

132 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Suncor Energy Marketing Inc.

and

Suncor Energy (U.S.A.) Inc.

v.

Docket Nos. OR09-6-000

Platte Pipe Line Company

Frontier Oil and Refining Company

v.

OR09-7-000

Platte Pipe Line Company

Platte Pipe Line Company

IS10-108-000

IS10-108-001

(consolidated)

ORDER FOLLOWING TECHNICAL CONFERENCE, CONSOLIDATING  
PROCEEDINGS, DENYING COMPLAINTS, REJECTING TARIFF, AND  
REQUIRING ADOPTION OF NEW PRORATIONING PROCEDURE

(Issued September 17, 2010)

## **I. Introduction**

1. In this order, the Commission addresses a complaint filed by Suncor Energy Marketing Inc. and Suncor Energy (U.S.A.) Inc. (together, Suncor) and a similar complaint filed by Frontier Oil and Refining Company (Frontier). Both complaints (Complaint Proceedings) challenge Platte Pipe Line Company's (Platte) March-April 2009 application of the prorating procedure established in its FERC Tariff No. 1456 (Current Procedure). The Commission also addresses a proposed revision of the Current Procedure filed by Platte in an effort to remedy the prorating problems on its pipeline system<sup>1</sup> and an alternative prorating procedure proposed by a group of shippers and based on shippers' historical volumes (Shippers' Proposal).<sup>2</sup>

2. As discussed below, the Commission consolidates the proceedings, denies the complaints, rejects Supplement No. 15 to FERC Tariff No. 1456, and directs Platte to adopt the Shippers' Proposal filed following the technical conference in Docket No. IS10-108-000. One year from the date on which Platte implements the Shippers' Proposal, Platte and its shippers must file comments addressing the effectiveness of the new prorating procedure. Following a review of the comments and any reply comments filed within 20 days after the deadline for initial comments, the Commission will determine whether additional changes are necessary to ensure that prorating on Platte's pipeline system does not produce unjust, unreasonable, and unduly discriminatory results.

## **II. Platte's Pipeline System**

3. Platte owns an interstate pipeline that originates at Casper, Wyoming, and consists of two successive segments extending approximately 950 miles to Wood River, Illinois. At Casper, Platte connects with Express Pipeline LLC and Express Pipeline Ltd. (together, Express) forming an integrated system extending from Hardisty, Alberta, a major Canadian petroleum hub, to Wood River, Illinois, a major refinery location and pipeline hub. Platte has interconnections with other pipelines at Casper and Guernsey, Wyoming, at Holdredge, Nebraska, and at Wood River, Illinois.

4. A portion of the volume flowing from the Express system and other sources at Casper is delivered at Guernsey for further transportation to refineries in the Cheyenne,

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<sup>1</sup> Supplement No. 15 to FERC Tariff No. 1456. In this order, Supplement No. 15 also is referred to as the Pipeline Proposal. Supplement No. 15 is attached to this order as Appendix A.

<sup>2</sup> The Shippers' Proposal is attached to this order as Appendix B. It is presented in a format identifying the proposed changes from Platte's Current Procedure.

Wyoming, and Denver areas. Platte also receives substantial additional volumes at Guernsey for delivery downstream at Wood River; however, Platte's pipeline capacity decreases from approximately 163,000 barrels per day (bpd) on the upstream Casper-Guernsey Segment to approximately 143,000 bpd on the downstream Guernsey-Wood River Segment. As a result of these and other factors discussed below, prorationing on Platte's pipeline system has been the subject of contention between Platte and its shippers for several years.

### **III. Background of Prorationing on Platte's Pipeline System**

5. The proceedings in Docket No. IS06-259-000 provide insight into the current disputes relating to prorationing on Platte's pipeline system.

6. On April 19, 2006, Platte filed Supplement No. 7 to its FERC Tariff No. 1456, proposing to implement historically-based prorationing only on its Guernsey-Wood River Segment. Platte explained that its then-current prorationing procedure applicable to both segments allocated capacity monthly on a pro-rata basis, i.e., based on the shippers' respective nominations as a percentage of available capacity.

7. Platte stated that Supplement No. 7 would allocate capacity among New Shippers and Historical Shippers based on a rolling six-month historical volume average. Platte defined New Shippers as those moving injection volumes in four or fewer of the six months used in the historical calculation. Platte explained that a New Shipper would remain in that category until it had shipped volumes in a minimum of five of the six consecutive months used in calculating the historical period for any particular month and if the pipeline segment had not required prorationing for a minimum of one month. Platte defined Historical Shippers as any shippers other than New Shippers.

8. Platte asserted that, since the third quarter of 2005, it had received steadily increasing nominations on its system from both domestic and Canadian crude oil sources, which contributed to an oversubscription of capacity on its pipeline to Illinois destinations and significant price differentials, enabling shippers to engage in gamesmanship with their nominations. Platte pointed out that it began prorationing in December 2005 at a level of nine percent. However, Platte stated that total ex-Guernsey nominations increased from 135,000 bpd in September/October 2005 to 296,000 bpd in April 2006.

9. Platte stated that it presented its shippers with two historically-based prorationing procedures in early 2006 in response to shipper requests. According to Platte, the 95-percent ship-or-pay provision applicable during prorationing imposed a small and ineffective penalty. Thus, Platte argued that historically-based prorationing was necessary in addition to the ship-or-pay rule. Platte claimed that Supplement No. 7 would help prevent further gamesmanship by shippers that might be trying to build artificial throughput positions in anticipation of historically-based prorationing.

10. The Commission accepted and suspended Supplement No. 7 for seven months, faulting the proposal in part for not permitting shippers to build a history of shipments prior to the imposition of historically-based prorationing. In its order establishing a technical conference (May 19, 2006 Order),<sup>3</sup> the Commission found that this failure created an undue preference, whether intended or not, in favor of those who would be defined as Historical Shippers based on shipments during the retroactive six-month historic period.

11. The Commission found that Platte's proposed reservation of 10 percent of its capacity for New Shippers was within the range of other historically-based prorationing systems approved by the Commission, but that it was not clear that this percentage was appropriate for Platte's system. The Commission directed that the issue be explored at the technical conference. Additionally, the Commission questioned the effect of one section of the proposed prorationing procedure, which provided in part, "Any New Shipper will remain in the New Shipper Allocation until they have shipped volumes in a minimum of five of the six consecutive months used in the calculation for that month AND the pipeline segment has not required prorationing for a minimum of one month" (emphasis in original). The Commission recognized that the dramatic increase in prorationing on Platte's system was likely to continue into the foreseeable future. In such circumstances, the Commission determined that the provision requiring that there be no prorationing for at least one month during the rolling six-month historic period, as well as the volume shipping requirements for a New Shipper to qualify as a Historical Shipper, could not be satisfied.

12. In the Order Following Technical Conference (December 19, 2006 Order),<sup>4</sup> the Commission approved the historically-based prorationing procedure for the Guernsey-Wood River Segment to be effective as of December 20, 2006. The Commission cited Platte's acknowledgment that it was appropriate for a pipeline's tariff to provide capacity to shippers that had used the pipeline consistently and continued to rely on it. Platte stated that the historically-based method is less "dynamic" than the nominations approach; however, the Commission noted Platte's statement that the historically-based method would allow for changes in Historical Shippers' shares over time as New Shippers became Historical Shippers. In addition, the Commission stated that Platte's proposal would allow it to redistribute capacity percentages gradually because, when the 10-percent of capacity set aside for New Shippers was underutilized, it would be reallocated, as would unused capacity allocated to Historical Shippers.

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<sup>3</sup> *Platte Pipe Line Co.*, 115 FERC ¶ 61,215 (2006).

<sup>4</sup> *Platte Pipe Line Co.*, 117 FERC ¶ 61,296 (2006).

13. In the December 19, 2006 Order, the Commission recognized that the intervenors generally supported Platte's proposal as the most workable solution to the capacity allocation problem, although they differed on various aspects of the proposal. In particular, the Commission cited one intervenor's assertion that the prorationing difficulties at that time resulted from Kinder Morgan Canada, Inc.'s (Kinder Morgan) expansion of the Express system without providing for adequate takeaway capacity on Platte.

14. In the December 19, 2006 Order, the Commission emphasized that there was no single prorationing policy that would satisfy all of the competing interests on Platte's system, although there could be a number of different methods that might be appropriate for the system. The Commission pointed out that additional capacity on Platte's system likely would be the most effective means of alleviating the prorationing difficulties, but the Commission explained that it lacked statutory authority to require such an expansion.

