178 FERC ¶ 61,105
DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. AD22-7-000]

Oil Pipeline Capacity Allocation Issues and Anomalous Conditions

(February 17, 2022)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comment on oil pipeline capacity allocation issues that arise when anomalous conditions affect the demand for oil pipeline capacity. In addition, the Commission seeks comment on what actions, if any, the Commission should consider to address those allocation issues.

DATES: Initial Comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and Reply Comments are due **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through http://www.ferc.gov, is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

- Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.
- Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Oil Pipeline Capacity Allocation Issues and Anomalous Conditions	Docket No. AD22-7-000

NOTICE OF INQUIRY

(February 17, 2022)

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks to explore oil pipeline capacity allocation issues that arise when anomalous conditions affect the demand for oil pipeline capacity and what actions, if any, the Commission should consider to address those allocation issues. Specifically, the Commission seeks public comment on anomalous conditions and their potential impacts on oil pipeline capacity allocation, as well as whether there are changes to the Commission's existing policies (such as those regarding prorationing) that the Commission should consider to mitigate these impacts. The Commission also seeks comment on the effects of recent anomalous conditions – those arising from the COVID-19 pandemic – on the availability of pipeline capacity for transporting jet fuel.

I. Background

A. Allocation of Capacity

2. Interstate oil pipelines are regulated as common carriers subject to the Interstate Commerce Act (ICA).[1] Accordingly, oil pipeline rates, terms, and conditions of service must be just and reasonable[2] and non-discriminatory.[3] Furthermore, an oil pipeline is obligated to provide transportation upon reasonable request.[4]

3. Prorationing is the mechanism that oil pipelines use to allocate capacity among shippers when their total nominations exceed the pipeline's capacity. The Commission does not prescribe a uniform prorationing methodology, but a pipeline's methodology must be consistent with the ICA.[5]

4. Historically, oil pipelines have employed two general types of prorationing methodologies: pro rata and history-based. 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.[6] In contrast, a history-based

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[1] 49 U.S.C. app. 1 (1988).

[2] *Id.* § 15(1).

[3] *Id.* § 3(1).

[4] *Id.* § 1(4).

[5] *Suncor Mktg. Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 24 (2010).

[6] *Id.* P 26. In a simplified example, if a pipeline's available capacity per cycle is 100 barrels and Shipper A and Shipper B each nominate 100 barrels, each shipper would be allocated 50 barrels. If in the next cycle, Shippers A and B each nominate 100 barrels

methodology gives preference to shippers with a history of shipping on the pipeline.[7] However, the Commission has required pipelines using this methodology to allow all shippers the opportunity to develop a record of transportation on the pipeline so as to attain preferred historical shipper status.[8] When a pipeline uses a history-based methodology, it must reserve a portion of its capacity for new shippers.[9]

B. <u>Anomalous Conditions</u>

5. Oil pipelines serve a critical function transporting crude oil, refined products,[10] and natural gas liquids.[11] Pipelines move crude oil from production areas to refineries and refined products to markets for consumption. Pipeline transportation is often more convenient and more cost-effective than alternative forms of transportation. Many

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again, but new Shippers C and D also each nominate 100 barrels, each shipper would be allocated 25 barrels.

[7] *Id.* P 25. In a simplified example, assume that a pipeline's available capacity per cycle is 100 barrels and that Shipper A and Shipper B each nominate 100 barrels. Assume also that, over the prior 12 months, Shipper A shipped 900 barrels and Shipper B shipped 300 barrels. If Shipper A and Shipper B each nominate 100 barrels in a particular cycle, then Shipper A would be allocated 75 barrels of the 100 available barrels of capacity (reflecting its historical usage of 75% of total usage over the past year) and Shipper B would be allocated 25 barrels of the 100 available barrels of capacity (reflecting its historical usage of 25% of total usage over the past year).

[8] *See Colonial Pipeline Co.*, 156 FERC ¶ 61,001, at PP 19-24 (2016); *Suncor*, 132 FERC ¶ 61,242 at P 25; *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 46 (2006).

[9] *See Colonial*, 156 FERC ¶ 61,001 at P 24; *Platte*, 117 FERC ¶ 61,296 at P 56.

