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Dated: December 4, 2024.

**Carlos D. Clay,**

*Acting Deputy Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. AD22-7-000]

#### Oil Pipeline Capacity Allocation Issues and Anomalous Conditions

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Termination of notice of inquiry proceeding.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is terminating the notice of inquiry (NOI) proceeding considering oil pipeline capacity allocation issues that arise under anomalous conditions.

**DATES:** The NOI proceeding is terminated as of December 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Cook (Technical Information),

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**SUPPLEMENTARY INFORMATION:** On February 17, 2022, the Commission issued a Notice of Inquiry (NOI) in the captioned proceeding to explore oil pipeline capacity allocation issues that arise when anomalous conditions affect the demand for oil pipeline capacity and, in particular, the availability of pipeline capacity for transporting jet fuel to supply airports following the onset of the COVID-19 pandemic. The Commission sought comment on what actions, if any, the Commission should consider to address those allocation

issues.<sup>1</sup> Specifically, the Commission requested comment on: (a) historical examples of anomalous conditions; (b) whether current prorationing policies sufficiently address anomalous conditions; (c) whether the Commission should take actions to mitigate the effects of anomalous conditions; and (d) whether secondary market transactions could improve access to pipeline capacity during anomalous conditions.<sup>2</sup>

For the reasons set forth below, we exercise our discretion to terminate the proceeding in Docket No. AD22-7-000.

#### I. Background

As detailed in the NOI,<sup>3</sup> interstate oil pipelines are regulated as common carriers under the Interstate Commerce Act (ICA).<sup>4</sup> Oil pipelines use prorationing to allocate capacity among shippers when their total nominations exceed the pipeline's capacity. The Commission does not prescribe a particular prorationing methodology but requires any such methodology to be consistent with the ICA. As relevant to this proceeding, a history-based methodology gives preference to shippers with a history of shipping on the pipeline.<sup>5</sup>

The COVID-19 pandemic significantly impacted the demand for oil pipeline capacity. In particular, some industry participants raised concerns that the demand for jet fuel disproportionately decreased as compared with other oil products such as road fuels, which could have reduced allocations of capacity to jet fuel transportation on pipelines that used a history-based prorationing methodology.<sup>6</sup> The issue was raised formally in two Commission proceedings. First, in May 2021, SFPP, L.P. (SFPP) filed a tariff revision proposing a temporary change to its prorationing policy that would allow jet fuel shippers to obtain access to additional capacity that its tariff reserves for new shippers.<sup>7</sup> Other SFPP shippers protested the proposal, and SFPP subsequently withdrew the filing.

<sup>1</sup> *Oil Pipeline Capacity Allocation Issues & Anomalous Conditions*, 87 FR 10355 (Feb. 24, 2022), 178 FERC ¶ 61,105 (2022) (NOI).

<sup>2</sup> *Id.* P 9, A1-A4.

<sup>3</sup> *Id.* P 2.

<sup>4</sup> 49 U.S.C. app. 1 (1988).

<sup>5</sup> *Suncor Mktg. Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 25 (2010). In contrast, a *pro rata* methodology awards available capacity to shippers in proportion to their nominations each nomination cycle, regardless of how much service, if any, they have taken in the past. *Id.* P 26; *see also*, NOI, 178 FERC ¶ 61,105 at P 4 nn.6-7 (providing simplified examples of *pro rata* and history-based methodologies).

<sup>6</sup> NOI, 178 FERC ¶ 61,105 at P 7.

<sup>7</sup> Docket No. IS21-322-000 (Withdrawn).

Second, in August 2021, Airlines<sup>8</sup> filed a request for emergency relief, asking the Commission to direct SFPP to prioritize jet fuel shipments on its North Line to the Reno terminal serving Reno-Tahoe International Airport to prevent jet fuel shortages. The filing was protested, and the Commission denied the request for emergency relief because Airlines did not establish that the circumstances constituted a public health emergency warranting extraordinary relief under section 1(15) of the ICA.<sup>9</sup>

#### II. NOI and Comments

On February 17, 2022, the Commission issued the NOI seeking comments on oil pipeline capacity allocation issues that arise under anomalous conditions, and in particular, the availability of pipeline capacity for transporting jet fuel to supply airports following the onset of the COVID-19 pandemic.<sup>10</sup> Fifteen commenters—including pipelines, Airlines, and non-jet fuel shippers—filed comments in response to the NOI.<sup>11</sup>

<sup>8</sup> Airlines include Airlines for America; Airlines Council International-North America; American Association of Airport Executives; International Air Transport Association; National Air Carrier Association; Regional Airline Association; and Southwest Airlines Pilots Association.

