, and that an oil pipeline regulatory construct based in large part on the use of cost-of-service rates "would be inconsistent with Congress's mandate under the [Energy Policy Act of 1992 ("EPAct")]." As the record herein reflects, apart from the fact that the ANOPR and Shipper proposals are ambiguous and impracticable for oil pipelines, individual pipeline companies would need to invest millions of dollars and thousands of hours of company resources to comply with the requested disaggregated reporting. There is no justification for requiring oil pipelines to incur this substantial additional reporting burden given that the vast majority of oil pipelines have never been and are unlikely to ever be involved in a cost-of-service rate case.

Consistent with their approach of transforming the annual Form No. 6 report into something more akin to a full-blown, cost-of-service rate case, certain Shippers also challenge the ANOPR's finding that the provision of Page 700 workpapers to shippers and other interested persons is not necessary. The ANOPR's determination is consistent with the Commission's repeated rulings on this issue, and Shippers provide no valid reason to depart from the Commission's consistent rulings in this regard. The ANOPR also correctly found that requiring pipelines to provide their workpapers to all interested persons – including their competitors and the competitors of individual shippers – would raise significant confidentiality concerns.

Ultimately, the changes proposed by the ANOPR and Shippers are directly counter to Congress's mandate that oil pipeline rates be established using a simplified and streamlined mode of regulation, rather than reliance on a utility-type, cost-of-service regulatory regime, and to "avoid unnecessary regulatory costs" relating to oil pipeline regulation. Neither the ANOPR nor Shippers provide any valid basis for this radical break with established policy. The ANOPR's and Shippers' proposals are also inconsistent with recent executive orders issued by the new Administration that seek to reduce the costs and burdens of federal regulation. The Commission, therefore, should terminate this docket and decline to adopt the changes proposed in the ANOPR as well as the additional changes proposed by the Shippers.

DISCUSSION

I. The ANOPR and Shipper Proposals are Contrary to Congress' Mandate in EPAct, the Commission's Policy Goals, and the Administration's Policy to Reduce Regulatory Burdens.

In the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 3010 (Oct. 24, 1992) ("EPAct"), Congress required the Commission to "streamline" its procedures "relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays" and directed the Commission to implement a "simplified and generally applicable ratemaking methodology for oil pipelines." EPAct §§ 1801, 1802(a). The purpose of EPAct was to address the problem of burdensome cost-of-service rate litigation "[i]n order to reduce costs, delays, and uncertainties" with respect to oil pipeline ratemaking. *Ass'n of Oil Pipe Lines v. FERC*, 83 F.3d 1424, 1429 (D.C. Cir. 1996) ("*AOPL v. FERC I*") (citing H.R. Rep. No. 474, pt. 1, 102d Cong., 1st Sess. 225, *reprinted in* 1992 U.S.C.C.A.N. 1953, 2048).

Consistent with Congress' instructions, the Commission promulgated rules that "comprehensively revised its oil pipeline regulations in response to the mandate of the [EPAct]." *AOPL v. FERC I*, 83 F.3d at 1428. As discussed in AOPL's Initial Comments, the primary post-EPAct regulations relevant here were (1) Order No. 561, which established the oil pipeline rate index mechanism as the "simplified and generally applicable" ratemaking methodology for changing oil pipeline rates,[3] and (2) Order No. 571, which, among other things, directed that cost-of-service rate filings as well as the new Page 700 should be prepared on a total-carrier basis.[4] *See* AOPL Initial Comments at 18-21.

In keeping with the Congressional mandate, one of the primary goals of the Commission's post-EPAct regulations has been to minimize the need for expensive and time-consuming cost-of-service ratemaking. As the Commission emphasized, the post-EPAct regulations provide "*several ways of establishing just and reasonable rates*" other than cost-of-service ratemaking (*i.e.*, settlement rates, market-based rates and grandfathered rates). Order No. 561 at 30,940 (emphasis added). Moreover, by adopting indexing as the generally applicable method for changing oil pipeline rates, the Commission stated its intent to "eliminate the need for much future cost-of-service litigation." Order No. 561 at 30,941. In other words, the Commission established

[3] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, 58 Fed. Reg. 30,985 (Oct. 22, 1993), FERC Stats. & Regs., Regs. Preambles, 1991-1996, ¶ 30,985 (1993) ("Order No. 561"), *order on reh'g.*, Order No. 561-A, FERC Stats. & Regs., Regs. Preambles, 1991-1996 ¶ 31,000 (1994) ("Order No. 561-A").

[4] *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, 59 Fed. Reg. 59,137 (Nov. 16, 1994), FERC Stats. & Regs., Regs. Preambles, 1991-1996, ¶ 31,006 (1994) ("Order No. 571"), *order on reh'g*., FERC Stats. & Regs., Regs. Preambles 1991-1996, ¶ 31,012 (1994) ("Order No. 571-A").

indexing as the "ordinary scheme of rate changes," but permitted exceptions, such as cost-of-service ratemaking, in "special circumstances." Order No. 571 at 31,165.

On judicial review, the D.C. Circuit concluded that the post-EPAct regulations "*reasonably balanced [the Commission's] dual responsibilities of ensuring just and reasonable pipeline rates and simplifying and streamlining ratemaking through generally applicable procedures*." *AOPL v. FERC I*, 83 F.3d at 1428 (emphasis added). The court explained that, while cost-of-service rates are permitted as a safety valve when indexed rates prove inadequate, cost-of-service rates are intended to be "the exception, rather than the rule." *Id.* at 1442. Indeed, the D.C. Circuit has made clear that an oil pipeline regulatory construct based in large part on the use of cost-of-service rates "*would be inconsistent with Congress's mandate under the EPAct*." *Ass'n of Oil Pipe Lines v. FERC*, 281 F.3d 239, 244 (D.C. Cir. 2002) ("*AOPL v. FERC II*") (emphasis added).

For the reasons explained in AOPL's Initial Comments, the ANOPR proposals would impose significant additional burdens on oil pipelines with respect to annual reporting and ratemaking and move oil pipeline regulation back to the very cost-of-service regime that EPAct sought to avoid. As discussed further below, the Shippers' proposals are even more diametrically opposed to the simplification and streamlining goals of EPAct and the Commission's post-EPAct regulations.

In addition, subsequent to the issuance of the ANOPR, the President of the United States issued two executive orders designed to eliminate unnecessary and burdensome regulation. The first order makes clear that it is the "policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources." *Reducing Regulation and Controlling Regulatory Costs,* Exec. Order No. 13,771 § 1, 82 Fed. Reg. 9,339 (Jan. 30, 2017). The order states that it is "essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations." *Id.*[5]

The second executive order reiterates the "policy of the United States to alleviate unnecessary regulatory burdens placed on the American people," and directs federal agencies to designate a Regulatory Reform Officer and Regulatory Reform Task Force to ensure that each agency implements the President's "regulatory reform initiatives and policies." *Enforcing the Regulatory Reform Agenda*, Exec. Order No. 13,777, 82 Fed. Reg. 12,285 (Feb. 24, 2017).

The Administration's policy of reducing the costs and burdens of federal regulation is consistent with the goals of EPAct and the Commission's post-EPAct regulations. This statutory and regulatory purpose and the Administration's policy to

---

[5] The requirements of Exec. Order No. 13,771 that at least two existing regulations be identified for repeal for every new regulation and that the "total incremental cost of all new regulations . . . shall be no greater than zero" do not appear currently to apply to independent regulatory agencies such as FERC, although such agencies are encouraged to voluntarily comply. *See* Dominic J. Mancini, Acting Administrator, Office of Information and Regulatory Affairs, *Memorandum: Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled "Reducing Regulation and Controlling Regulatory Costs*," The White House (Feb. 2, 2017), https://www.whitehouse.gov/the-press-office/2017/02/02/interim-guidance-implementing-section-2-executive-order-january-30-2017. Nevertheless, the executive order establishes a clear policy of reducing the regulatory burdens on private enterprise.

eliminate unnecessary regulations further supports the conclusion that the ANOPR and Shipper proposals should not be adopted. As discussed herein, the ANOPR's proposals would lead to needless disputes and impose a significant, unwarranted increase in burdens on oil pipelines as well as on the Commission's resources. The Shippers' proposals would only compound these problems and must be rejected.

II. The Shipper Proposals Would Undermine the Effectiveness of Indexing and Lead Inevitably to More Burdensome Cost-of-Service Ratemaking Contrary to EPAct and the Commission's Post-EPAct Regulatory Regime.

The ANOPR proposes two primary changes to its standards for challenges to indexed rates: (1) the new "exacerbate" test, and (2) the new "percentage comparison" test. For the reasons discussed in AOPL's Initial Comments, the proposed changes would undermine the Commission's indexing methodology and impose unwarranted additional burdens on the oil pipeline industry contrary to EPAct and the Commission's own post-EPAct regulations. *See* AOPL Comments at 23-40. The Shippers' proposed changes to the ANOPR are similarly without merit.