15. The Commission found that Platte's proposed rolling historically-based prorationing methodology would permit changes in the shipper mix and the shippers' entitlements over time. The Commission stated that the fact that shippers might not be able to move the volumes they wished to move on Platte's capacity-constrained system did not violate the pipeline's common carrier obligation, which requires that carriers provide transportation service "upon reasonable request therefor."<sup>5</sup> However, the Commission also found merit to certain modifications proposed by Platte that would allow New Shippers to become Historical Shippers even during periods of prorationing and would limit the ability of shippers to game the system through the use of affiliates.

16. The Commission stated that, while Platte's proposal gave consideration to past volumes shipped on its system, the Commission would not require Platte to accommodate certain shippers' speculation concerning levels of volumes they might wish to transport in the future. The Commission concluded that the historically-based prorationing methodology proposed by Platte, as modified, was reasonable in affording all existing and potential shippers the ability to increase their volumes.

17. The Commission also accepted Platte's proposed 10-percent allocation reserved for New Shippers, finding it just and reasonable because it provided an opportunity for a greater number of shippers to attain Historical Shipper status, while at the same time providing sufficient protection for the Historical Shippers because they would retain access to 90 percent of Platte's capacity, with the possibility of access to more capacity if the New Shippers did not utilize the entire 10-percent set-aside. Additionally, the Commission accepted a three-percent cap applicable to an individual New Shipper.

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<sup>5</sup> Interstate Commerce Act (ICA) section 1(4), 49 App. U.S.C. § 1(4) (1988).

18. With the adoption of the historically-based prorationing procedure applicable to the Guernsey-Wood River Segment, Platte began to apply the Current Procedure, which provides separate prorationing procedures for each of the two segments of its system. However, although their proposed remedies differ, Platte and its shippers now share the view that the Current Procedure has become ineffective in addressing prorationing on the Platte system.

#### **IV. Discussion**

##### **A. Introduction**

19. The proceedings in Docket No. IS06-259-000 foreshadow the difficulties arising from Platte's continuing efforts to develop a workable prorationing procedure for its pipeline system. Platte applied a pro-rata prorationing procedure to both segments until 2006, when it acknowledged problems with that methodology and sought Commission authorization to implement historical prorationing, but only on the Guernsey-Wood River Segment. It retained pro-rata prorationing for the Casper-Guernsey Segment. At the time it sought to implement historical prorationing on the Guernsey-Wood River Segment, Platte touted the benefits of that methodology.<sup>6</sup>

20. In March and April 2009, Platte's entire pipeline system required prorationing for the first time since it implemented the Current Procedure. Following Platte's application of the Current Procedure for those months, Suncor and Frontier filed the Complaint Proceedings, alleging that Platte improperly interpreted and applied the Current Procedure in a manner that discriminated against shippers utilizing only the Casper-Guernsey Segment. The Complaint Proceedings are addressed below.

21. Despite settlement discussions over several months with the aid of the Commission's Dispute Resolution Service, Platte and the Complainants failed to reach an agreement to resolve the Complaint Proceedings. The Complainants filed notices of withdrawal from the settlement discussions, and shortly thereafter, Platte filed the Pipeline Proposal, which would apply a new prorationing procedure to both segments of its pipeline on the basis of historical deliveries to defined Destinations. A number of shippers protested the Pipeline Proposal. The Commission accepted and suspended the Pipeline Proposal for seven months, subject to the outcome of a technical conference. Following the technical conference, the parties filed comments and reply comments, and

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<sup>6</sup> See *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 20-21 (2006) (citing *Explorer Pipeline Co.*, 87 FERC ¶ 61,374, at 62,387 n.14 (1999) (*Explorer*); *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999) (*SFPP*); *Total Petroleum, Inc. v. Citgo Products Pipeline*, 76 FERC ¶ 61,164, at 61,947 (1996) (*Citgo*); *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213, at P 28 (2005) (*ConocoPhillips*)).

Suncor filed the Shippers' Proposal, which would allocate capacity on both segments on the basis of shippers' historical shipments. It is clear from the pleadings submitted in the Complaint Proceedings and the instant proceeding addressing the Pipeline Proposal that the Current Procedure with its dual prorationing methodologies is no longer a satisfactory means of prorationing capacity on Platte's system.

22. As discussed below, the Commission denies the complaints, finding that Platte's application of the Current Procedure in March and April 2009 was based on a reasonable interpretation of that procedure. However, the Commission also concludes that Platte has failed to demonstrate that, going forward, the Pipeline Proposal will be just, reasonable, and not unduly discriminatory. Platte's efforts to justify this replacement of its Current Procedure are based largely on irrelevant and generally unsupported claims that the pipeline's competitive position is being jeopardized by the alleged arbitrage of current shippers' transportation entitlements and that it seeks to protect potential shippers that do not have historical allocations on the pipeline. Further, the Pipeline Proposal would violate Platte's ICA section 1(4) common carrier obligation to provide transportation upon reasonable request, as well as the prohibition against any undue or unreasonable preference established in ICA section 3(1). Finally, the Pipeline Proposal, which is based on the history of transportation to certain defined Destinations, is unprecedented, cumbersome, and vague, and it affords the Destinations unwarranted and improper control over transportation on Platte's pipeline system.

23. The records in the three captioned proceedings support a Commission determination that the Current Procedure is flawed and must be replaced, and because the Pipeline Proposal is not just and reasonable, the Commission has examined the Shippers' Proposal and directs Platte to adopt that historically-based prorationing procedure on both segments of its pipeline system, as discussed below.

### **B. Prorationing on Oil Pipelines**

24. The purpose of a prorationing procedure is to allocate constrained pipeline capacity among shippers in an equitable manner that is consistent with the common carrier obligation established in ICA section 1(4),<sup>7</sup> the section 1(6) prohibition of unjust

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<sup>7</sup> 49 App. U.S.C. § 1(4) (1988) provides in part: "It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor. . . ." See *Belle Fourche Pipeline Co.*, 28 FERC ¶ 61,150 (1984) (summarizing the history of the common carrier obligation and rejecting tariff provision that would allow the carrier to refuse service to a shipper even if other shippers already have tendered volumes that would utilize the entire capacity of the pipeline). In a later case, *Texaco Pipeline Inc.*, 74 FERC ¶ 61,071, at 61,201-02 and n.5 (1996) (*Texaco*), the Commission rejected a tariff provision that would designate a portion of the

(continued...)

and unreasonable classifications, regulations, and practices,<sup>8</sup> and the section 3(1) provision forbidding any undue or unreasonable preference or advantage.<sup>9</sup> A prorationing procedure may not be structured for the purpose of protecting a pipeline's competitive position, nor may it be structured to favor certain shippers or types of shippers over others if all have made "reasonable requests" for transportation on the pipeline. The Commission does not prescribe a uniform prorationing methodology,<sup>10</sup> requiring only that any prorationing procedure must be just and reasonable and not unduly discriminatory in light of factors applicable to each pipeline's provision of service to its shippers.

25. One common prorationing procedure is a historically-based methodology that affords a preference to shippers with a history of shipping on the pipeline. The Commission has accepted this type of prorationing procedure for a number of pipelines, including for Platte's Guernsey-Wood River Segment, recognizing that it rewards shippers for their loyalty.<sup>11</sup> However, the Commission also has required pipelines, including Platte, that implement historically-based prorationing methodologies to allow all shippers the opportunity to develop a record of transportation on the pipeline so as to attain preferred historical shipper status.<sup>12</sup>

26. Another common procedure for allocating limited capacity is a pro-rata methodology that awards a share of the available capacity to each shipper based on the shipper's proportionate share of all nominations, regardless of a shipper's history of shipments on the pipeline. The pro-rata allocation methodology applied to Platte's entire system prior to 2006, when it implemented historically-based prorationing for its Guernsey-Wood River Segment pursuant to the December 19, 2006 Order.<sup>13</sup> While

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pipeline's capacity for the guaranteed use of a special class of shippers holding contracts for transportation.

<sup>8</sup> 49 App. U.S.C. § 1(6) (1988) provides in part: "[E]very unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

<sup>9</sup> 49 App. U.S.C. § 3(1) (1988) provides in part: "It shall be unlawful for any common carrier . . . to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company . . . ."

<sup>10</sup> *See, e.g., Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at P 14 (2004).

<sup>11</sup> December 19 2006 Order, 117 FERC ¶ 61,296 at P 42-48.

<sup>12</sup> *Id.* P 56.