<sup>9</sup> *Airlines for Am.*, 176 FERC ¶ 61,065, at PP 14-16 (2021).

<sup>10</sup> The Commission sought comment on: (a) pipelines and airports where airlines anticipate receiving capacity below their anticipated fuel needs; (b) pipelines that were not in prorationing over the prior 12 months that would have been in prorationing if jet fuel had shipped at 2019 levels; (c) total capacity on pipelines that transport jet fuel; (d) how nominations and capacity awarded for non-jet fuel products have changed during the COVID-19 pandemic; (e) actions the Commission should consider to address concerns regarding pipeline capacity to airport destinations; and (f) whether expansions on pipelines serving airports would help address jet fuel needs. NOI, 178 FERC ¶ 61,105 at P 9, B1-B7.

<sup>11</sup> Comments were filed by: Airlines; the American Fuel & Petrochemical Manufacturers (AFPM); Liquid Energy Pipeline Association (LEPA) (formerly known as Association of Oil Pipe Lines or AOPL); Buckeye Partners, L.P.; the Canadian Association of Petroleum Producers (CAPP); Chevron Products Company (a Chevron U.S.A. Division), HollyFrontier Refining & Marketing LLC, and Valero Marketing and Supply Company (collectively, CHV Shippers); Colonial Pipeline Company (Colonial); Enterprise Products Partners L.P. (Enterprise); Explorer Pipeline Company (Explorer); ConocoPhillips Company, Devon Gas Services, L.P., Marathon Oil Company, Murphy Exploration and Production Company-USA, Ovintiv Marketing Inc., and Pioneer Natural Resources USA, Inc. (collectively, Liquids Shippers Group); Magellan Midstream Partners, L.P. (Magellan); SIGMA: America's Leading Fuel Marketers, and the National Association of Truckstop Operators (SIGMA/NATSO); QT Fuels Incorporated, Pilot Travel Centers LLC, Saratoga Rack Marketing LLC, Southern Counties Oil Co. dba SC Fuels, Pro Petroleum LLC, RaceTrac, Inc., and Love's Travel

In general, Airlines contend that existing policies are not suited to addressing the conditions created by the COVID-19 pandemic and claim that further action is necessary to prevent jet fuel supply constraints; Airlines state, however, that industry-wide action is not necessary at this time. Airlines state that because the pandemic disrupted jet fuel shipping patterns on a sustained yet temporary basis, shipper histories adjusted to reflect shippers' temporarily reduced demand. Because history-based prorationing policies are designed to preserve shippers' relative capacity allocations, Airlines argue that jet fuel shippers will be unable to rebuild their shipper histories to pre-pandemic levels absent Commission action.<sup>12</sup> Moreover, Airlines contend that shippers cannot rely upon secondary market transactions to restore lost shipper histories<sup>13</sup> and that Airlines have limited ability to ship on behalf of others to maintain history during periods of reduced demand.<sup>14</sup> Airlines request that the Commission remain receptive to case-specific proposals to resolve capacity constraints.<sup>15</sup>

In addition, Airlines argue that the Commission should consider taking three generic actions to address the effects of the COVID-19 pandemic upon jet fuel capacity allocations. First, Airlines request that the Commission confirm that it could exercise authority to direct pipelines to reset shipper histories to 2019 levels.<sup>16</sup> Second, Airlines request that the Commission require pipelines to provide data from 2019 to the present regarding volumes of products nominated and shipped, available pipeline capacity, and months when the pipeline was in prorationing.<sup>17</sup> Third, Airlines request that the Commission take action to encourage expansions by emphasizing that pipelines can conduct expansions for one product and by increasing the

Stops & Country Stores, Inc. (collectively Surface Transportation Fuel Shippers); and Tallgrass Energy, LP (Tallgrass). In addition, the City of Phoenix Aviation Department, a member of Airlines through its trade association, filed separate comments.

<sup>12</sup> Airlines Initial Comments at 10-11; Airlines Reply Comments at 16-17.

<sup>13</sup> Airlines Initial Comments at 19-24; Airlines Reply Comments at 26-27.

<sup>14</sup> Airlines Initial Comments at 9-10; *see also* Airlines Reply Comments at 17-19.

<sup>15</sup> *E.g.*, Airlines Initial Comments at 8, 11-12; Airlines Reply Comments at 3-4.

<sup>16</sup> Airlines Initial Comments at 13-14, 29; Airlines Reply Comments at 6-9. Airlines state that for purposes of future anomalous conditions, the Commission could direct pipelines to freeze shipper histories when it is recognized that anomalous conditions are occurring. Airlines Initial Comments at 13.