A. The "Exacerbate" Test

As noted, the ANOPR proposed a new "exacerbate" test that would deny any increase in the indexed rate or index ceiling for pipelines whose Page 700 revenues exceed Page 700 total costs by 15 percent or more for both of the prior two years. ANOPR at P 13. Various Shippers propose even more restrictive versions of that test in which the "over-recovery" threshold would be lowered to 10 percent (CAPP Comments at 5), 7.5 percent (Airline Comments at 23), or even 5 percent (Liquids Shippers Group Comments at 16, Chevron/XTO Comments at 8, Suncor Comments at 2).[6]

For the reasons discussed in AOPL's Initial Comments, the ANOPR's proposed "exacerbate" test is fundamentally flawed and would undermine the purposes of the index, which are to (1) allow oil pipeline rates to keep pace with inflation without the need for burdensome cost-of-service review, (2) provide an incentive for pipeline operators to act efficiently, both by expanding output and managing costs, which benefits pipelines and shippers, and (3) give pipelines a certain degree of ratemaking flexibility that is crucial to promoting needed pipeline infrastructure investment and expanding services to shippers. *See* AOPL Initial Comments at 30-33. The Shippers' proposals would further undermine – if not completely eliminate – these benefits, by essentially imposing the very utility-type, cost-of-service ratemaking approach on oil pipelines that EPAct was intended to avoid.

Moreover, as the Airlines note, the 15 percent over-recovery threshold proposed in the ANOPR is arbitrary and "lack[s] a clear legal or logical foundation." Airline Comments at 22; *see also id.* at 24 (stating that "the ANOPR does not provide a meaningful foundation or basis for establishing a 15 percent over-recovery threshold level as opposed to any other over-recovery threshold level that could be applied"). The

---

[6] Mr. Gooch urges the Commission to reject all indexed rate increases for pipelines showing any level of over-recovery on the Page 700. Gooch Comments at 9.

lower thresholds proposed by the Shippers do not solve that issue, since they are equally arbitrary and unsupported.

1. Shippers' Proposals Would Eviscerate the Efficiency-Enhancing Goals of Indexing and Harm Shippers Over the Long-Term.

Indexing encourages individual pipelines to keep their costs below the level of their industry peers, which reduces the likelihood that pipelines will need to file a cost-of-service rate increase or that shippers will need to challenge pipeline rates on a cost-of-service basis. Moreover, by encouraging individual pipelines to manage their costs efficiently, the index helps constrain cost increases for the entire industry. That in turn tends to reduce future index levels and thus the motivation for shippers to file cost-of-service rate challenges. *See* Shehadeh Decl. at ¶ 15. "If cost-efficiency incentives are diluted, dynamic inefficiency results, and shippers are worse off." Shehadeh Decl. at ¶ 25.

Indeed, Shippers' near-sighted focus on "over-recovery" thresholds ignores the fact that shippers benefit from indexing over the long-term, as the oil pipeline industry as a whole has been under-earning on a Page 700 basis every year going back to at least 1993. *See* Shehadeh Decl. at ¶ 51. Notably, in the vast majority of those years the total industry Page 700 under-recovery has been more than $1 billion annually. *Id.* There is thus no ground to suggest there is any systemic problem that needs changing with respect to the current indexing approach.

As Dr. Shehadeh explained, the 15 percent "over-recovery" threshold proposed in the ANOPR will "dilute incentives for pipelines to lower costs," because "potentially efficient operators will only invest in efficiency improvements to the point at which revenues exceed costs by the allowed maximum mark-up of 15 percent." *Id.* at ¶ 20. Moreover, because pipeline managers are unlikely to know at the time that investment decisions are being made whether they will be "over-recovering" their cost-of-service when the cost savings are intended to be realized, the "proposed 15 percent test is therefore likely to lead to excessive caution" on the part of pipeline managers that, as things ultimately turn out, may not be affected by the specific "over-recovery" threshold at all. *Id.*

The lower "over-recovery" levels that the shippers propose will dilute the efficiency incentives of indexing even further. As Dr. Shehadeh explains, the "incentive to invest in cost-savings diminishes the more operators anticipate that a substantial share of their cost savings will be passed on to shippers." Shehadeh Decl. at ¶ 21. Indeed, since pipeline managers are likely to be cautious about making investments given the uncertainty of future recovery levels (even if they are not ultimately affected by a particular "over-recovery" threshold), the even lower thresholds proposed by the Shippers would undermine the goals of indexing to a greater extent.

It is also important to recognize that, if the low "over-recovery" thresholds proposed by Shippers were applied to each so-called "system," the negative consequences would be even more pronounced. Not only would any efficiency incentive be eviscerated, the proposals could lead to significant real-world harms to both pipelines and shippers alike. As AOPL explained in its Initial Comments, it is highly unlikely that the costs and revenues for each of a pipeline's individual systems would perfectly match the fully-allocated cost-of-service attributed to each system as shown on Page 700 in any given year. Thus, even if a pipeline were consistently under-recovering its overall cost-of-service, the Page 700 for certain individual systems may show over-recovery for those systems in certain years. If a pipeline were denied indexing increases for the systems on which the Page 700 showed revenues exceeding costs in the applicable period, while continuing to be capped at the industry-wide rate of inflation with respect to the systems on which it is under-recovering, the result would be to make it even more difficult for the under-recovering pipeline to recover its costs without resorting to a burdensome and expensive cost-of-service rate proceeding. That could cause the pipeline to eliminate its less profitable transportation services, thus leaving shippers with fewer transportation alternatives. *See, e.g.,* Texas Pipeline Association Comments at 5, 8-11 (discussing potential for reduction in provision of interstate transportation service); NuStar Comments at 8-9 (explaining that if its "integrated operations are artificially and arbitrarily forced to be separated for reporting and rate purposes, NuStar would have to examine the viability of continuing certain transportation services," and could "elect to not maintain service on [an] artificially created 'system' that is underutilized"). The low "over-recovery" thresholds would only compound these problems, as they would further restrict the ability of pipeline rates to keep pace with inflation and completely undermine any efficiency incentives that benefit pipelines and shippers over the long-term.

2. Shippers' Proposals Are Unsupported and Fail to Address the Impact on the Commission's Rate Indexing Policy Goals.

Shippers ignore the Commission's policy of encouraging efficiency-enhancing benefits for pipelines and shippers and provide no analysis of how their proposals will affect those incentives. Instead, Shippers argue that, unless their proposals to effectively impose cost-of-service regulation on index-based rates are adopted, pipelines may be able to "over-recover" their Page 700 cost-of-service. *See, e.g.*, Airline Comments at 23-28; CAPP Comments at 5-9; Chevron/XTO Comments at 3-13; Liquids Shippers Group Comments at 15-17. Those arguments fail to support their proposals.

As an initial matter, Shippers fail to demonstrate that a showing of revenues in excess of costs on the Page 700 is a reason to reduce a pipeline's ability to implement a rate index adjustment. As the Commission has long recognized, it is inherent that under an industry-wide index some pipelines will earn more than an allowed cost-of-service and some will earn less. Opinion No. 561, at 30,949. Indeed, the index mechanism affirmatively intends that pipelines that operate their systems more efficiently should earn more, since that is what provides the incentive for efficiency which benefits pipelines and shippers over the long-term. *See* Shehadeh Decl. at ¶¶ 12-16. As Dr. Shehadeh explained, "[d]enying ceiling level increases for exactly those pipelines that manage to reduce costs perverts the incentives the price cap regulation is meant to provide." Shehadeh Decl. at ¶ 18. In other words, "[a]s long as returns are high because of relatively lower cost changes rather than due to tariffs that exceed the ceiling, there is no reasoned justification for intervention with the rate setting of individual operators." *Id.*

Shippers' arguments that lower "over-recovery" thresholds are necessary because the ANOPR proposal would permit oil pipelines to earn an excessive rate of return on equity ("ROE") are simply another version of their "over-recovery" claims addressed above, and are similarly lacking in merit.[7] Further, a fundamental flaw in the Shippers' ROE calculations is their use of the total cost-of-service shown on Page 700 as a measure of the return allowed under cost-based rates. As AOPL explained in its Initial Comments, oil pipelines are permitted to charge grandfathered rates, market-based rates and settlement rates that are just and reasonable even if they may exceed the cost-based level. Thus, the so-called "over-recovery" reported on Page 700 may not only be due to the pipeline improving its operating efficiencies, but also because of revenue earned under one or more of these just and reasonable rates.