<sup>13</sup> *Id.*

pro-rata and historically-based prorationing procedures are the most common, the Commission does not limit pipelines to strict versions of these two methodologies.<sup>14</sup>

### C. Complaint Proceedings

27. Complainants assert that Platte's actions in March and April 2009 violated the ICA, including sections 1(4), 1(6), and 3(1). Complainants further argue that Platte failed to apply its Current Procedure in accordance with the Commission's orders in Docket No. IS06-259-000, which are discussed above. However, if the Commission finds that Platte acted in accordance with its Current Procedure, Complainants ask the Commission to require Platte to modify the Current Procedure to establish historical apportionment on the Casper-Guernsey Segment so that both segments will be subject to the same prorationing procedure. In the alternative, Complainants ask the Commission to require Platte to provide for nominations-based pro-rata prorationing on both segments of the pipeline.

28. Flint Hills Resources, LP (Flint Hills) filed a motion to intervene and an answer in opposition to Suncor's complaint, stating that the relief requested by Suncor could adversely affect Flint Hills' access to pipeline capacity needed to supply its Pine Bend Refinery and undermine the historically-based methodology approved by the Commission in the December 19, 2006 Order. Flint Hills also asserts that any change in the existing methodology should be implemented prospectively. The Wyoming Pipeline Authority (WPA) filed a motion for leave to intervene out of time and a request for a technical conference. EnCana Marketing (USA) Inc. (EnCana) and Frontier filed motions to intervene, and Cenovus Marketing (USA) Inc. (Cenovus) filed a motion for leave to intervene out-of-time.

29. ConocoPhillips Canada (BRC) Ltd., EnCana, and Suncor filed motions to intervene in the Frontier complaint proceeding. WPA filed a motion to intervene and a request for appointment of a settlement judge. Cenovus filed a motion for leave to intervene out-of-time.

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<sup>14</sup> For example, in *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *reh'g denied*, 122 FERC ¶ 61,123 (2008) (*CCPS*) the Commission accepted a proposal that reserved a portion of the pipeline's expansion capacity to firm shippers paying a premium rate pursuant to Transportation Services Agreements, but also required the pipeline to set aside a portion of the capacity for new shippers. The Commission determined that the pipeline's open season for the expansion capacity afforded all prospective shippers an equal opportunity to enter into such firm agreements, observing that shippers who chose not to do so had the flexibility to ship on the pipeline in any month, but would pay less for non-firm service.

30. In its Answers and Motions for Partial Summary Disposition and Dismissal and Motions to Adopt Procedures, Platte refutes the Complainants' allegations. However, Platte does state that it has concluded that the Current Procedure might have unintended future consequences. For that reason, on January 20, 2010, Platte filed the Pipeline Proposal, which is addressed below.

**1. Positions of the Parties**

**a. Complainants**

31. Complainants contend that Platte admits that it applied its Current Procedure during March and April 2009 as follows:

- Platte initially apportioned the Guernsey-Wood River Segment pursuant to the historical rules in Item 11 of the Current Procedure, including the provision of undersubscribed space held for New Shippers and Historical Shippers; and
- For volumes originating out of Casper, Platte first reserved Casper-Guernsey Segment capacity for volumes continuing past Guernsey, and then it apportioned the remaining Casper-Guernsey capacity pro-rata for volumes destined for final delivery at Guernsey.

32. According to Complainants, with both segments over-nominated, Platte should have applied Item 8.c. of its Current Procedure as follows:

- First, it should have prorated the Guernsey-Wood River Segment based on the historical procedure, pursuant to Items 9 and 11 of the Current Procedure; and
- Second, it should have prorated all volumes (regardless of the ultimate destination) moving on the Casper-Guernsey Segment (including volumes destined for subsequent shipment on the Guernsey-Wood River Segment) on a pro-rata basis in accordance with Items 9 and 10 of the Current Procedure.

Complainants submit that Platte's actions allowed shippers utilizing both segments to obtain an improper preference on the Casper-Guernsey Segment versus shippers that utilized only the Casper-Guernsey Segment.

33. Complainants contend that, even when the Current Procedure addresses volumes that travel the entire length of the pipeline, it speaks of two distinct segments. They argue that pro-rata allocation of all shippers on the Casper-Guernsey Segment would not result in double prorationing of shippers on the Guernsey-Wood River Segment. Rather,

they contend that a shipper would be prorated once on each segment it uses, similar to the process used when there is prorationing on multiple segments of a pipeline path utilizing more than one carrier. Complainants add that nothing in the Current Procedure indicates that the Casper-Guernsey shippers as a group are limited to their total historical shipments.

34. Complainants further maintain that the Current Procedure recognizes that volumes traveling to Wood River may originate from Casper and contribute to the need for prorationing on the Casper-Guernsey Segment. Despite that, they continue, Platte's insistence that Casper-Wood River volumes can be subject only to the Guernsey-Wood River allocation rules leads to absurd results. For example, they state that, under Platte's interpretation, all 143,000 bpd of capacity (with 130,000 bpd injected at Casper) on the Guernsey-Wood River Segment is allocated by the historical method. However, noting that the Casper-Guernsey Segment capacity is limited to 125,000 bpd because of government-imposed flow restrictions, Complainants explain that Platte would have to allocate 5,000 bpd more on the Casper-Guernsey Segment than actual capacity allows. Further, continue Complainants, because Platte will not prorate these barrels twice, it would not be able to reduce the barrels scheduled for the Casper-Guernsey Segment to a volume that it actually could transport on that segment. Thus, Complainants assert that shippers nominating volumes on the Casper-Guernsey Segment for Guernsey delivery would be completely shut out of the segment based on the improper preference afforded Wood River shippers on the Casper-Guernsey Segment.

35. Complainants state that the May 19, 2006 Order indicated that the Casper-Guernsey Segment would continue to be prorated based on a pro-rata share of nominations.<sup>15</sup> Complainants also point to Platte's statement in Docket No. IS06-259-000:

Frontier's volumes, by its own admission, move overwhelmingly, indeed for years almost exclusively, west of Guernsey [*i.e.*, on the upstream segment]. Although Frontier claims that it may transport more volumes east to its Kansas refinery, it has not done so in the past, and it is purely speculative that Frontier may move sufficient volumes east of Guernsey [*i.e.*, on the downstream segment] to be significantly affected by the proposed rules at some point in the

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<sup>15</sup> May 19, 2006 Order, 115 FERC ¶ 61,215, at P 1, 4 (2006).

future . . . *Suncor, like Frontier, has traditionally moved its volumes overwhelmingly off the system at Guernsey – transportation that is unaffected by the proposal.*<sup>16</sup>

According to Complainants, neither Platte nor the Commission suggested that the prorationing procedure established in that proceeding also would affect volumes west of Guernsey.

36. Complainants argue that the Commission has determined that it is unduly discriminatory and preferential for a common carrier pipeline to grant certain shippers preferential access to capacity without offering the capacity to all similarly-situated shippers of like commodities. Moreover, state Complainants, the Commission has applied this principle to forbid the practice at issue here, i.e., exempting certain shippers from prorationing. For example, continue Complainants, in *Enbridge (U.S.) Inc. (Enbridge)*,<sup>17</sup> the pipeline proposed to exempt shippers from prorationing if they signed throughput and deficiency agreements; however, the Commission rejected the proposal, holding that such an exemption would be unjust, unreasonable, and unduly discriminatory under the ICA and applicable Commission precedent.

37. Complainants state that Platte's March-April 2009 application of its Current Procedure differs from situations in which any shipper eventually could gain access to the capacity.<sup>18</sup> Complainants emphasize that, under Platte's application of its Current Procedure, a Casper-Guernsey shipper would not be able to gain access to the capacity reserved for long-haul shippers. Complainants point out that the Commission determined that the shippers exempted from prorationing in the *CCPS* case were differently situated because they paid premium rates.<sup>19</sup> Complainants also cite *Texaco*, in which the Commission rejected a proposal to exempt a large percentage of the pipeline's capacity from prorationing so that it could serve its contract shippers, regardless of the volume that non-contract shippers might tender.<sup>20</sup>

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<sup>16</sup> Response of Platte Pipe Line Company to Protests, Docket No. IS06-259-000, at 25, 27 (May 9, 2006) (emphasis added).

<sup>17</sup> 124 FERC ¶ 61,199, at P 30, 37 (2008).

<sup>18</sup> *Id.* P 31-34 (distinguishing *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007) (*CCPS*) and *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040 (2006) (*Mid-America*)).

<sup>19</sup> *Id.* P 31, 34.

<sup>20</sup> *Texaco*, 74 FERC ¶ 61,071, at 61,201 and n.4.

38. Complainants argue that Platte's application of the Current Procedure is not a case in which the preferred shippers have taken on additional contractual risk, such as by means of throughput and deficiency agreements used to finance expansions of pipeline infrastructure. Moreover, Complainants state that the through shippers do not pay a premium rate as did the *CCPS* shippers, and it is not a sufficient distinction that the preferred shippers purchase transportation from Platte on both segments rather than on only one segment. Complainants argue that permitting a common carrier to tie preferential treatment on one segment to a shipper's purchase of transportation on another segment could lead to abuse, such as compelling an upstream-segment shipper to purchase downstream-segment capacity that it does not need so it can have reasonable access to the pipeline's upstream capacity. In contrast, continue Complainants, their interpretation of the Current Procedure would afford shippers on the upstream segment a variety of options for the ultimate destinations of their shipments rather than favoring the shippers that ship on both of Platte's segments.