[10] Refined petroleum products include motor gasoline, jet fuel, diesel, naphtha, and kerosene.

[11] Natural gas liquids include propane, butane, ethane, and natural gasoline.

pipelines offer transportation of more than one kind of product, often using a batching system to differentiate between products on the system.

6. As explained above, pipeline prorationing policies determine which shippers may access the pipeline when shipper demand exceeds pipeline capacity. These prorationing policies are often important during anomalous conditions that may cause sudden and unexpected changes to the demand for pipeline capacity. Anomalous conditions can result from a number of circumstances, including, but not limited to, extreme weather, national emergencies, and major market disruptions. Anomalous conditions can significantly and suddenly increase shipper nominations above available pipeline capacity. Likewise, anomalous conditions can temporarily reduce some shippers' usage of the pipeline system. Under these circumstances, if demand subsequently increases above pipeline capacity, prorationing policies must address the allocation of pipeline capacity among different shippers whose most recent shipping histories may not reflect their longer-term historical usage.

7. The COVID-19 pandemic significantly affected jet fuel shippers' demand for oil pipeline capacity, although it reduced demand rather than increasing it. For example, at a July 2020 technical conference discussing the serious impacts that emergency conditions caused by the COVID-19 pandemic were having on the energy industry, one panelist raised concerns regarding jet fuel shippers' ability to access capacity on oil pipelines using history-based prorationing due to a disproportionate decrease in jet fuel

consumption during the COVID-19 pandemic.[12] Then, in July 2021, certain jet fuel shippers filed a request for emergency relief, asking the Commission to direct SFPP to prioritize jet fuel shipments on its North Line to Reno-Tahoe International Airport to prevent jet fuel shortages.[13]

8. As reflected in these proceedings, Airlines[14] have raised capacity allocation issues related to the COVID-19 pandemic's effects on demand for jet fuel shipments and subsequent effects on pipeline allocation.[15] After demand for air travel declined due to the start of the pandemic in March 2020, Airlines state that they reduced shipments of jet

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[12] *See Impacts of COVID-19 on the Energy Industry*, Docket No. AD20-17-000, Tr. 222-224, 242-246 (O'Mahoney); *see also* Comment of Delta Air Lines, Inc., Docket No. AD20-17-000 (submitted June 30, 2020). Additionally, in May 2021, SFPP, L.P. (SFPP) proposed a temporary change to its prorationing policy that would allow jet fuel shippers to obtain new shipper space as well as regular shipper space. This filing was protested, and SFPP subsequently withdrew it. *SFPP, L.P.*, Tariff Filing, Docket No. IS21-322-000 (submitted May 11, 2021; withdrawn June 1, 2021).

[13] The jet fuel shippers that filed the request for emergency relief included Airlines for America, Reno-Tahoe Airport Authority, Alaska Air Group, Inc., Allegiant Air, American Airlines, Inc., Delta Air Lines, Inc., Federal Express Corp., Frontier Airlines, JetBlue Airways Corp., National Air Carrier Assoc., Southwest Airlines Co., and World Fuel Services, Inc. *Airlines for America*, Request for Emergency Relief, Docket No. OR21-10-000 (submitted July 26, 2021) (Request for Emergency Relief). The Commission denied the request because the petition did not establish that the circumstances rose to the level of a public health emergency warranting extraordinary relief under § 1(15) of the ICA. *Airlines for Am.*, 176 FERC ¶ 61,065, at PP 14-16 (2021).

[14] As used herein, "Airlines" refers to various jet fuel shippers that supply airports, primarily airlines, and their trade association, Airlines for America.

[15] *See, e.g.*, Airlines for America, Motion to Intervene, Docket No. IS21-322-001 (filed May 27, 2021); Airlines for America, Request for Emergency Relief, Docket No. OR21-10-000 (filed July 26, 2021).

fuel on several multi-product pipelines that supply airports.[16] Because these pipelines use history-based prorationing, Airlines claim that their decreased shipments during the pandemic reduced the future capacity allocated to them.[17] Airlines state that this reduction harms their ability to continue to self-supply jet fuel using their shipper history on pipelines as they did prior to the pandemic. They state that fuel is a major cost and that self-supply enables them to better control fuel costs.[18]