The Commission has made clear that not only is it entirely appropriate for a pipeline to earn revenue in excess of a company-wide cost-of-service as a result of just and reasonable non-cost-based rates, it is directly contrary to Commission precedent and policy to attempt to reduce a pipeline's cost-based rates because of perceived "over-

---

[7] For example, the Liquids Shippers Group, Chevron/XTO and Suncor contend that an "over-recovery" threshold of 5 percent would result in an achieved ROE of 12.3 percent, which they claim is at the high end of the zone of reasonableness for oil pipeline ROEs. *See* Liquids Shippers Group Comments at 16-17; Chevron/XTO Comments at 9-10; Suncor Comments at 2; *see also* Airline Comments at 23-28 (claiming an "over-recovery threshold of 7.5 percent would allow pipelines to earn an ROE that was 25 percent higher than the industry average); CAPP Comments at 7, n.21 (claiming an "over-recovery" threshold of 10 percent would permit the pipeline to earn an ROE of 14.1 percent).

recovery" related to revenue generated from the just and reasonable non-cost-based rates. *See, e.g.*, *Seaway Crude Pipeline Co. LLC*, 154 FERC ¶ 61,070 at PP 47, 219-22 (2016) ("Opinion No. 546"). Thus, denying pipelines the ability to adjust indexed rates for inflation (in other words, requiring them to reduce their indexed rates in real terms) because of revenue earned from just and reasonable non-indexed rates would be a blatant violation of EPAct's grandfathering provision and the Commission's market-based rate and settlement rate regulations and precedents.[8]

For the same reasons, the Page 700 "over-recovery" cannot be translated into an achieved ROE for cost-based rates in the manner that the ANOPR and Shippers propose. For example, a pipeline with grandfathered rates, market-based rates or settlement rates may show an "over-recovery" on Page 700 even though the revenue received from its cost-based rates is less than the cost of service attributable to those rates, in which case the achieved ROE with respect to its cost-based rates could well be negative. In short, the Shippers' overly simplistic calculations fail to support their claim that a pipeline showing a Page 700 "over-recovery" at a certain threshold will earn an excessive ROE with respect to its cost-based rates.

[8] There is thus no justification for Mr. Gooch's request that the Commission order all pipelines to reduce their tariff rates so that revenues will not exceed the Page 700 cost of service, even if the pipeline has market-based and settlement rates. Gooch Comments at 10. Mr. Gooch's suggestion would also violate the ICA's provision that a hearing is necessary to reduce existing pipeline rates. 49 U.S.C. § 15(1). In addition, as discussed further below, Mr. Gooch's suggestion is directly contrary to the Commission's longstanding policy of relying on shippers to challenge rates.

Even if the pipeline has only cost-based rates, Page 700 is a "preliminary screening tool," not the ultimate measure of a pipeline's cost-of-service. Order No. 571 at 31,168. As the Commission made clear in establishing Page 700, it "is not intended to be the information which, in itself, either forms the basis of a Commission decision on the merits of a pipeline filing, or demonstrates that the pipeline's proposed or existing rates are just and reasonable." *Id.* For example, the Commission made clear that cost allocation and rate design issues were reserved for hearing, and were not part of the Page 700 filing. *Id.* at 31,165-66. Parties may also propose alternative cost-of-service methods, such as stand-alone cost or some other method, as part of a rate case. *Id.*; *see also Williams Pipe Line Co.*, 31 FERC ¶ 61,377 at 61,834 n.22 (1985) ("Opinion No. 154-B") (Commission will consider alternatives to the Opinion No. 154-B cost-of-service methodology if "innovative solutions . . . are presented to it"). Thus, even with respect to cost-based rates, the ROEs that the Shippers derive from the various Page 700 "over-recovery" thresholds are not necessarily based on the cost-of-service that would be established in a rate case.

3. Shippers' Other Arguments in Support of Their Proposals Miss the Mark.

There is no merit to the Airlines' claim that a 7.5 percent Page 700 "over-recovery" threshold would align the Commission's indexing review process with the standard for challenges to grandfathered rates. Airline Comments at 24-27. The Airlines contend that a 7.5 percent Page 700 "over-recovery" threshold translates into ROEs that are approximately 25 percent above the industry average ROE, which they claim is the threshold the Commission uses in considering whether challenges to grandfathered rates may go forward. *Id.* at 26. Even if the Airlines' claim that a 7.5 percent "over-recovery" equals an ROE 25 percent above the industry average were valid (which it is not, at minimum, for the reasons explained above), the Airlines' proposal is not consistent with the Commission's test for whether a grandfathered rate may be challenged,[9] and is as equally unsupported and arbitrary as the other proposed thresholds.

CAPP proposes that index rate increases should be denied "in any one year in which reported revenues exceed costs by twenty percent." CAPP Comments at 4. In addition to the reasons stated above, CAPP's proposal should be rejected because it is based solely on one year's results. Given the potential volatility with respect to oil pipeline costs (*e.g.*, due to the variability of pipeline integrity inspection costs), reliance on such a limited period for review would unfairly deny pipelines the ability to increase their rates to keep pace with inflation. *See, e.g.*, Enbridge Comments at 14-15; Magellan

---

[9] Pursuant to EPAct, a grandfathered rate may only be challenged under certain limited conditions, including where the complainant establishes that a substantial change has occurred since the date of the enactment of EPAct in "the economic circumstances … which were the basis for the rate." EPAct § 1803(b)(1). The Commission has interpreted that test to require a complainant to demonstrate that the ROE earned on the rate at issue has *increased* by at least 25 percent over the ROE embedded in the grandfathered rate and that the increase has occurred since the passage of EPAct in 1992. *See, e.g.*, *Tesoro Ref. & Mktg. Co. v. Calnev Pipe Line LLC*, 134 FERC ¶ 61,214 at PP 17-18, 60 (2011). The Airlines' proposal, however, would deny an indexing increase based on the absolute level of the alleged ROE regardless of whether the ROE represents an increase from prior years (or from the ROE embedded in the grandfathered rate) and regardless of whether the indexing adjustment would increase the ROE.

Comments at 10-11; Plains Comments at 8-9. Moreover, in light of the competitive nature of the pipeline industry, denial of index rate increases based on short-term comparisons of costs and revenues may result in pipelines being unable to earn a reasonable return over the long-term if the pipeline is required to reduce (or not increase) its rates during periods of low demand while being denied the ability to increase its rates for inflation during periods of high demand. CAPP's proposal would also reduce incentives to undertake cost-saving investments that may not have a smooth pattern of cost reductions. *See* Shehadeh Decl. at ¶¶ 36-37.

Importantly, to the extent a pipeline's rates are deemed excessive, shippers already have the means to challenge them. The Liquids Shippers Group is therefore incorrect when it claims that indexing permits "automatic" rate increases[10] that are "not subjected to any scrutiny." Liquids Shippers Group Comments at 17. Indeed, the D.C. Circuit upheld the Commission's post-EPAct regulations in part because the Commission's pleading rules do not unduly restrict shippers from challenging pipeline rates. *See AOPL v. FERC I*, 83 F.3d at 1444 (rejecting claim that post-EPAct regulations improperly limit shippers' ability to challenge pipeline rates). The Commission has also made clear that shippers have the necessary tools to challenge pipeline rates and that shippers have invoked those processes on numerous occasions in the past. *See Review of FERC Form*

---

[10] Moreover, the annual index adjustment is subject not only to upward adjustment, but also to downward adjustment when inflation is low, as was the case in 2016.

Nos. 6 and 6-Q, 125 FERC ¶ 61,308 at P 7 (2008) ("the information provided in FERC Form No. 6 has been adequate to allow shippers over the last 10 years to file numerous complaints challenging rates").

B. The "Percentage Comparison" Test

The ANOPR's new "percentage comparison" test would deny any pipeline that shows an "over-recovery" on its Page 700 an increase in the indexed rate or index ceiling that exceeds five percentage points above the percentage change in the total costs per-barrel mile shown on Page 700 for the two most recent years. ANOPR at P 13. Most of the shipper commenters support the ANOPR's proposed percentage comparison test. CAPP Comments at 10; Liquids Shippers Group Comments at 15; Suncor Comments at 3; Sinclair Comments at 5. Two commenters, however, urge the Commission to discontinue use of the existing percentage comparison test. Chevron/XTO Comments at 10; Airline Comments at 28. For the reasons explained in AOPL's Initial Comments, there is no valid ground to change the Commission's current test. AOPL Initial Comments at 34-35.

Under the Commission's indexing regulations, a pipeline is permitted to increase its rates to a level that does not exceed the index ceiling, provided the rate increase is not "so substantially in excess of actual cost increases incurred by the carrier that the rate is unjust and unreasonable." 18 C.F.R. § 343.2(c)(1). If protested, the Commission determines whether a pipeline's rate increases are "substantially in excess" of actual cost increases by comparing the proposed percentage change in the pipeline's rates to the change in the total cost-of-service for the prior two years shown on the pipeline's Page

700. *See, e.g.*, *BP W. Coast Prods., LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141 at P 6 (2007). "If the percentage comparison test differential is greater than 10 percent, the Commission has historically investigated the protested index filing" through a hearing. ANOPR at P 10. If the differential is less than 10 percent, the Commission has generally accepted the indexed rate change. *Id.* The 10 percent test is also used to assess complaints against indexed rates. *BP W. Coast Prods., LLC v. SFPP, L.P.*, 123 FERC ¶ 61,121 at PP 6-7 (2008). The current percentage comparison test provides a clear standard for whether to investigate an indexed rate increase that properly balances the interests of carriers and shippers and maintains the intended simplicity of the indexing process.