39. Complainants also assert that the courts have established rules of construction for the interpretation of tariffs. For example, Complainants state that the terms of a tariff must be taken in the sense in which they are generally used and accepted.<sup>21</sup> Complainants further state that a tariff should be strictly construed against the carrier because the carrier drafted the tariff and, therefore, any ambiguity or doubt should be decided in favor of the shipper.<sup>22</sup> Complainants add that published rules relating to tariffs must have a reasonable construction and should be interpreted in such a way as to avoid unfair, unusual, absurd, or improbable results.<sup>23</sup> However, even if the Commission determines that Platte applied the Current Procedure in accordance with its terms, Complainants assert that the Commission should order Platte to cease and desist from using the Current Procedure so as to prevent an unjust, unreasonable, and unduly discriminatory result in favor of certain shippers.

**b. Platte**

40. Platte responds that the pertinent provisions of its Current Procedure have remained unchanged since it submitted its compliance filing following the December 19, 2006 Order. Platte emphasizes that the provisions took effect by operation of law in the absence of protests.

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<sup>21</sup> *Penn Central Company v. General Mills, Inc.*, 439 F.2d 1338, 1340 (8<sup>th</sup> Cir. 1971) (*Penn Central*).

<sup>22</sup> *Id.* at 1341.

<sup>23</sup> *Id.*

41. Platte contends that nothing in its tariff supports the claim that the two segments of its pipeline are the equivalent of segments on two different pipelines that are subject to successive nominations, and in fact, that the Nominations section of its FERC Tariff No. 1456 makes this clear.<sup>24</sup> According to Platte, a shipper makes a single nomination for transportation on its system, and most of the volumes tendered at Casper move past Guernsey and travel the entire length of the pipeline.

42. Platte further explains that, under section 8.c. of the Current Procedure, when both segments are subject to allocation, all ex-Casper and ex-Guernsey volumes destined for any points east of Guernsey will be prorated first “based on the historical methodology below.” However, continues Platte, if additional prorationing is required for the Casper-Guernsey Segment, all ex-Casper and ex-Guernsey volumes destined for points east of Casper will be prorated “based on the prorating methodology below.” Platte emphasizes that, in contrast to the first clause, the second clause does not specify the “historical” or the “pro-rata” method, but instead refers to “the prorating methodology below,” which means both the pro-rata methodology (Item 10) and the historical methodology (Item 11).

43. Platte also argues that it did not exempt from prorationing those deliveries to destinations east of Guernsey. Platte points out that, since January 2007, shippers transporting volumes to destinations east of Guernsey have not been able to nominate all the volumes they wished to nominate because the volume assigned to each shipper is constrained by that shipper’s rolling six-month average of volumes moved, as reduced by volumes allocated to New Shippers. According to Platte, during the period at issue, the net result of prorating nominations from Casper to Guernsey within the amount of capacity that was not allocated to shippers delivering east of Guernsey was that the Guernsey destination shippers received roughly the same volume of capacity that was available to them during the month prior to the 2009 prorationing.

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<sup>24</sup> **6.1 Monthly Nominations** On or before Carrier’s Monthly Nomination date, Shipper shall provide Carrier with a Nomination on the prescribed Nomination Form including the volume of Petroleum or Crude Oil to be shipped for the following Month, the Receipt Point(s), the Delivery Point(s) and type(s) of Petroleum and Crude Oil. Shipper shall, upon notice from Carrier, also provide written third party verification of the availability of its supply of Petroleum or Crude Oil and of its capability to remove such Petroleum or Crude Oil from the Delivery Point(s) as may be required by Carrier in support of such Shipper’s Nomination. Carrier shall not be obligated to accept Shipper’s Nomination where such verification is unacceptable to Carrier.

44. Platte asserts that, under conditions like those present in March and April 2009, Complainants' approach would create unfair and discriminatory results for the long-haul shippers. Platte contends that this would be compounded by the fact that, because the first round of prorationing is based on historical volumes, the long-haul shippers would be unable to nominate volumes higher than those historical volumes during the prorationing process. In contrast, however, states Platte, the short-haul shippers would be free to game the system by nominating far higher volumes than they might expect to receive because they would not be constrained by the historical volume limit applicable to the long-haul shippers.

45. Citing the principles of tariff interpretation found in *Penn Central*<sup>25</sup> and *Trans Alaskan Pipeline System (Trans Alaskan)*,<sup>26</sup> Platte disagrees that the tariff must be construed in favor of the shippers. Platte maintains that a tariff provision must be implemented in light of "the factual situation upon which it is sought to be impressed," in a manner that will "avoid unfair, unusual, absurd or improbable results," and such that it "conforms to the intentions of the framers of the tariff."<sup>27</sup>

46. Platte asserts that Complainants ignore the need to apply Item 8 in light of the fact that the prorationing of shippers moving along the entire length of the pipeline should be consistent with the fundamental rationale of the Commission's December 19, 2006 Order. According to Platte, it is incorrect to compare Platte's prorationing approach to the types of capacity allocation recently rejected by the Commission, such as in *Enbridge*,<sup>28</sup> *CCPS*,<sup>29</sup> and *Mid-America*.<sup>30</sup> Platte argues that the key issue in all of these cases was whether the pipeline's award of what would be considered "firm" capacity to shippers that executed long-term contracts of a particular type reserved the capacity for their use as a matter of contract right versus non-contract shippers. Moreover, continues Platte, the contrast between the issue in this case and that found in the cited cases is

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<sup>25</sup> 439 F.2d 1338, 1340-41 (8<sup>th</sup> Cir. 1971).

<sup>26</sup> 57 FERC ¶ 63,010 (1991).

<sup>27</sup> *Penn Central Company v. General Mills, Inc.*, 439 F.2d 1338, 1340-41 (8<sup>th</sup> Cir. 1971); *National Van Lines, Inc. v. United States*, 355 F.2d 326, 332 (7<sup>th</sup> Cir. 1966); *Glickfield v. Howard Van Lines, Inc.*, 213 F.2d 723, 727 (9<sup>th</sup> Cir. 1954); *A.E. West Petroleum Co. v. Atchison, T. & S.F. Ry*, 212 F.2d 812, 816 (8<sup>th</sup> Cir. 1954).

<sup>28</sup> 124 FERC ¶ 61,199.

<sup>29</sup> 121 FERC ¶ 61,253.

<sup>30</sup> 116 FERC ¶ 61,040.

illustrated by the Commission's summary of the basis for denying approval of firm rights in *Enbridge*:

In contrast, the Petitioners here propose that the firm shippers pay a lower rate than the uncommitted shippers in addition to receiving a guarantee that their contracted volumes will never be subject to prorationing. Additionally, the proposal in this proceeding would prevent new or spot shippers from becoming regular shippers, thereby denying them access to 90 percent of the Project's capacity. The Commission finds that this prorationing arrangement is unreasonable under the ICA and applicable Commission precedent.<sup>31</sup>

47. Platte distinguishes the situation on its pipeline from these cases as follows:

- There is no closed class of contract shippers with firm rights on Platte's system;
- Historical Shippers on Platte's system must use their allocations or lose them;
- There is no prohibition against New Shippers appearing and using the unused capacity; and
- There is no limitation to 10 percent or any other low percentage use of the system.

## 2. Commission Analysis

48. The Commission concludes that it was reasonable for Platte to interpret and apply the Current Procedure as it did in 2009. Complainants bear the burden of proof in these proceedings to demonstrate that Platte failed to interpret and apply the Current Procedure properly, and the Commission finds that they have not met that burden. For that reason, the Commission denies the complaints. However, the Complainants contend that the Current Procedure should be replaced with a single prorationing methodology applicable to both segments of the pipeline, and with its filing of the Pipeline Proposal, Platte also acknowledges that a single prorationing methodology applicable to both segments will be more effective. The Commission will address below the competing proposals to replace the Current Procedure.

49. First, the Commission points out that the Complainants were active parties to the proceedings in Docket No. IS06-259-000, in which the Commission approved the

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<sup>31</sup> *Enbridge*, 124 FERC ¶ 61,199 at P 34.

Current Procedure. They did not seek rehearing of the December 19, 2006 Order and did not contest Platte's compliance filing. Perhaps the contrasting interpretations of the Current Procedure did not become clear until prorationing actually became necessary on both segments of the pipeline in 2009, but at any rate, Complainants had ample opportunity to review the Current Procedure and challenge its potential application during the 2006 proceedings.