<sup>17</sup> Airlines Initial Comments at 15-19.

annual reporting requirements on Form No. 6.<sup>18</sup>

By contrast, pipelines and non-jet fuel shippers urge the Commission to take no action.<sup>19</sup> They argue that existing history-based prorationing policies sufficiently address the allocation of capacity during anomalous conditions. Commenters argue that pipeline capacity is finite and that any action to increase the capacity allocated to jet fuel shippers will reduce the capacity allocated to other products, which could produce fuel shortages, market disruptions, and increased costs for consumers.<sup>20</sup> Commenters contend that this result would confer an undue preference upon jet fuel shippers, violate pipelines' obligation to provide service upon reasonable request, and conflict with Commission precedent.<sup>21</sup>

Airlines provided data from 2019 through April 2022 related to jet fuel pipeline deliveries and jet fuel use at certain airports in order to allow the Commission to compare jet fuel deliveries from before the COVID-19 pandemic to 2021 and the first half of 2022.<sup>22</sup>

### III. Discussion

At this time and based upon this record, we are not persuaded to take further action in this proceeding related to oil pipeline capacity allocation issues arising from the COVID-19 pandemic and other anomalous conditions. The record provides an insufficient basis for initiating industry-wide policy changes. In particular, the record may no longer reflect market conditions.<sup>23</sup>

<sup>18</sup> *Id.* at 31-32 (citing *SFPP, L.P.*, 169 FERC ¶ 61,001, at PP 44-46, 51 (2019); *SFPP, L.P.*, 168 FERC ¶ 61,058, at P 15 (2019); *CHS Inc. v. Enter. TE Prods. Pipeline Co.*, 155 FERC ¶ 61,178, at P 15 (2016)); Airlines Reply Comments at 9-10. Airlines request that the Commission require pipelines to provide additional information on Form No. 6 to aid in identifying where declining to expand capacity may reflect an abuse of market power. Airlines Initial Comments at 33-34.

<sup>19</sup> *E.g.*, LEPA Reply Comments at 2, 5; CHV Shippers Initial Comments at 3; Colonial Initial Comments at 1, 3; Enterprise Initial Comments at 7; SFPP Reply Comments at 1, 8; SIGMA/NATSO Initial Comments at 1, 4; Surface Transportation Fuel Shippers Initial Comments at 1, 17, 20, 22.

<sup>20</sup> *E.g.*, AOPL Initial Comments at 6-7; Enterprise Initial Comments at 2-5, 7; Explorer Comments at 4; SIGMA/NATSO Initial Comments at 3; Surface Transportation Fuel Shippers Initial Comments at 1, 14; Tallgrass Initial Comments at 3-4.

<sup>21</sup> *E.g.*, AFPM Initial Comments at 3; AOPL Initial Comments at 3-4; Colonial Initial Comments at 2, 15, 18, 20; Magellan Initial Comments at 5; CHV Shippers Initial Comments at 4-5 (citing *Suncor*, 132 FERC ¶ 61,242 at P 24); Liquids Shippers Group Initial Comments at 3-4 (same); Surface Transportation Fuel Shippers Initial Comments at 1-2, 7, 21 (same).

<sup>22</sup> *See* Airlines Initial Comments, Ex. A and Ex. C; Airlines Reply Comments at Ex. A.

<sup>23</sup> The most recent actual data in the record is from April 2022.

Accordingly, we exercise our discretion to terminate the proceeding in Docket No. AD22-7-000.

Although we are not taking further action in this proceeding, we are committed to working with pipeline and shipper groups to address problems related to oil pipeline capacity constraints and allocation issues as they may arise. We continue to monitor and evaluate the Commission's policies governing the allocation of oil pipeline capacity. Interested entities are encouraged to contact the Commission with any concerns regarding the effects of anomalous conditions on oil pipeline capacity allocation that may arise in the future.

By the Commission.

Issued: December 4, 2024.

**Carlos D. Clay,**

*Acting Deputy Secretary.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2446-052]

#### STS Hydropower, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2446-052.

c. *Date filed:* August 30, 2022.

d. *Applicant:* STS Hydropower, LLC (STS Hydropower).

e. *Name of Project:* Dixon Hydroelectric Project (Dixon Project).

f. *Location:* On the Rock River near the City of Dixon in Lee and Ogle Counties, Illinois.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. David Fox, Senior Director of Regulatory Affairs, Eagle Creek RE Management, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (240) 724-8765, [david.fox@eaglecreekre.com](mailto:david.fox@eaglecreekre.com).

i. *FERC Contact:* Laura Washington (202) 502-6072, [Laura.Washington@ferc.gov](mailto:Laura.Washington@ferc.gov).

j. *Deadline for filing motions to intervene and protests, comments,*