II. Discussion

9. In this proceeding, we seek comment on oil pipeline capacity allocation issues that arise under anomalous conditions, including the availability of pipeline capacity for transporting jet fuel to supply airports following the onset of the COVID-19 pandemic. We also seek comment on whether there are any actions the Commission should consider that would mitigate the effects of anomalous conditions on oil pipeline capacity

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[16] *See* Airlines for America, Request for Emergency Relief, Docket No. OR21-10-000, at 2 (filed July 26, 2021) ("[D]emand for air travel radically decreased at the start of the COVID-19 pandemic and remained depressed throughout 2020 and into early 2021. Consequently, shipments of jet fuel on interstate pipelines . . . significantly decreased as well."); Airlines for America, Motion to Intervene, Docket No. IS21-322-001, at 2-3 (filed May 27, 2021) ("While demand for air travel was depressed, airlines were unable to meet their minimum shipping requirements and nominate future volumes in accordance with their line space history.").

[17] For example, SFPP's prorationing policy provides that 95% of its capacity shall be allocated to regular shippers based on each shipper's average historical shipments over a rolling 12-month base period. SFPP, L.P., Proration Policy dated June 1, 2019, at 1, 3, *available at* https://www.kindermorgan.com/item/Policy/SFPP%20Policy/1.

[18] *Impacts of COVID-19 on the Energy Industry*, Docket No. AD20-17-000, Tr. 222-224 (O'Mahoney); *Airlines for America*, Request for Emergency Relief, Docket No. OR21-10-000 (filed July 26, 2021).

allocations, including the effects of the COVID-19 pandemic on demand for pipeline capacity to airport destinations.

A. Capacity Allocation Issues Arising Under Anomalous Conditions

A1. Using specific historical examples, please describe any anomalous conditions that have affected demand for, and thus shipper access to, pipeline capacity. In discussing each example, commenters should (a) generally describe the differential between the shipper's nominations and actual, pro-rated shipments, (b) describe how long the anomalous conditions existed, (c) explain whether the anomalous conditions continued to affect pipeline access even after the anomalous conditions concluded, and (d) describe whether and to what extent the shipper was able to use transportation alternatives (e.g., trucking) or other means to compensate for the difference between its nominations and actual, pro-rated shipments.

A2. Do current prorationing policies sufficiently address the allocation of capacity during and after anomalous conditions? For commenters responding that current prorationing policies are insufficient, please explain how current prorationing policies are insufficient and describe any aspects of current prorationing policies that pose particular problems or impediments.

A3. Are there any actions the Commission should consider that would mitigate the effects of anomalous conditions on pipeline capacity allocations? To the extent the Commission considers changes to prorationing policies to address capacity allocation issues under anomalous conditions, should the Commission consider alternatives to history-based prorationing and pro rata allocations? Or should the Commission instead modify existing capacity allocation methodologies? In proposing any potential actions, please describe how such actions would be consistent with the ICA.

A4. Please describe the current availability of secondary transactions for acquiring shipper history[19] or for otherwise obtaining access to pipeline capacity outside a pipeline's nomination and prorationing process. Please describe any experience with, and the practical implications of, using such secondary transactions to mitigate the impacts of anomalous conditions. Please also explain whether and, if so, how the availability of secondary transactions could be enhanced or expanded to improve shipper access to pipeline capacity during anomalous conditions.

B. <u>Access to Capacity for Transporting Jet Fuel Following the Onset of the COVID-19 Pandemic</u>

B1. In the context of the Airline-specific issues that have been raised to the Commission, please identify any pipelines and the destination airports

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[19] Under a history transfer, a shipper's credit for accumulated shipping history on a particular pipeline could be transferred to another shipper in exchange for payment. The replacement shipper could then nominate on the pipeline during prorationing using the shipper history of the selling shipper, thereby obtaining a higher allocation than it otherwise might be entitled to.

where Airlines anticipate receiving capacity for moving jet fuel in 2022 or 2023 that is both (a) below pre-pandemic levels and (b) below Airlines' anticipated fuel needs, notwithstanding Airlines' efforts to mitigate the pipeline's capacity constraints.[20]

B2. Are there pipelines transporting jet fuel that were not in prorationing at any time over the past 12 months that would have been in prorationing had jet fuel volumes shipped at 2019 levels? If so, for each nomination cycle (or month) in which the pipeline would have been in prorationing, please describe the degree to which nominations would have exceeded capacity to the extent possible.