For the reasons explained in AOPL's Initial Comments, the ANOPR's proposed percentage comparison test imposes additional unwarranted limitations on the ability of pipelines to adjust their rates consistent with the index. The ANOPR's proposed percentage comparison test would therefore make it more difficult for pipeline rates to keep pace with inflation and would dilute the benefits generated through the efficiency incentives of indexing.[11]

---

[11] Again, the negative effects of the ANOPR proposal are compounded if applied to individual "systems" rather than on a total-carrier basis, since it would further reduce any incentives for efficiency, make it harder for pipeline rates to keep pace with inflation, and lead pipelines to shut down less profitable systems. Review of cost increases on a system-by-system basis may also produce erratic results that show significant variability in cost changes from year to year for individual systems, even though the pipeline's

(Continued …)

Moreover, the problems related to the percentage comparison test proposed in the ANOPR are increased by the proposal to measure cost changes on a barrel-mile basis instead of on the absolute level of costs. *See* AOPL Initial Comments at 35; Magellan Comments at 11-13; Marathon Comments at 13-14; Plains Comments at 10-11. CAPP argues generally that measuring cost changes per barrel-mile helps to ensure that rates do not "depart[] from just and reasonable levels." CAPP Comments at 10-11. But the use of a barrel-mile metric could have significant perverse economic effects. Instead of encouraging pipelines to control costs, the ANOPR proposal could have the result of discouraging pipelines from moving additional volumes, which is directly contrary to what the Commission policy should be and historically has been. *See* Shehadeh Decl. at ¶ 41.

It also would not be practical to abandon the percentage comparison test and attempt to apply the "substantially in excess" standard on a "case by case basis." Airline Comments at 29; *see also* Chevron/XTO Comments at 11-13. The current test is reasonable and provides appropriate protection of shipper and pipeline interests. Abandoning it for a case-by-case determination of the issues would run directly counter to EPAct's goals of streamlined and simplified ratemaking.

---

overall costs may not have changed significantly (*e.g.*, due to pipeline integrity inspections that are unlikely to be conducted each year on each system).

The Airlines contend that "[s]ince only a very small number of index-based rate increase challenges occur every year relative to the total number of index-based rate changes, the Commission's examination of those challenges on a case by case basis would not create an unreasonable burden." Airline Comments at 29. The Airlines have it backwards: the small number of index-based challenges shows that the current system is working as intended and there is no compelling reason to change it. Indeed, the limited number of challenges is likely due in part to the current bright-line standard and streamlined procedures.

Ultimately, as the Commission has explained, the percentage comparison test is intended to "assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases" by "avoid[ing] extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review." *BP W. Coast Prods., LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141 at P 6 (2007) (emphasis and internal citations omitted); *see, e.g.*, *NuStar Logistics, L.P.*, 139 FERC ¶ 61,278 at PP 12-13 (2012) (explaining that the percentage comparison test maintains "the relative simplicity of the oil indexing process," and setting for hearing a tariff filing with a percentage comparison test differential greater than 10 percent). The proposals to abandon the existing straightforward and easy-to-apply standard with an amorphous test would likely turn every challenge to an indexed rate increase into a full-blown cost-of-service hearing. Those proposals are contrary to EPAct's purpose of simplifying oil pipeline ratemaking in order to avoid unnecessary regulatory costs. EPAct §§ 1801, 1802.

C. Cap on Index Ceiling

The shipper commenters generally appear to support the ANOPR's proposal to permit shippers to challenge, not only the pipeline's rate changes, but also its index ceiling calculation under the ANOPR's proposed two-part test. Liquids Shippers Group at 18; Chevron/XTO Comments at 8-9; Airline Comments at 21. The Liquids Shippers Group goes further, urging the Commission to "consider a policy under which a pipeline would lose the right to an indexed rate increase to the applicable ceiling level, if it chose not to implement the increase to the new ceiling level when the new ceiling level is established." Liquids Shippers Group at 18. There is no valid basis for these proposals.

The Commission has previously made clear that the index ceiling calculation is not a rate or practice that can be challenged under the Commission's regulations. *See Chevron Prods. Co. v. SFPP, L.P.*, 138 FERC ¶ 61,115 at PP 17-21 (2012); *Colonial Pipeline Co.*, 139 FERC ¶ 61,270 at PP 7-11 (2012). Nor is there any basis to preclude a pipeline from carrying forward the ability to recover revenues under indexed rate increases that it is unable to charge or chooses not to take in the current year. Doing so eliminates the ratemaking flexibility that is one of the key purposes of indexing, and would only lead to unnecessary contentiousness by encouraging pipelines to raise their rates when they might otherwise have delayed or foregone a rate increase. As AOPL explained in its Initial Comments, it would also undermine the goal that indexed rates keep pace with inflation and would further mute the benefits from the efficiency incentives of the index.

D. Summary denial of pipeline rate filings based on proposed tests

The ANOPR proposed that the "exacerbate" and "percentage comparison" tests "would serve as a sufficient basis … to deny a challenged index rate filing," and that it would not be necessary to refer the matter to an administrative law judge for further hearing. ANOPR at P 18. The shipper commenters generally appear to support this proposal. Airline Comments at 26; CAPP Comments at 8; Chevron/XTO Comments at 11.

For the reasons explained in AOPL's Initial Comments, summary rejection of an indexing increase would be a fundamental denial of due process. A pipeline should be given the opportunity to respond to claims that the level of revenue recovery on Page 700 is unreasonable, including the opportunity to make a showing that reported revenue is derived from rates that are not subject to an index challenge, such as market-based rates and settlement rates. Moreover, Shippers fail to explain why a hearing should not be held if a complaint (as opposed to a protest) is brought against a pipeline's indexed rates, since relying solely on the proposed two-part screen to lower a pipeline's indexed rates, without allowing the pipeline to defend its rates at hearing, would eliminate the challenger's burden of proof. It would also inappropriately deny the pipeline the opportunity to present evidence that may have arisen since its rates were filed to show that it is no longer over-earning or that the level of over-earning has declined, such that it was not "exacerbated" by the indexing increase. *See HollyFrontier Ref. & Mktg. LLC v. SFPP, L.P.*, 157 FERC ¶ 61,186 at PP 8-10 (2016) (dismissing complaint against indexing increase based on evidence that the difference between the pipeline's costs and revenues declined after the indexed rate was filed).

Suncor takes matters a step further, arguing that it "should be un-necessary for a shipper(s) to file a rate protest." Suncor Comments at 2. Instead, Suncor contends that the carrier should be required "to present evidence – effectively a cost-of-service analysis – that its tolls are just and reasonable despite failing the exacerbate test (and/or the percentage comparison test)" and allow shippers "at least 60 days to review and provide comments" on the cost-of-service filing. *Id.* at 2-3.

Suncor's proposal is contrary to the goals of EPAct and the Commission's indexing regulations. Suncor's proposal, by imposing a *de facto* annual cost-of-service rate filing, would lead to an expansion of cost-of-service ratemaking along with the attendant costs and burdens for pipelines, shippers and the Commission. Suncor's proposal also negates the Commission's longstanding policy of relying on shippers to challenge pipeline rates, which the ANOPR indicated would continue to apply. ANOPR at P 13 n.20 (the Commission "anticipates continued reliance upon affected shippers to bring challenges that apply the standards contemplated by the ANOPR to indexed rate changes"); *see also* Opinion No. 561 at 30,967. If the affected shippers see no reason to protest a given pipeline's rates, there is no valid justification for imposing on the pipeline an onerous cost-of-service rate filing requirement. The 60-day review period urged by Suncor of course is also inconsistent with the 15-day tariff review period afforded under the Commission's regulations. 18 C.F.R. § 343.3(a) and (b).

CAPP's suggestion that the Commission should initiate its own investigation into pipeline rates at certain levels of over-recovery (CAPP Comments at 8) is similarly contrary to the policy of relying on affected shippers to identify rate changes that warrant review. The Commission has previously explained that the "policy of streamlining and expediting the regulation of oil pipelines, as reflected in [EPAct], supports the notion of relying primarily upon the affected parties to bring challenges to rates." Opinion No. 561 at 30,967. The Commission has therefore made clear "that it does not contemplate invoking [its] authority [to initiate investigations of pipeline rates] except in the most unusual circumstances." *Id.* As discussed in AOPL's Initial Comments, there is no reason to depart from that settled practice.