50. Platte states that, when it determined that prorationing was required on both segments of its pipeline system in March and April of 2009, it applied the Current Procedure by first prorating on the historical basis all ex-Casper and ex-Guernsey volumes destined for any tariff delivery point east of Guernsey. When additional prorationing became necessary, Platte states that it prorated the remaining volumes nominated for delivery on the upstream Casper-Guernsey Segment on a pro-rata basis in accordance with the procedure established in section 10.ii.<sup>32</sup>

51. In contrast, Complainants argue that Platte should have prorated its system by first prorating the Guernsey-Wood River Segment based on the historical procedure, pursuant to Items 9 and 11 of the Current Procedure,<sup>33</sup> and second, by prorating all volumes

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<sup>32</sup> 10. Casper-Guernsey Segment:

...

- ii. Pro Rata Allocation – For any Month, if the Carrier determines that Nominations exceed its capacity, then the Carrier will determine the capacity available in that Month. In the event that Binding Nominations for that Month exceed the capacity available, such capacity shall be allocated to Shippers on a pro rata share of capacity available. . . .

<sup>33</sup> 9. Methodology – In a month where the Carrier determines the requirement for Platte Pipe Line to be prorated, ALL Shippers nominating to tariff delivery points on the affected segment(s) of the Platte Pipe Line will have their nominated volumes prorated at the Platte injection point at the level of prorationing in the affected Pipe Line segment. . . .

11. Guernsey-Wood River Segment:

- i. Capacity Allocation – Capacity will be allocated as follows: 10% of capacity to New Shippers and 90% of capacity to Historic Shippers. Any individual New Shipper will not be allocated more than 3% of capacity.

(continued...)

(regardless of the ultimate destination) moving on the Casper-Guernsey Segment on a pro-rata basis using the methodology described in Items 9 and 10 of the Current Procedure. Complainants submit that Platte's actions allowed shippers utilizing both segments to obtain an improper preference on the Casper-Guernsey Segment versus shippers that utilized only the Casper-Guernsey Segment.

52. Section 8 of the Current Procedure describes the application of prorationing on Platte's pipeline system. It provides as follows:

8. Application to Pipe Line Segment – Following the receipt of nominations for a month, Carrier will determine if the prorated segment of the pipeline will be the Casper-Guernsey Segment, the Guernsey-Wood River Segment or both. If the prorated segment of the Platte Pipeline is the:
  - a. Casper-Guernsey Segment, then all eastbound ex-Casper volumes destined for tariff delivery destinations east of Casper will be prorated equally, and Guernsey receipts onto Platte destined for tariff delivery destinations east of Guernsey will not be prorated, or the,
  - b. Guernsey-Wood River Segment, then all ex-Casper and ex-Guernsey volumes destined for any tariff delivery point east of Guernsey will be prorated on the historical methodology below, and ex-Casper volumes destined for Guernsey will not be prorated, or on,
  - c. Both segments, then the Guernsey-Wood River Segment (all ex-Casper and ex-Guernsey volumes destined for any tariff delivery points east of Guernsey) will be prorated first based on the historical methodology below and if still required: the Casper-Guernsey Segment, (all-ex-Casper and ex-Guernsey volumes destined for any tariff delivery points east of Casper) will be prorated based on the prorating methodology below.

53. Sections 8.a. and 8.b. are clear in specifying the prorationing methodologies to be applied when only one segment is to be prorated. However, the intent of section 8.c.,

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. . . .

- iv. Proportion – The allocated pipeline proportion to each Historical Shipper as a ratio will be the respective 6 month total injection volume for each Historical Shipper divided by the 6 month summation of total Historical Shipper monthly throughputs. . . .

particularly the words “will be prorated based on the prorating methodology below,” is the basis of the current dispute between Platte and the Complainants. “[T]he prorating methodology below” could be read to include both the historical methodology applicable to the Guernsey-Wood River Segment and the pro-rata methodology applicable to the Casper-Guernsey Segment. However, the wording of section 8.c. makes the prorating of the Casper-Guernsey Segment secondary to the prorating of the Guernsey-Wood River Segment if both segments require prorating.

54. The Commission finds that it is reasonable to interpret section 8.c. as follows: (1) the Guernsey-Wood River Segment must be prorated first in accordance with the historical methodology, even if the volumes to be transported east of Guernsey originate as far west as Casper; (2) if Platte determines that additional prorating is required, it must calculate the Casper-Guernsey capacity remaining after the long-haul shippers’ prorated volumes are deducted from the total capacity of that segment; and (3) the remaining capacity must be allocated on a pro-rata basis for transportation that is limited to the Casper-Guernsey Segment.

55. Section 9 of the Current Procedure states that, in a month when the pipeline is prorated, “ALL shippers nominating to tariff delivery points on the affected segment(s) of the Platte Pipe Line will have their nominated volumes prorated at the Platte injection point at the level of prorating in the affected Pipe Line segment. . . .” This section does not preclude Platte’s interpretation and application of the Current Procedure as it did in 2009. It is reasonable to interpret this section to allow long-haul shippers to be prorated pursuant to the historical methodology applicable to the Guernsey-Wood River Segment and likewise to prorate the Casper-Guernsey Segment shippers in accordance with the pro-rata procedure applicable to that segment. This interpretation would make section 9 consistent with section 8.c., although it does not specify that the Casper-Guernsey Segment shippers will be allocated only the amount of capacity remaining after the long-haul shippers’ allocations are deducted from the capacity of the Casper-Guernsey Segment.

56. The Commission also rejects the claim that Platte’s two segments are comparable to multiple segments on different pipelines and, therefore, that long-haul shippers should be subjected to separate prorating on each segment. Section 6.1 - Nominations of Platte’s tariff makes it clear that all shippers, whether long or short-haul, nominate volumes only once for transportation on Platte’s system. That section states as follows:

On or before Carrier’s Monthly Nomination date, Shipper shall provide Carrier with a Nomination on the prescribed Nomination Form including the volume of Petroleum or Crude Oil to be shipped for the following Month, the Receipt Point(s), the Delivery Point(s) and type(s) of Petroleum and Crude Oil. Shipper shall, upon notice from Carrier, also provide written third party verification of the availability of its supply of Petroleum or Crude Oil and of its capability to remove such Petroleum or

Crude Oil from the Delivery Point(s) as may be required by Carrier in support of such Shipper's Nomination. Carrier shall not be obligated to accept Shipper's Nomination where such verification is unacceptable to Carrier.

57. The Commission rejects the claim that pro-rata allocation of all shippers on the Casper-Guernsey Segment will not cause double prorationing of shippers whose volumes subsequently are transported on the Guernsey-Wood River Segment. If only the pro-rata methodology is applied to the long-haul shippers, the value of their historical business relationship with Platte will not be recognized. However, if all shippers on the upstream segment are subject to pro-rata allocation before the long-haul shippers are prorated based on the historical methodology for transportation of the Guernsey-Wood River Segment, it is clear that the long-haul shippers will be subject to double prorationing.

58. Complainants argue that the May 19, 2006 Order indicated that the Casper-Guernsey Segment would continue to be prorated based on a pro-rata share of nominations.<sup>34</sup> According to Complainants, Platte's own statements in Docket No. IS06-259-000 contravene the allocation process it now advances.<sup>35</sup>

59. The Commission's statements in early paragraphs of the May 19, 2006 Order recite Platte's description of its proposal.<sup>36</sup> While that order described Platte's filing and raised some areas of concern on the part of the Commission, the order merely accepted and suspended the filing, subject to the outcome of a technical conference. Following the technical conference in Docket No. IS06-259-000, the parties submitted comments and

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<sup>34</sup> *Platte Pipe Line Co.*, 115 FERC ¶ 61,215, at P 4 (2006).

<sup>35</sup> For example, they point to Platte's statement in Docket No. IS06-259-000:

Frontier's volumes, by its own admission, move overwhelmingly, indeed for years almost exclusively, west of Guernsey [*i.e.*, on the upstream segment]. Although Frontier claims that it may transport more volumes east to its Kansas refinery, it has not done so in the past, and it is purely speculative that Frontier may move sufficient volumes east of Guernsey [*i.e.*, on the downstream segment] to be significantly affected by the proposed rules at some point in the future . . . *Suncor, like Frontier, has traditionally moved its volumes overwhelmingly off the system at Guernsey – transportation that is unaffected by the proposal.*

Response of Platte Pipe Line Company to Protests, Docket No. IS06-259-000, at 25, 27 (May 9, 2006) (emphasis added).