B3. Regarding pipelines identified in response to B1, please provide both historical and projected levels of total jet fuel demand at the airport destinations, aggregate jet fuel nominations to each airport destination, and aggregate pipeline capacity awarded for jet fuel movements to each airport destination, beginning with January 2018.[21]

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[20] Mitigation could include increased trucking, tankering, and other attempts to obtain fuel supplies.

[21] Although an individual shipper may not have complete information regarding pipeline capacity, a shipper could provide information related to its own nominations and capacity or could work with other shippers to provide aggregate information.

B4. For pipelines that transport jet fuel, please provide the pipeline's current total capacity for shipments of all products at destinations serving airports and any changes to total capacity that occurred since January 2018.

B5. Regarding products other than jet fuel transported on pipelines serving airport destinations, please provide data showing how aggregate product nominations and aggregate pipeline capacity awarded for each product have changed during the COVID-19 pandemic. Please discuss any specific shifts in product demand that caused these changes. In addition, please provide information regarding how sudden demand shifts have affected pipeline capacity allocations for some products to the detriment of others, including jet fuel.

B6. Please describe any action that the Commission should consider to address concerns regarding oil pipeline capacity to airport destinations. Such actions could include broader policy changes, as discussed in Section A above, or proposals specifically designed to address the capacity allocation issues that have arisen due to the effects of the COVID-19 pandemic on demand for jet fuel shipments. For example, should the Commission consider adjustments to existing capacity allocation methodologies to enhance shippers' ability to transfer their history or otherwise transfer capacity rights to mitigate the impacts of the COVID-19 pandemic? In proposing any potential actions, please describe how such actions would be consistent with the ICA.

B7. Please describe whether expansions of capacity on the pipelines serving airport destinations would help address current and future jet fuel needs. Please identify whether any of the pipelines serving airports were in prorationing in the 12 months prior to March 2020. Please explain in detail the extent of the capacity constraints on these pipelines and discuss whether expansions of pipeline capacity are necessary to avoid continued prorationing going forward.

III. Comment Procedures

10. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Initial Comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and Reply Comments are due **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must refer to Docket No. AD22-7-000, and must include the commenter's name, the organization they represent, if applicable, and their address. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

11. The Commission encourages comments to be filed electronically via the eFiling link on the Commission’s website at http://www.ferc.gov. The Commission accepts most standard word processing formats. Documents created electronically using word

processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

12. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

IV. Document Availability

13. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

14. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

15. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By direction of the Commission. Commissioner Danly is concurring with a separate attached.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Oil Pipeline Capacity Allocation Issues and Anomalous Conditions — Docket No. AD22-7-000

(Issued February 17, 2022)

DANLY, Commissioner, *concurring*:

1. I concur because the Commission always has discretion to issue a Notice of Inquiry (NOI) on any topic within its purview. I also concur because I agree that we recently faced a potential jet fuel shortage driven, at least in part, by the mechanisms in our pipeline tariffs. I write separately to express three concerns.

2. *First*, it is my view that the Commission should only issue notices of inquiry when there is a problem that in fact may need to be resolved and can be done so by the Commission. I do not believe that to be the case here.

3. Today's NOI characterizes the problem as whether oil pipeline allocation methodologies sufficiently address anomalous conditions and identifies only one instance where this problem has occurred: "effects of the COVID-19 pandemic on demand for pipeline capacity to airport destinations."[1] The NOI does not show airlines as having raised concerns since July 2021 when certain airlines filed a request for emergency relief.[2] Airlines are not shy before the Commission. If there were still a problem, we would have heard from them.[3]

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[1] *Oil Pipeline Capacity Allocation Issues and Anomalous Conditions*, 178 FERC ¶ 61,105, at P 9 (2022) (Oil Pipeline Allocation NOI).

[2] *Id.* P 7.