III. The Shippers' Comments Fail to Support the ANOPR's Disaggregated Page 700 Reporting Proposal, Which Would Impose Unduly Burdensome Additional Reporting Requirements that are Inconsistent With EPAct and the Commission's Post-EPAct Regulations.

While the Airlines, like AOPL, explain that the ANOPR's proposal to require separate Page 700s for each "system" is fraught with ambiguities that would make it difficult to apply, most of the Shippers support the ANOPR Page 700 proposals. Airline Comments at 30, 33, 38. AOPL's Initial Comments addressed in detail why the ANOPR's proposed additional Page 700 reporting obligations are unnecessary, ambiguous, unduly burdensome, and inconsistent with EPAct and the Commission's post-EPAct regulations. AOPL Comments at 47-70. The Shippers' comments fail to provide any valid ground for the Commission to adopt the ANOPR proposals. The Airlines' attempt to resurrect its proposal that pipelines be required to file individual Page

700s for each pipeline "segment" is completely without merit and the ANOPR correctly rejected it.

A. The Shipper Comments Fail to Demonstrate Any Changed Circumstance or Other Compelling Reason to Justify the ANOPR's Proposed Departure from the Commission's Established Requirement to Report Total-Company Data.

Since the passage of EPAct more than two decades ago, the Commission has consistently interpreted that statute to require oil pipelines to file Page 700 reports on a total-carrier basis. *See* AOPL Comments at 49-54. The Shipper comments fail to point to any instance in which a challenge to a proposed or existing oil pipeline rate was dismissed for lack of segmented data. Nor do they present any relevant changed circumstance or other compelling reason why the Commission should depart from its established regulations. There is thus no reason to upset the Commission's well-considered decisions to reject reporting of Page 700 cost-of-service data on something other than a total-carrier basis.

1. The Commission Has Previously Rejected Shippers' Claim that an Individual System or Segment Page 700 Filing Requirement can be Squared With EPAct's Simplification Mandate.

Shippers argue that EPAct does not specifically prohibit the Commission from making the changes that they propose, and suggest that AOPL is proposing a novel and incorrect interpretation of that statute. Liquids Shippers Group Comments at 20-24; Airline Comments at 15-20. In fact, what Shippers challenge is the *Commission's* longstanding interpretation of EPAct. As AOPL explained in its Initial Comments, the Commission's decision to require pipelines to use total-carrier data for Page 700 reporting was not arbitrary, but was fully considered by the Commission, and its decision was grounded in EPAct's policy of ensuring just and reasonable rates by means of a simplified ratemaking methodology that avoided unnecessary regulatory costs and burdens. *See* AOPL Initial Comments at 49-54.

Shippers further argue that the Page 700 reporting and cost-of-service filing rules in Order No. 571 need not comply with EPAct on the ground that EPAct's mandate was allegedly "fulfilled" by the Commission's indexing regulations in Order No. 561 (Airline Comments at 15) and that Order No. 571 was "separate from" the Order No. 561 regulations. Liquids Shippers Group Comments at 22. On the contrary, the Commission made clear that Order No. 571 was "a companion to Order No. 561" and was also promulgated pursuant to the requirements of EPAct. Order No. 571 at 31,163-65. The Commission explained that its post-EPAct regulations work together to fulfill the policy objective of EPAct "to simplify and expedite the Commission's regulation of oil pipeline rates" consistent with the Interstate Commerce Act's requirement that rates be just and reasonable. Order No. 561 at 30,940.

During the rulemaking proceeding that established the Commission's cost-of-service filing and Page 700 requirements, certain shippers argued that the cost-of-service rate filing regulations should require that "the carrier provide cost allocation and rate design schedules with its rate filing." Order No. 571 at 31,166. The Commission rejected that proposal, explaining that the burden that would be imposed by a requirement to provide cost allocation and rate design information with a cost-of-service rate filing "is not justified, particularly since the cost-of-service methodology is an alternative to indexing." *Id.* The Commission therefore made clear that oil pipeline cost-of-service rate filings must be supported with a *total-carrier cost-of-service*, and that "[m]atters of rate design and cost allocation will be at issue only if the rates are protested and a hearing is conducted." *Id.* at 31,165-66. The Commission explained that its decision was "not arbitrary" but "*carefully balanced the need for threshold information against the burden that filing requirements could impose on pipelines*." Order No. 571-A at 31,253 (emphasis added).

The Commission rejected shipper requests for segmented Page 700 reporting "*[f]or the same reasons*." Order No. 571 at 31,166, 31,168 (emphasis added). The Commission concluded that requiring "a pipeline to demonstrate with precision its cost-of-service attributable to each individual pipeline system it operates," is a matter for a rate case, and should not be "required as part of Form No. 6, which is and shall remain primarily a financial report." *Id.* at 31,168-69.

On judicial review, the D.C. Circuit concluded that the post-EPAct regulations "reasonably balanced [the Commission's] dual responsibilities of ensuring just and reasonable pipeline rates and simplifying and streamlining ratemaking through generally applicable procedures." *AOPL v. FERC I*, 83 F.3d at 1428. In the approximately two decades since its post-EPAct regulations were promulgated, the Commission has consistently maintained the balance that it originally struck with respect to Page 700 reporting and cost-of-service rate filings. *See* AOPL Comments at 52-54. Shippers fail to present any reason why the Commission should upset that balance and impose onerous additional regulatory burdens on oil pipelines without any compelling showing that such changes are necessary.

2. Shippers fail to present any relevant changed circumstance or other compelling reason to justify their proposed departure from Commission precedent.

Shippers urge the Commission to depart from its longstanding policies, but their comments are almost entirely devoid of any explanation why such a change is warranted. Indeed, Shippers do not point to any instance in which the Commission has rejected a protest or a complaint because of a lack of segmented Page 700 data. It is also important to emphasize, as noted above, that for the past several years the oil pipeline industry as a whole has been under-earning on an Opinion No. 154-B cost-of-service basis by a total of more than $1 billion annually. *See* Reply Comments of the Association of Oil Pipe Lines, Docket No. RM15-20-000, at 76 (Sept. 21, 2015). There is thus no ground to suggest that shippers are unfairly burdened by the current regulatory regime.

The Liquids Shippers Group contends that while pipelines historically were primarily owned by integrated oil companies, "[t]oday, that is significantly less true, due in part to corporate spin-offs or sales to third parties of midstream assets into independently owned entities." Liquids Shippers Group Comments at 5. The Liquids Shippers Group makes the claim that these changes have led to "consolidation of pipeline ownership in midstream companies with increasing market power." *Id.* But independent pipeline companies are not a new phenomenon, nor do they provide any basis to impose new segmented Page 700 filing requirements on the oil pipeline industry. In fact, the case that resulted in the Commission's 1985 Opinion No. 154-B decision involved the independently-owned Williams Pipe Line Company. *See* Opinion No. 154-B at 61,832. Moreover, the Commission has for many years encouraged independent ownership and operation of energy transmission facilities as a means of promoting competition. Nor is there any evidence of greater industry concentration. On the contrary, there have been many new entrants into the oil pipeline industry in recent years, as the Commission is well aware. *See, e.g.*, Attachment A at 20 & n.2 (AOPL Initial Comments in Docket No. RM15-19-000 noting a 15 percent increase in Page 700 filings since 2008).

The Liquids Shippers Group claims there was less rate litigation when pipelines were owned by vertically integrated companies. Liquids Shippers Group Comments at 6, n.11. That claim lacks a factual foundation, and in any case is not evidence of any problem for the Commission to address. Given the sophisticated nature of oil pipeline shippers, pipelines and shippers continue to reach agreement on ratemaking matters in most instances.[12] The fact that some pipeline assets are owned by independent

---

[12] *See e.g.*, *Zydeco Pipeline Company LLC*, "*Order of Chief Judge Suspending Procedural Schedule, Waiving Period for Answers, and Ordering Status Report*," Docket No. IS14-607-000 (July 20, 2015) (Zydeco Pipeline Company LLC, the Liquids Shippers Group, and others reached a settlement in principle); *Buckeye Pipe Line Company, L.P.*, "*Joint Explanatory Statement Regarding Offer of Settlement and Joint Motion for Permission to Withdraw Complaints*," Docket Nos. OR14-41-000, OR13-3-000, and OR12-28-000 (June 19, 2015) (Buckeye Pipe Line Company, L.P., Delta Air Lines, Inc., JetBlue Airways Corporation, United Airlines, Inc. and US Airways, Inc. jointly filed an Offer of Settlement); *Enterprise TE Prods. Pipeline Co. LLC*, 137 FERC ¶ 61,009 (2011) (FERC approved a settlement among Enterprise TE Products Pipeline Company LLC and various shippers).

companies rather than large integrated oil companies provides no reason to impose a new burdensome segmented Page 700 filing requirement.