<sup>36</sup> *Platte Pipe Line Co.*, 115 FERC ¶ 61,215, at P 1, 4 (2006).

reply comments. As stated above, both Suncor and Frontier were active parties to the proceedings in Docket No. IS06-259-000 and could have sought rehearing of the December 19, 2006 Order following the technical conference or challenged the compliance filing if they believed that the Current Procedure was unclear as to the proper means of allocating capacity in the event that both segments of Platte's pipeline required prorationing. However, the Current Procedure went into effect in December 2006 and the construction and application of section 8.c. remained unchallenged until after Platte applied it in March-April of 2009.

60. Complainants cite a variety of Commission decisions in support of their argument that it is unduly discriminatory and preferential for a common carrier pipeline to grant certain shippers preferential access to capacity without offering the capacity to all similarly-situated shippers of like commodities. For example, Complainants state that, in *Enbridge*,<sup>37</sup> the pipeline proposed to exempt shippers from prorationing if they signed throughput and deficiency agreements. According to Complainants, the Commission rejected the proposal, holding that such an exemption would be unjust, unreasonable, and unduly discriminatory under the ICA and applicable Commission precedent.<sup>38</sup> Additionally, Complainants cite *Texaco*, in which the Commission rejected a proposal to exempt a large percentage of the pipeline's capacity from prorationing so that it could serve its contract shippers, regardless of the volume that non-contract shippers might tender.<sup>39</sup>

61. Platte has not exempted the long-haul shippers from prorationing, instead first prorating those shippers based on the historical methodology adopted for the Guernsey-Wood River Segment in the 2006 proceedings. Further, Platte has not reserved a specific amount of capacity for the long-haul shippers. As Platte points out, since January 2007, shippers transporting volumes to destinations east of Guernsey have not been able to nominate all the volumes they wished to nominate because the volume assigned to each shipper is constrained by that shipper's rolling six-month average of volumes moved, as

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<sup>37</sup> *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 30 (2008).

<sup>38</sup> *Id.* P 37.

<sup>39</sup> *Texaco*, 74 FERC ¶ 61,071 at 61,201 and n.4. The Commission held as follows:

[T]he tariff grants an unreasonable preference by designating a portion of the pipeline for the exclusive use of a special class of shippers. This preference takes the form of a guarantee of service, which, in effect, denies access to other shippers. Thus, the tariff violates the common carrier obligation to provide service upon reasonable request.

reduced by volumes allocated to New Shippers. Additionally, as the Commission stated in the December 19, 2006 Order, the fact that shippers may not be able to move the volumes they wish to move on Platte's capacity-constrained system does not violate Platte's common carrier obligation.<sup>40</sup>

62. Complainants also contend that Platte's March-April 2009 application of its Current Procedure differs from situations in which any shipper eventually could gain access to the capacity.<sup>41</sup> They assert that, under Platte's interpretation of its Current Procedure, a Casper-Guernsey shipper would not be able to gain access to the capacity reserved for long-haul shippers. Complainants also maintain that the Commission determined that the shippers exempted from prorationing in the *CCPS* case were differently situated because they paid premium rates.<sup>42</sup> In contrast, Complainants argue that long-haul shippers are not differently situated on the Casper-Guernsey Segment of Platte's system and should not be exempted from pro-rata prorationing on that segment.

63. The Current Procedure applies the pro-rata allocation methodology to shippers that transport volumes only on the Casper-Guernsey Segment. As explained above, the Commission has required historically-based prorationing procedures to allow new shippers a means of becoming historical shippers. However, a pro-rata allocation methodology, such as that applicable to shippers moving volumes only on the Casper-Guernsey Segment, does not distinguish new and historical shippers; in times of constrained capacity, it merely apportions the available capacity in proportion to the parties' nominations, regardless of the shippers' historical business relationships with the pipeline.

64. Complainants' example demonstrates how Platte's interpretation of the Current Procedure could lead to absurd results because of the differences in capacity of the two pipeline segments. In contrast, Platte asserts that, under conditions such as those present in March and April 2009, Complainants' approach would create unfair and discriminatory results for the long-haul shippers because they would be limited to their historical volumes, while short-haul shippers would be able to game the system because they would not be subject to historical volume limitations.

65. These hypothetical examples do not overcome the Commission's conclusion that Platte reasonably applied the Current Procedure in 2009, although they do highlight the

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<sup>40</sup> *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 46 (2006).

<sup>41</sup> *Id.* P 31-34 (distinguishing *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007) and *Mid-America Pipeline Co.*, 116 FERC ¶ 61,040 (2006) (*Mid-America*)).

<sup>42</sup> *Id.* P 31, 34.

fact that future application of the Current Procedure may be unjust and unreasonable for both long and short-haul shippers. Accordingly, the Commission denies the complaints and turns to an analysis of the Pipeline Proposal and the alternative Shippers' Proposal.

#### **D. Pipeline Proposal**

##### **1. Tariff Filing**

66. In its January 20, 2010 filing in Docket No. IS10-108-000, Platte emphasizes that the Commission has not required a generally-applicable prorationing procedure.<sup>43</sup> Platte states that the Pipeline Proposal combines aspects of the two distinct prorationing methodologies currently effective on its pipeline segments, but applies the new methodology to both segments.

67. Specifically, continues Platte, it will retain the allocation of capacity on the basis of historical volumes, but will do so on the basis of delivery patterns, i.e., historical volumes delivered to defined Destinations, rather than based on the history of all volumes transported within a segment for the account of individual shippers.<sup>44</sup> Platte explains that the allocation of capacity to each defined Destination will be determined by the highest five (later revised to four) months of the preceding six months or a minimum of five percent.<sup>45</sup> Additionally, Platte states that capacity allocations to individual shippers will be based on their historical pro-rata shares of nominations to each Destination. Platte maintains that the principal elements of the Pipeline Proposal – both the concept of relying on historical volumes (here, patterns of delivery) and the use of pro-rata allocations among shippers based on nominations – have been accepted by the Commission for other pipelines, as well as for Platte itself.

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<sup>43</sup> Platte cites *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213, at P 20 (2005) (quoting *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004)); *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 42 (2006).

<sup>44</sup> Platte states that the defined Destinations in the Pipeline Proposal consist of: (1) refineries that are the ultimate markets for the petroleum, typically located at the end of connecting pipelines; (2) some merchant storage facilities attached to the pipeline, which are used to store petroleum for marketing purposes, and which typically represent little daily capacity; and (3) Marathon Pipe Line, which leads to a number of PADD II refinery markets and is treated for this purpose as a single Destination.

<sup>45</sup> In its post-technical conference comments, Platte offered to modify the Pipeline Proposal to determine historical volumes based on the highest four of the last six months.

68. Platte points out that the Pipeline Proposal allows for additional defined Destinations to be established reflecting new physical connections or changes in ownership of the Destination facilities. Platte explains that this “New Destination Acceptance Process” employs procedures similar to those established for accepting new crude oil types for transportation on the pipeline system. Because the proposed rolling historical basis for allocation will reflect the highest four of the last six months, Platte argues that the Pipeline Proposal provides flexibility to adjust delivery allocations in the event of refinery turnarounds or similar circumstances. However, Platte also asserts that adoption of the Pipeline Proposal will prevent shippers with allocations based on their own system-wide history from selling those allocations when they do not need to use them.

69. Platte argues that the Pipeline Proposal will address the concerns raised in the Complaint Proceedings, including the alleged unfair imbalance between the rights of upstream and downstream shippers to capacity on the Casper-Guernsey Segment. Platte states that, under the Pipeline Proposal, the Complainants would be guaranteed access, on a percentage-of-pipeline-capacity basis, to the historical volume deliveries made to Guernsey Destinations. However, Platte also states that the main purpose of the Pipeline Proposal is to ensure that shippers on the Guernsey-Wood River Segment will have reasonable access to their markets based on historical flow patterns, rather than based on the unpredictable monthly results of the nominations-based process.

70. At the time Platte filed the Pipeline Proposal, the intervenors<sup>46</sup> generally contended that the Pipeline Proposal: (1) is unreasonably vague and unclear; (2) would improperly allow non-shippers to control pipeline capacity;<sup>47</sup> (3) is based on false and irrelevant considerations designed to protect Platte from competition; (4) is based on false and irrelevant allegations of consumer impacts; and (5) fails to consider an alternative policy based on shippers’ transportation history.

71. On February 19, 2010, the Commission issued the Order Accepting and Suspending Tariff, Subject to Conditions, Establishing Technical Conference, and

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<sup>46</sup> Cenovus, Eighty-Eight Oil LLC (Eighty-Eight), Enserco Energy Inc. (Enserco), Flint Hills, Frontier, Nexen Marketing U.S.A. Inc. (Nexen), Suncor, ConocoPhillips, Tidal Energy Marketing (U.S.) L.L.C. (Tidal), WPA.