[3] *See also* Chief Administrative Law Judge, Final Status Report, Conference to Discuss Resolution of Jet Fuel Issues at the Reno-Tahoe International Airport, Docket No. AD21-16-000, at PP 2-3 (Aug. 25, 2021) ("The long-term concerns raised regarding jet fuel capacity are too speculative at this time for the parties to a find a consensual resolution in this form . . . it is determined that the participants are at an impasse regarding long term remedies . . . . Going forward, based on a general assessment of the matters at issue, the attendees and other concerned entities would be well advised to continue discussions, in their regular course of business. It seems beneficial for all entities to keep open lines of communication to identify issues or disputes before they arise, and to engage in dialogue on how to best obtain optimal commercial resolution of

4. *Second*, while I again acknowledge that we had a particular problem with supplies of jet fuel in 2021, as a general matter, I am wary of any action wherein the Commission singles out a particular shipper category as the basis for exploring changes to its policies and tariffs.[4] This is especially true when, as here, we have not even made the most preliminary of showings that this shipper category is not similarly situated with other shippers, nor have we identified some other legitimate factor that justifies disparate treatment.[5] As commenters in response to the July 2021 request for relief stated: "All industries and shipper classes faced unprecedented demand destruction during the COVID-19 pandemic. All shippers faced challenges and choices to manage the downturn and prepare for the upcoming period when demand will return."[6]

5. *Third*, I am not confident that carriers will willingly provide the information the Commission requests on destinations, nominations, and capacity awarded.[7]

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what they perceived to be issues in this matter."). *But see Hearing to Review Admin. of Laws Within FERC's Jurisdiction Before the S. Comm. on Energy and Nat'l Res.*, 117th Cong. (2021) (responding to Senator Cortez Masto on 2021 jet fuel shortages, "I think this issue of historical use needs to be addressed. I raised this as an issue in a technical conference we had earlier in the year. I think we need a different approach to allocating capacity because of different anomalies. And you have my commitment that we will take a look at that and hopefully act before next summer's demand peak") (statement of Richard Glick, Chairman of the Fed. Energy Regulatory Comm'n), https://www.energy.senate.gov/hearings/2021/9/full-committee-hearing-to-review-administration-of-laws-within-ferc-jurisdiction.

[4] I also note that the NOI solicits information not related to the anomalous conditions problem. *Id.* P 9, Question B.7 ("Please describe whether expansions of capacity on the pipelines serving airport destinations would help address current and future jet fuel needs.").

[5] *See* 49 App. U.S.C. § 3 (1988) (prohibiting undue preference).

[6] Pilot Travel Centers LLC, et al., Joint Motion to Intervene and Protest, Docket No. OR21-10-000, at 3 (Jul. 27, 2021); *see also* Chevron Products Co., et al., Response to Request for Emergency Relief under Section 1(15) of the Interstate Commerce Act, Docket No. OR 21-10-000, at 2 (Jul. 28, 2021) ("The Commission should ask whether the Request is seeking to prioritize jet fuel and those who can afford to access air travel at the expense of supplying transportation fuels that affect many more people and their daily lives as they go to work, daycare, school, and deliver goods and services in support of their communities.").

[7] *See* Oil Pipeline Allocation NOI, 178 FERC ¶ 61,105 at P 9, Question B.3 ("[P]lease provide . . . aggregate jet fuel nominations to each airport destination, and

Section 15(13) of the Interstate Commerce Act prohibits common carriers from disclosing:

> any information concerning the nature, kind, quantity, destination, or consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor . . . .[8]

6. While I acknowledge the Commission attempts to strategically deploy the word "aggregate," I do not think that this maneuver is sufficient. Oil pipelines that deliver to airport destinations in many cases only have a few shippers, meaning that, even if data is "aggregated," it is not difficult to discern individual shipper data. And even so, I could imagine some shippers arguing that the information, aggregated or not, might be used to their detriment or prejudice.

For these reasons, I respectfully concur.

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James P. Danly
Commissioner

aggregate pipeline capacity awarded for jet fuel movements to each airport destination . . . ."); *id.* Question B.5 ("Regarding products other than jet fuel transported on pipelines serving airport destinations, please provide data showing how aggregate product nominations and aggregate pipeline capacity awarded for each product have changed during the COVID-19 pandemic.").

[8] 49 App. U.S.C. § 15(13) (1988).