The Liquids Shippers Group also points to "a dramatic increase in domestic crude oil and [natural gas liquids] production in recent years due in large part to increases in shale development which has fueled the demand for new, expanded and reconfigured pipeline infrastructure." Liquids Shippers Group Comments at 5. But that fails to explain why it is necessary for pipelines to file Page 700s for each individual system. In fact, the increased number of new pipelines runs counter to the Liquids Shippers Groups' claim that segmented Page 700 data is required because of greater concentration in the industry. It also undercuts its entirely unsupported claim that pipelines have "increasing market power" and "a greater opportunity and incentive" to charge "excessive" rates. Liquids Shippers Group at 5-6. The entry of new pipelines into the market is evidence of competition, not market power. Moreover, new pipelines must justify their initial rates on a cost-of-service basis unless they obtain agreement of a non-affiliated shipper and no party protests. 18 C.F.R. § 342.2. Thus, any shipper on a new pipeline may require the pipeline to establish cost-of-service rates.[13]

---

[13] While a new pipeline's uncommitted shipper rates must generally be set on a cost-of-service basis as noted above, the pipeline may also offer contract rates through an open season to all shippers that agree to pay the rates and meet the applicable conditions. *See, e.g.*, *Marathon Pipe Line LLC*, 152 FERC ¶ 61,005 (2015); *Monarch Oil Pipeline LLC*, 151 FERC ¶ 61,150 (2015); *Express Pipeline LLC*, 151 FERC ¶ 61,093 (2015).

Far from providing compelling reasons for the Commission to depart from this established precedent, Shippers simply brush aside the past twenty years of oil pipeline regulation, relying instead on the bald assertion that the Commission must adopt their proposal in order to ensure that pipeline rates are "just and reasonable." Liquids Shippers Group Comments at 24. That argument, however, incorrectly assumes that "just and reasonable" oil pipeline rates must be cost-of-service rates and that cost-of-service rates must be calculated on an individual system or segment basis using a fully allocated cost methodology. As explained in AOPL's Initial Comments, those assumptions are simply wrong and are directly contrary to applicable Commission and court precedent. *See* AOPL Comments at 18-21, 35-40, 54-59.

In short, Shippers fail to demonstrate that there has been any change in circumstances or any other valid reason that would justify the burdensome new Page 700 reporting requirements proposed in the ANOPR. There is thus no valid ground for the Commission to depart from its consistent application of EPAct with respect to the level of information required to be included in the Page 700.

B. The ANOPR Correctly Rejected the Airlines' Segmentation Proposal, and the Airlines' Comments Provide no Valid Basis to Change that Conclusion.

As noted above, the Airlines challenge the ANOPR's proposal to require page 700s for each individual "system" on the ground that the ANOPR's definition of a "system" is arbitrary, ambiguous and difficult to apply. Airline Comments at 7, 30-38. Instead, the Airlines urge the Commission to reconsider the proposal to require a pipeline to file a separate Page 700 for each individual "segment." *See* Airline Comments at 7-8

& n.2. The Airlines made that proposal as part of the petition for rulemaking in Docket No. RM15-19-000 (*see id.*), and, consistent with prior Commission decisions, the ANOPR properly rejected it. ANOPR at PP 31-34. The Airlines fail to provide any valid ground for the Commission to reverse that determination.

1. The ANOPR's "System" Proposal is Arbitrary, Ambiguous and Unworkable, But That Provides no Basis to Reconsider the Airlines' "Segment" Approach.

The Airlines contend that the ANOPR's proposed definition of a "system" is ambiguous and "would lead to unnecessary conflicts and confusion when attempting to apply the standards proposed in the ANOPR." Airline Comments at 30, 33, 38. For example, the Airlines point out the arbitrariness in the ANOPR's proposed 250-mile standard for "major" pipeline systems and cite examples of pipelines with lengths of over 250-miles that do not appear to constitute sufficiently distinct operations. *Id.* at 33-37. The Airlines note a similar ambiguity with respect to the ANOPR's definition of "non-contiguous" pipeline systems, observing that it is not clear whether the ANOPR's definition includes pipelines that may share an origin or destination point. *Id.* at 32.

AOPL discussed similar concerns in its Initial Comments and agrees that the ANOPR's "system" definition is arbitrary, vague and unworkable. AOPL Initial Comments at 54-59; *see also* Buckeye Comments at 5-9; Delek Comments at 7; Kinder Morgan Comments at 5-6; Magellan Comments at 1-4, 14-15; Marathon Comments at 16-17; NuStar Comments at 5-6; Plains Comments at 16-19. But that provides no basis to reconsider the Airlines' proposal to require individual Page 700s for each "segment." As discussed further below, the Airlines' proposal was rejected in the ANOPR and adopting it would only compound the problems with the "systems" proposal in the ANOPR and lead to confusion, needless disputes and unwarranted additional regulatory burdens. Instead, the solution is to retain the current requirement to file Page 700s on a *total-carrier* basis, which is clear and straightforward and has worked well for more than two decades by properly balancing the interests of pipelines and shippers alike.

The Liquids Shippers Group also takes issue with the ANOPR's proposal to define a "major pipeline system" based primarily on mileage and instead suggests that the determination should be "based on the fundamental operations of a given pipeline." Liquids Shippers Group Comments at 28. The Liquids Shippers Group further proposes that the definition of a "non-contiguous system" or "major pipeline system" should generally be left to the pipeline's discretion for Form No. 6 reporting purposes subject to the right of shippers to challenge the pipeline's proposed categorization. *Id.* at 28-29. The Liquids Shippers Group's comments effectively acknowledge what AOPL pointed out in its Initial Comments – that it is not possible to establish a one-size-fits-all definition of a pipeline "system" consistent with Commission precedent. AOPL Initial Comments at 56-59. The Liquids Shippers Groups' proposal to leave the issue up to each pipeline subject to the right of shippers to protest is not a viable solution, however. That approach would expose pipelines to challenges from shippers with no clear standard to resolve those disputes, and thus lead only to more contentiousness and burdens on oil pipelines and the Commission's resources. Indeed, an inquiry into the "fundamental operations" of the pipeline could be a mammoth undertaking that would involve resolving many of the most onerous burdens of a full-blown cost-of-service rate case.

2. The Airlines' "Segment" Proposal is Vague, Unworkable and Inconsistent with Commission Precedent.

The Airlines urge the Commission to require a pipeline to file a separate Page 700 if it has (1) "distinct pipeline transportation segments" and (2) "design[s] and/or establish[es] FERC regulated rates on a segment-specific basis." *See* Airline Comments at 7-8 & n.2. AOPL previously addressed the Airlines' proposal when it was originally submitted in Docket No. RM15-19-000, and explained that the Airlines' definition of a "segment" was unclear and inconsistent with Commission precedent. *See* Attachment B at 20-34. The ANOPR agreed that the Airlines' individual "segment" proposal was not appropriate and properly rejected it. ANOPR at PP 31-33. There is no reason for the Commission to reverse that determination.

As AOPL previously discussed, the Airlines' definition of a "distinct pipeline transportation segment" is modeled on the term "Segment of Business," as contained in the Uniform System of Accounts for Oil Pipelines, but the accounting term on which the Airlines rely is not consistent with Commission precedent regarding what constitutes a system for ratemaking purposes and could lead to pipelines being required to file individual Page 700s even for small lateral lines. Attachment B at 24-30; *see also* Airline Comments at Attachment 4 at 34. The ANOPR similarly concluded that the Airlines' proposal "to define rate design segments using definition 32(a) from the Uniform System of Accounts provides little clarity because this definition has historically served a separate accounting purpose" and the "Commission's considerations when applying this accounting definition may differ significantly from considerations used to identify separate segments in a rate case." ANOPR at P 32 & n.45. The ANOPR further observed that the Airlines' "segment" definition would "include relatively insignificant assets, such as small laterals." Instead of responding to AOPL and the ANOPR on this issue, the Airlines' current comments simply omit any reference to the source for their definition. The language that they propose, however, has not changed, and the source for that language remains inapplicable here.

Moreover, as AOPL discussed in its comments in RM15-19-000, a "system" for ratemaking purposes differs substantially from the individual pipeline "segments" that the Airlines claim should be the basis for cost-of-service reporting and ratemaking. *See* Attachment B at 27-30. Instead, the test for what constitutes a "system" is multi-factored and highly dependent on the specific facts and circumstances of the pipeline at issue. *Id.* Ultimately, the determination of what constitutes a separate "system" for any given pipeline is something appropriately left to a rate case, rather than a one-size-fits-all definition. As the ANOPR correctly observed, requiring individual Page 700s for each "segment" would "likely insert into the Commission's 'simplified' indexing methodology complex, fact-specific disputes regarding the appropriate rate design segmentation" and impose significant burdens on pipelines if they were required to file a separate Page 700 for each individual segment. ANOPR at PP 32, 33.