<sup>47</sup> In particular, the intervenors asserted that the Pipeline Proposal would place control over the allocation of capacity in non-jurisdictional entities without the protection against undue discrimination and preference provided by ICA sections 6 and 3(1), as well as ICA section 1(4) and section 341.8 of the Commission’s regulations (18 C.F.R. § 341.8 (2010)).

Denying Motion to Consolidate (February 19, 2010 Order).<sup>48</sup> The technical conference was held April 22, 2010, after which the parties filed comments and reply comments.<sup>49</sup> Additionally, Suncor filed the Shippers' Proposal. The shippers filing post-technical conference comments all support the Shippers' Proposal, which represents a consensus among the shippers that the most workable prorationing procedure for Platte's pipeline system is historically-based.<sup>50</sup> Platte opposes the Shippers' Proposal.

72. Encore Operating LP (Encore) filed a motion to for leave to intervene out of time in Docket No. IS10-108-000, citing an administrative oversight due to its recent merger with another company in March 2010. The Commission will grant Encore's motion to intervene out of time; however, Encore must accept the record as it stands in Docket No. IS10-108-000.

## 2. Post-Technical Conference Comments

### a. Platte

73. Platte asserts that, although it proposes an unprecedented prorationing methodology, the Commission's responsibility is to determine whether the Pipeline Proposal is just, reasonable, and not unduly discriminatory in light of the facts specific to Platte's system. Platte argues that prorationing procedures based on each of the aspects of the Pipeline Proposal – historical volume allocations (patterns of delivery to Destinations in this case) and pro-rata, nominations-based allocations – have been approved by the Commission for other pipelines, as well as for Platte itself. Platte also states that, if the Commission rejects the Pipeline Proposal, it will propose a simple pro-rata allocation procedure accompanied, if necessary, by enhanced enforcement provisions.

74. Platte outlines the four steps of the Pipeline Proposal: (1) shippers submit nominations; (2) historic capacity utilization is calculated using the highest four of the

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<sup>48</sup> *Platte Pipe Line Co.*, 130 FERC ¶ 61,125 (2010).

<sup>49</sup> Parties filing initial comments: Platte, Cenovus, ConocoPhillips Canada Marketing and Trading ULC (ConocoPhillips), Eighty-Eight, Encore, Flint Hills, Frontier, Nexen, Suncor, Tidal, and WPA.

Parties filing reply comments: Platte, Cenovus, ConocoPhillips, Flint Hills, Frontier, Nexen, Suncor, and Tidal.

<sup>50</sup> WPA does not support or protest the Pipeline Proposal or the Shippers' Proposal.

past six months deliveries to each Destination (subject to a five-percent minimum allocation) and shown as a percentage share of total pipeline capacity for each Destination; (3) where Destinations typically are not subject to nominations equal to their allocated capacity, such unused capacity would be redistributed to the other Destinations, and the final shipper allocations would reflect that redistribution; and (4) shippers are allocated pipeline capacity based on pro-rata share of total nominations received for each Destination.<sup>51</sup>

75. Platte contends that the Pipeline Proposal does not violate any provisions of the ICA. It also maintains that the lack of support from other shippers results from the substantial control of its capacity by Historical Shippers and fear of retribution on the part of other shippers that rely on them for access to Platte's capacity.

76. Platte argues that the Pipeline Proposal will resolve a number of problems associated with the Current Procedure, including the ability of Historical Shippers to extract premiums from other potential shippers seeking capacity on the pipeline. Platte cites the following factors in support of its claim that shippers are obtaining premiums for capacity that they do not need:

- Shippers and other market participants have confirmed the premiums.
- Many New Shippers appear to obtain Platte capacity solely for the purpose of charging a premium to those who desire the capacity.
- Unprecedented numbers of New Shippers have appeared on Platte's system that may not have done business on any other pipelines and prefer to prepay for transportation (thus avoiding a credit check).
- Historical Shippers may deliver to non-traditional destinations on behalf of others.

77. Additionally, Platte contends that the ability of some shippers to collect premiums has harmed and will continue to harm its competitive position versus that of existing pipelines and the new Keystone pipeline project. Platte states that it has lost one significant shipper and that it need not demonstrate further erosion of its competitive position before seeking to limit its losses. Platte also maintains that adoption of the Pipeline Proposal will resolve the type of problem alleged in the Complaint Proceedings,

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<sup>51</sup> In support of the Pipeline Proposal, Platte submits the Verified Statements of Kevin McFarlane (Manager, Scheduling & Logistics, Kinder Morgan Canada, Inc. and Platte) and Reynold Hinger (Director, Shipper Services, Platte). These statements are attached to Platte's post-technical conference comments and reply comments.

in part by eliminating the different prorating procedures applicable to its two pipeline segments.

78. Platte emphasizes that the Pipeline Proposal would make its capacity available to all potential shippers, including current shippers seeking to increase their volumes. Because it claims that the Pipeline Proposal is neutral as to shippers, Platte contends that it would not eliminate or impair the role of marketers. Platte further states that the Pipeline Proposal would allow any shipper to participate in every Destination market on the system, in contrast with the current closed system that directs 90 percent of all capacity to existing shippers. Moreover, continues Platte, the Pipeline Proposal would eliminate the possibility of “air barrels” (excessive nominations) because excessive nominations to one Destination would not affect nominations to other Destinations, and self-policing would occur because Destinations would have an incentive to avoid accepting excessive nominations.

79. Platte challenges the intervenors’ claim that the Pipeline Proposal would impair shippers’ flexibility in directing their volumes. Platte explains that, following the allocation of capacity and confirmation of volumes to shippers, such shippers would continue to be free to redirect volumes to different Destinations, subject to operational availability. For example, Platte asserts that the Pipeline Proposal would allow shippers to redirect allocations to meet changes in refinery needs. Platte also argues that its analysis of the effect of the Pipeline Proposal, had it been effective during 2007-2010, reveals that the Pipeline Proposal would not have capped allocations to the Destinations listed in that proposal. Additionally, Platte submits that the Pipeline Proposal is not vague and does not lack certainty and that shippers nominating to the Destinations will continue to be able to make contracts and plan for their future needs. Platte disputes the examples and calculations that the intervenors presented in an effort to discredit the Pipeline Proposal.

80. Platte points out that all nominations must be verified by the Destinations to ensure authenticity.<sup>52</sup> According to Platte, the Pipeline Proposal would not result in a proliferation of new Destinations, and it would not give Destinations (non-shippers) improper control of the allocations or access to the pipeline.

81. Platte offers to make certain changes in an effort to address the intervenors’ concerns. First, Platte would agree to Commission review of the Pipeline Proposal 12 months after it is adopted. As stated above, it also offers to use the highest four of the preceding six months in calculating the rolling historical average for shippers’ delivery patterns to Destinations.

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<sup>52</sup> Initial Post-Technical Conference Comments of Platte Pipe Line Company May 14, 2010, Verified Statement of Kevin MacFarlane Verified Statement at 3.

**b. Intervenors**

82. The intervenors' comments generally echo their earlier protests. None of the intervenors supports the Pipeline Proposal, and they point out that no shipper intervened in support of it.<sup>53</sup> The intervenors also argue that Platte has failed to demonstrate that the Pipeline Proposal is just, reasonable, and not unduly discriminatory. Further, the intervenors contend that Platte has failed to provide any valid reason for imposing the Pipeline Proposal on its entire pipeline system, particularly the Guernsey-Wood River Segment, where the prorationing procedure based on shippers' historical volumes operates successfully. On the other hand, as discussed below, most intervenors strongly support the Shippers' Proposal, which would apply a historically-based prorationing procedure to both segments of Platte's pipeline system.

83. The intervenors emphasize that the purpose of the ICA is to protect shippers rather than pipelines, consumers, or other non-shipper entities.<sup>54</sup> They explain that brokering of capacity is not prohibited by the ICA or Commission precedent and that it is common in the oil pipeline industry to maximize the use of capacity to all markets. The intervenors also point out that an effort to eliminate such brokering is not a legitimate objective of a prorationing procedure, which should be to allocate capacity equitably among shippers on a constrained pipeline system. The intervenors add that the Commission's long-standing policy is to promote greater competition within all of the industries it regulates.<sup>55</sup>

84. The intervenors assert that a central purpose of Platte's Pipeline Proposal is to restrict the ability of marketers to obtain capacity. According to the intervenors, Platte claimed that the only shippers with a legitimate "need" for capacity are producers, refiners, and other parties that have long-term contractual commitments. Further, the intervenors state that Platte also indicated that the Pipeline Proposal would restrict the access of producers and refiners to the extent that such parties are also marketers of volumes that exceed their "needs." However, the intervenors emphasize that the ICA does not allow Platte to restrict the access of marketers to capacity because they have less "need" than producers or refiners.