The Airlines propose that a pipeline with multiple "segments" need only file a separate Page 700 if its rates are "designed" or "established" on a "segment-specific basis (versus rates designed and/or established on a total-system basis)." Airline Comments at 8 n.2. The proposed language is unclear and would simply create confusion if the

Commission were to adopt it. *See* Attachment B at 30-34. As the ANOPR correctly observed, "[m]ost pipelines have never made a filing with the Commission identifying their rate design segments." ANOPR at P 32. Moreover, "[o]il pipelines have discretion with the structuring of their tariff, and how the tariff is structured does not necessarily establish whether or not separate rate design segments exist." *Id.* at n.48.

The Airlines claim that the question of whether a pipeline is required to file disaggregated information depends primarily on whether "*the pipeline* actually develops or establishes its tariff rates on a segment-specific basis." Airline Comments at 7 (emphasis added). The Airlines acknowledge, however, that their proposal would give shippers the ability to file a complaint with the Commission "[t]o the extent shippers disagree with the carrier's approach." *Id.* at 40. It is therefore not accurate to suggest that the decision regarding whether to file segmented Page 700 reports "is completely carrier-driven." *Id.* at 8. In any event, given the potential for shipper challenges as well as the requirement that a corporate officer certify that the information reported is correct under threat of criminal penalties, there must be a clear standard regarding what pipelines are required to do. The standard that the Airlines propose, however, is so vague as to be practically meaningless. The ANOPR correctly rejected it and there is no valid reason to revisit that determination.

C. Disaggregated Page 700 Reporting Would Impose Significant Unwarranted Burdens Whether Based on "Systems" or "Segments."

The ANOPR correctly declined to require Page 700 reporting by "segment" in part because of the additional regulatory burden it would involve. The ANOPR stated that "[r]ecent litigation before the Commission . . . demonstrates the burdens imposed by fact-specific inquiry into a pipeline's segmentation." ANOPR at P 33 & n.51. The ANOPR further found that the "burden associated with segmentation is not a one-time burden, as pipeline systems change over time and pipelines will need to re-evaluate their rate design segments in future years." *Id.* at P 33. In fact, given the dynamic nature of the oil pipeline industry, pipelines are subject to frequent change, with pipelines expanding capacity, reversing flow and changing ownership. *See, e.g.*, Marathon Comments at 7; Plains Comments at 14-15. Indeed, during the period 2010-2014 the mileage of crude oil pipelines increased by approximately 22 percent.[14]

The reasons provided by the ANOPR for rejecting the Airlines' "segment" proposal apply equally to the ANOPR's "system" approach. Indeed, as comments of AOPL and the individual pipelines in this proceeding and in Docket No. RM15-19-000 make clear, disaggregated Page 700 reporting would impose a considerable burden on oil pipelines regardless of whether it is required to be done by "system" or "segment."

In response to the petition for rulemaking in Docket No. RM15-19-000, AOPL and various individual pipelines described in detail the burdens that would be involved in requiring pipelines to prepare Page 700 reports for individual pipeline "segments" as proposed by the Airlines and other shippers. *See* Attachment A at 37-49; Attachment B

---

[14] *See* American Petroleum Inst. & Ass'n of Oil Pipe Lines, *U.S. Liquids Pipeline Usage & Mileage Report* at p. 1 (Nov. 2015), available at http://www.aopl.org/wp-content/uploads/2015/11/AOPL-API-Pipeline-Usage-and-Mileage-Report-2015.pdf.

at 36-44. AOPL's comments were supported by the affidavit of Robert G. Van Hoecke, a Principal with the Regulatory Economics Group. As discussed in those comments, the individual reporting requirements could cost pipelines approximately $10 million per segment, and the additional time commitment could be up to 4,000 hours. The pipeline company comments also explained that the pipelines maintain their books and records in accordance with the Uniform System of Accounts, and thus new accounting and recordkeeping systems would need to be developed to report data on a segmented basis. *See, e.g.*, Attachment A at 47-48; Attachment B at 38.

In this proceeding, Mr. Van Hoecke explained that the burden involved in preparing disaggregated Page 700s under the ANOPR's "system" approach "would be comparable to the burden that [he] previously estimated in connection with the shipper proposals in Docket No. RM15-19-000." AOPL Comments, Van Hoecke Decl. at 5. The individual oil pipelines that filed comments in this proceeding were consistent with Mr. Van Hoecke's conclusion.

For example, Enterprise explained that the proposed changes to the Page 700 reporting requirements remain burdensome whether based on a "system" or "segment" approach. Enterprise Comments at 5. As Enterprise indicated, its pipelines maintain their books and records in compliance with the Uniform System of Accounts for Oil Pipelines, which does not require records to be maintained on a "system" or "segment" basis. *Id.* at 6. The ANOPR's "system" proposal therefore does not eliminate the burden involved in the Airlines' "segment" proposal put forward here and in Docket No. RM15-19-000. Indeed, contrary to the ANOPR's assumption (P 38) that changes in accounting and recordkeeping systems would be unnecessary, Enterprise explained that the proposal "would alter fundamentally the record-keeping structure and processes in place for Enterprise and its subsidiaries, forcing Enterprise to deploy new internal and/or external resources to [undertake] the compilation of such 'system' data." *Id.*

Kinder Morgan, Inc. similarly indicated that the "ANOPR's shift from a 'segment' to a 'system' approach to Page 700 reporting would do nothing to reduce the burden" on oil pipelines. Kinder Morgan Comments at 6. Kinder Morgan reported that the records of its regulated oil pipelines "are not maintained on a 'system' basis," and that the "ANOPR's increased Page 700 reporting obligations would impose serious burdens on [Kinder Morgan's] pipelines and the oil pipeline industry." *Id.* at 7.

Plains All American Pipeline, L.P., also made clear that "the ANOPR's proposal to require pipelines to report data by 'system' presents the same concerns and burdens that the Commission found would result by requiring pipelines to report data by 'segment.'" Plains Comments at 15. As Plains explained, the ANOPR's definition of a "system" is "just as nebulous and uncertain as the definition of 'segment,' which means that the two approaches will lead to similar outcomes, including, inter alia, disputes between shippers and pipelines as to the appropriate use of the term and the attendant reporting requirements." *Id.*

Buckeye Partners, L.P. further explained that the ANOPR's proposal "would impose a significant regulatory burden," requiring "Buckeye to fundamentally change [its current] data collection and record-keeping structures." Buckeye Comments at 2, 15. As a consequence, the ANOPR proposal "would likely require investment in new information technology infrastructure" and "would require either the hiring of additional internal resources to compile and analyze the data, and/or an increased reliance on outside resources." *Id.* at 15.

Magellan Midstream Partners, L.P. provided additional context, noting that it operates a fungible, integrated system and therefore files a single Page 700. Magellan Comments at 2-3, 14-15. Magellan noted that if it "were required to make a large number of supplemental page 700 filings, given . . . the almost endless combinations of origins and destination on Magellan's system, the ANOPR would be completely unworkable and unduly burdensome for Magellan," and the "allocations that would be required … would be extremely burdensome and costly." *Id.* at 15.

Shell Pipeline Company, L.P. also concluded that the ANOPR's disaggregated Page 700 reporting requirement would be "egregiously burdensome, would invite litigation and is entirely unnecessary." Shell Comments at 11-12. Indeed, Shell stated "based on its own recent experience in a cost-of-service rate investigation, that the expense and internal effort required to allocate joint asset costs, overhead costs, and many other costs, is (a) very substantial; and (b) always contested, often in more than one way by various parties." *Id.* at 12 (internal citations omitted).

Most of the Shipper commenters make no attempt to address the burdens involved. CAPP claims the burdens would be minimal by relying on the ANOPR's speculation (P 30) that pipelines likely track their costs separately by systems already. *See* CAPP Comments at 14-15. As discussed above, the individual pipeline comments make clear that this is simply not the case. The Airlines rely on the same affidavit previously submitted by Dr. Daniel A. Arthur in Docket No. RM15-19-000, which fails to address the ANOPR's findings or the comments of AOPL and the individual pipeline commenters in this proceeding and the rulemaking proceeding discussed above. *See* Airline Comments at 54 and Attachment DSA-B. Dr. Arthur claims that the time required to prepare a segmented cost-of-service would range from 50 to 350 hours for the initial cost-of-service, with only 5 to 15 hours required annually thereafter. Airline Comments at 58 and Attachment DSA-B. Those time estimates are simply not credible and are not adequately supported. Indeed, Dr. Arthur claims to have prepared Page 700 cost-of-service calculations for a single pipeline company. *Id.* at ¶ 1. That fails to match the experience of Mr. Van Hoecke, who has been involved in the majority of oil pipeline rate proceedings over the past 25 years where segmented costs were an issue and whose firm prepared approximately a quarter of the Page 700 reports last year. *See* AOPL Comments, Van Hoecke Decl. at 3. Nor does Dr. Arthur's estimate provide any basis to ignore the comments from the pipelines that actually engage in Page 700 reporting and understand what is required.

In short, AOPL and the individual pipelines clearly demonstrated that disaggregated Page 700 reporting would impose significant additional regulatory burdens, including the need to develop new accounting and record-keeping systems that differ from the Uniform System of Accounts. Neither the ANOPR nor Shippers respond in any meaningful way to this showing, and their failure to do so is fatal to their disaggregated Page 700 reporting proposals.

IV. There is No Merit to the Liquids Shippers Group's Proposal that the Commission Impose One-Size-Fits-All Allocation Methods on Oil Pipelines.

The ANOPR proposed that pipelines be required to explain how costs are allocated between the different systems in connection with the filing of supplemental Page 700s. ANOPR at P 34. Under the ANOPR proposal, pipelines would be required to report additional information on Page 700 in order to "differentiate between directly assigned and allocated costs and to briefly describe the allocation methodology." *Id.* at PP 39-40. As AOPL explained in its Initial Comments, since there is no justification for requiring individual system Page 700 reporting, there is no basis to require pipelines to report the proposed allocation information. Ultimately, the need to make and explain various complex allocations demonstrates that the ANOPR's individual system Page 700 proposal is inconsistent with the streamlined regulatory approach that applies to oil pipelines, particularly for an annual report of basic rate screening information. The requirement to report detailed allocations would lead to more contentiousness and challenges, not streamlining and simplification. AOPL Comments at 68. Such a requirement would also run contrary to the Commission's previous determination that cost allocation and rate design issues are to be reserved for hearing, and are not part of the Page 700 filing. Order No. 571 at 31,166.

The Liquids Shippers Group argues that pipelines should not only be required to identify the allocation methodologies used, but that the Commission should specifically direct which allocation methodologies should be used by pipelines for each different type of allocation. Liquids Shippers Group Comments at 31. The Liquids Shippers Group request for one-size-fits-all rules is simply not appropriate in the context of cost and revenue allocation. While the Commission does have certain allocation methods that can often be used, the application of those methods to the specific facts of the pipeline's operations requires detailed review of company records and complex computations involving significant time and effort. As the Supreme Court has held, "[a]llocation of costs is not a matter for the slide-rule," but instead "involves judgment on a myriad of facts." *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945); *see also* ANOPR at P 39 ("[t]he choice and application of cost allocation methodologies involves judgment that, to some degree, may be subjective"). Thus, as Mr. Van Hoecke discusses, the limited Commission precedent that exists on this issue in the oil pipeline context does not provide hard-and-fast rules regarding the types of allocations that must be performed but generally reviews each issue on a case-by-case basis. AOPL Comments, Van Hoecke Decl. at 27-28.

The imposition of arbitrary allocation methodologies would not be helpful to the Commission or shippers since the resulting Page 700 cost-of-service for a given system might bear little relationship to the operational realities of an individual pipeline or the cost-of-service that would actually be developed in a rate case. *See, e.g.,* Colonial Comments at 11; Marathon Comments at 6-7; NuStar Comments at 9-11; Plains Comments at 24-25. As Mr. Van Hoecke explained, "[a]ny formulaic approach to allocating shared or common costs to separate systems could lead to false or inaccurate conclusions regarding the reasonableness of the rates." AOPL Comments, Van Hoecke Decl. at 28. Moreover, to the extent the ability to take an index rate increase is tied to individual system data based on arbitrary allocation rules, the proposal could cause significant harm and further undermine the purposes of the Commission's indexing methodology as described above in Section I and in AOPL's Initial Comments.

Finally, the Liquids Shipper Group's request that the Commission direct pipelines how to allocate revenues between cost-based services and non-cost-based services suffers from the same infirmities discussed by AOPL in response to the ANOPR. As AOPL pointed out, the primary difficulty, in addition to the unwarranted burdens that would be imposed, is the lack of a clear distinction between cost-based and non-cost-based rates. The ANOPR suggests that cost-based rates are those "resulting from indexing and cost-of-service," while non-cost-based rates are those "resulting from settlement rates and market-based rates." ANOPR at P 43. But many rates established by agreement with shippers (*i.e.*, settlement rates) will subsequently be indexed. Thus, apart from the fact that no additional reporting obligation is necessary, such a requirement would be difficult to implement, and may not properly reflect the specific operating and commercial circumstances of individual pipelines.

V. There is no Justification for Shippers' Proposal to Require Pipelines to Provide Their Page 700 Workpapers to All Interested Parties Upon Request.

Certain Shippers continue to urge the Commission to require pipelines to make their Page 700 workpapers available to any "interested person" upon request. Airline Comments at 9, 45-54; CAPP Comments at 15-16; Liquids Shippers Group at 2, 35-36. The ANOPR properly rejected that proposal as the Commission has repeatedly done in the past. Shippers fail to point to any changed circumstance that would justify the

Commission reversing its determinations on this issue, nor is there any valid ground to depart from the Commission's consistent holding that the provision of Page 700 workpapers to shippers and other interested parties is not necessary.

The ANOPR found that "on balance, mandating disclosure of work papers is not necessary to provide shippers with sufficient information when considering challenges to pipelines' proposed or existing rates." ANOPR at P 49. The ANOPR further noted that "the dissemination of this data to shippers raises potential confidentiality concerns," since the Page 700 workpapers may include confidential shipper information that is "protected by section 15(13) of the ICA" as well as "the pipeline's competitive business information." *Id.* The ANOPR concluded that "the general disclosure of this information, even subject to confidentiality agreements, is not appropriate at this time." *Id.*

The ANOPR's conclusion is consistent with the Commission's prior determinations on this issue. In Order No. 571, which originally added Page 700 to Form No. 6, the Commission made clear that pipelines are not required to provide the calculations and data underlying Page 700. *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, FERC Stats. & Regs. ¶ 31,006, at 31,168 (1994). The Commission explained that such a proposal was inconsistent with the intended purpose of Page 700 as a "preliminary screening tool." *Id.* The Commission further found that requiring pipelines to provide their complete Opinion 154-B calculations "would be cumbersome and not be of significant benefit" to shippers. *Id.* at 31,169-70.

In 2000, the Commission reached the same conclusion, finding that shippers had sufficient information to challenge pipeline rates without the Page 700 workpapers. *See Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Accounts*, 93 FERC ¶ 61,262 (2000) ("Order No. 620"), *order on reh'g*, 94 FERC ¶ 61,130 (2001). The Commission required workpapers to be provided to Commission Staff upon request, but declined to adopt shippers' proposal that the workpapers be disseminated more broadly. Order No. 620, FERC Stats. & Regs. ¶ 31,115, at 31,959-60 (Dec. 13, 2000).

In 2008, the Commission again denied a request that pipelines be required to provide workpapers. The Commission noted that numerous complaints had been filed without shippers having access to the Page 700 workpapers, and concluded that the Form No. 6 "provide[s] sufficient information to allow shippers to file a complaint requesting a determination of the justness and reasonableness of a pipeline's rates." *Review of FERC Form Nos. 6 and 6-Q*, 125 FERC ¶ 61,308 at PP 7-9 (2008).

Those findings remain valid today. Shippers make various inflated claims regarding the alleged need for the Page 700 workpapers, claiming there is "no way for a shipper to validate" the Page 700 data without it (Airline Comments at 46) and that the workpapers are "essential for shippers and other interested persons to understand the summary information reported on Page 700." Liquids Shippers Group Comments at 35. But Shippers are unable to point to any case in which an absence of Page 700 workpapers has precluded a shipper from challenging a pipeline's rates.

The other arguments raised by the Shippers were addressed in detail by AOPL in its comments in Docket No. RM15-19-000. *See* Attachment A at 49-53; Attachment B at 53-58. Shippers fail to respond meaningfully to AOPL's comments, but instead merely repeat the same arguments that AOPL and the ANOPR have already addressed.

In sum, Shippers fail to demonstrate any need for the workpapers underlying Page 700 calculations outside of a rate case. Subjecting the annual Form No. 6 report to an annual discovery-type process and review of underlying calculations would unnecessarily burden the Commission's resources and would be fundamentally inconsistent with the "streamlined" regulatory process mandated by Congress and Congress's instruction to avoid "unnecessary regulatory costs" in connection with oil pipeline ratemaking.

CONCLUSION

For the reasons set forth above, the Commission should not implement the changes proposed in the ANOPR or in the Shippers' comments.

Respectfully submitted,

/s/ Steven H. Brose

Steven M. Kramer
Senior Vice President, General Counsel
and Corporate Secretary
Association of Oil Pipe Lines
1808 Eye Street, NW, Suite 300
Washington, D.C. 20006
(202) 292-4502

Steven H. Brose
Steven Reed
Daniel J. Poynor
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-6250

Counsel for the Association of Oil Pipe Lines

March 17, 2017