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<sup>53</sup> While Platte filed a confidential letter on June 1, 2010, purporting to be a letter of support from a shipper, the intervenors state that they cannot verify the letter.

<sup>54</sup> *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571-A, FERC Stats. & Regs. ¶ 31,102 (1994); *TE Products Pipeline Co., Ltd.*, 94 FERC ¶ 63,004, at 65,009 (2001).

<sup>55</sup> *E.g., Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities*, 61 FERC ¶ 61,168, at 61,595 (1992).

85. The intervenors explain that Platte cannot charge more than the maximum rate for common carriage on its system, while a marketer can structure its product pricing to take advantage of an arbitrage opportunity between trading hubs. According to the intervenors, as long as the commodity may be freely traded at market prices, either before, during, or after transit on Platte's system, no steps taken by the pipeline to limit arbitrage or remarketing can constrain the ultimate pricing of the oil at various markets. The intervenors add that the Pipeline Proposal will neither eliminate brokering nor solve the existing problems of unreliable and unpredictable levels of service on Platte's system east of Guernsey. The intervenors view those problems as more likely to drive shippers from Platte's system than the alleged premiums that Platte seeks to eliminate.

86. The intervenors observe that the Casper-Guernsey Segment has not been prorated since April 2009 and that the Guernsey-Wood River Segment typically operates at full capacity. In any event, the intervenors submit that the new Keystone pipeline is likely to eliminate Platte's need to prorate the Casper-Guernsey Segment, as well as any price differential and opportunity for arbitrage.

87. The intervenors challenge Platte's claim that the Pipeline Proposal will address the issues raised in the Complaint Proceedings by providing certainty. The intervenors contend that, even if Platte's claim were correct, any possible certainty achieved for Platte would create a lack of flexibility for the shippers. In particular, the intervenors assert that marketers require flexibility and that the Pipeline Proposal would lock in supply patterns and serve as a barrier to the participation of marketers by eliminating shippers' flexibility to direct barrels in transit to different Destinations based on market conditions. Further, they state that the Pipeline Proposal does not provide sufficient information to allow them to determine how the procedure would work in practice or give shippers adequate guidance for processes such as verifying their take-away capacity.

88. The intervenors maintain that, in the case of early rail carriers, Interstate Commerce Commission decisions established that shippers must be allowed to select their destinations and to consign and reconsign shipments to different destinations, including shipments in transit. They argue that the Commission has found this reasoning equally applicable to oil pipeline carriers.<sup>56</sup> According to the intervenors, while shippers would continue to have the ability to redirect volumes to other delivery points after nomination, they would do so at a cost under Platte's proposal. The intervenors contend that, for Destination shippers, the cost would be a reduction in their allocations as a result of reduced delivery volume to the Destination.

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<sup>56</sup> *Tipco Crude Oil Co. v. Shell Pipe Line Corp.*, 19 FERC ¶ 61,105, at 61,198-99 (1982). *Texaco Pipeline Inc.*, 74 FERC ¶ 61,071, at 61,201 (1986) (carrier cannot reserve a portion of capacity for a particular class of shippers).

89. The intervenors also argue that the Pipeline Proposal will not work at a market hub, such as Wood River, because Platte will not know which barrels are going to which downstream markets unless it gets that information from the downstream carrier, which appears to be prohibited by ICA section 15(13). They also argue that four of the nine Destinations listed in the Pipeline Proposal are refiners, while others are connecting pipelines or terminals that do not use the oil, but instead serve multiple customers that use or resell it.

90. Pointing to the potential effective control of pipeline capacity by non-shippers, the intervenors claim that the Pipeline Proposal is vague and could be arbitrary in practice. For example, the intervenors contend that it is not clear how new Destinations will be added and that shippers' only recourse would be to file a protest against Platte's filing to include a new Destination in its tariff. They also indicate that it is not clear how individual shippers are chosen once a Destination is defined, and they suggest that one Destination may have an incentive to encourage overnominations as a means of taking volumes away from a competitor at a different Destination. The intervenors also submit that Destinations could have an incentive to discriminate in favor of certain shippers by allowing them to over-nominate and then refusing other shippers' over-nominations.

91. The intervenors contend that there is no merit to the modifications that Platte offers, such as using the top four of the past six months. They claim that this will not cure the defects in the Pipeline Proposal. They also contend that a 12-month experiment with the Pipeline Proposal would be disruptive.

92. Some intervenors cite particular problems that they will experience if the Pipeline Procedure is adopted. For example, Flint Hills contends that it will have a reduced ability to access additional supply for its Pine Bend refinery and that this will result in a reduced allocation if there is a refinery turn-around or other market conditions that change the amount of its allocation. Thus, continues Flint Hills, the Pipeline Proposal would result in an ever-decreasing allocation cap for it.

93. Tidal states that it purchases crude oil in different grades, from numerous sources, and markets its inventory to various customers. It asserts that it needs this flexibility to be able to ship to more than just a particular Destination. Tidal also maintains that Platte's aggregated volumes to particular Destinations do not reflect how the markets work because Platte assumes that all shippers tender oil from a single source, that the oil is purchased at a single price, and that it is moving to a single Destination.

94. Frontier raises a number of concerns, including whether Platte's discretion to add new Destinations leaves current Destinations at risk and whether third-party terminals will be allowed to disclose certain shipper information to Platte.<sup>57</sup>

95. Encore states that much of its production is obtained using enhanced oil recovery (EOR) techniques and that unplanned shut-ins caused by unreliable transportation adversely impact reservoir dynamics. According to Encore, its concerns have taken on a new dimension because of the efforts to use CO<sub>2</sub>-based EOR operations to reduce emissions of greenhouse gases (Carbon Capture and Storage), which makes it even more important to avoid unplanned shut-ins of production. Encore states that it does not use that process now, but expects to do so in the future.

96. WPA states that its responsibility is to ensure that Wyoming supplies and suppliers of crude oil can access the interstate common carriers in accordance with the ICA. WPA maintains that the Commission has spoken on the issue of a pipeline inserting itself into the exchange and commodity side of the oil market and found it inappropriate.<sup>58</sup> While it does not support or oppose either the Pipeline Proposal or the Shippers' Proposal, WPA urges the Commission to review the circumstances under the basic principles of the ICA and determine whether Platte has met its burden of proof, and if not, whether the Shippers' Proposal has merit to replace the Current Procedure.

### **3. Commission Analysis**

97. The Commission rejects Platte's Supplement No. 15 to its FERC Tariff No. 1456. The Commission concludes Platte has not shown that implementing the Pipeline Proposal is necessary or that it will in fact resolve the problems alleged by Platte. More importantly, Platte has failed to demonstrate that the Pipeline Proposal is just, reasonable, and not unduly discriminatory. As stated above, Platte attempts to justify the Pipeline Proposal largely on the basis of irrelevant and unsupported claims. Further, the Pipeline Proposal would violate the ICA section 1(4) common carrier obligation to provide transportation upon reasonable request, as well as section 1(6), which prohibits unjust and unreasonable classifications, regulations, and practices. Further, the Pipeline Proposal would violate the prohibition against any undue or unreasonable preference established in ICA section 3(1). While the Commission does not require pipelines to adhere to prescribed prorationing methodologies, the Commission must ensure that pipelines do not adopt prorationing methodologies that would frustrate the clear mandates of the ICA.

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<sup>57</sup> Post-Technical Conference Comments of Frontier Oil and Refining Company May 14, 2010 at 6-7.

<sup>58</sup> *Bridger Pipeline, LLC*, 126 FERC ¶ 61,182, at P 16 (2009).

a. **Need for the Pipeline Proposal**

i. **Platte**

98. Platte claims that it has demonstrated a need for the Pipeline Proposal to protect its interests and those of potential shippers. Platte asserts that incumbent Historical Shippers have been charging premiums to other shippers seeking access to Platte's pipeline system, although Platte admits that it does not know the amount of the premiums or the amount of capacity subject to the premiums. Platte states that it learned of such premiums in discussion with shippers, through the appearance of shippers new to its system that prepay for transportation presumably to avoid a credit check, and because of deliveries by Historical Shippers to non-traditional destinations on behalf of others. It further contends that New Shippers have proliferated under the Current Procedure and that many of these appear to be entities having as their sole purpose the acquisition and remarketing of Platte's capacity.<sup>59</sup> Platte argues that the intervenors' opposition to the Pipeline Proposal is rooted in their desire to retain the commercial advantages they enjoy by virtue of having guaranteed monthly allocations of capacity to use or to market at a profit.

99. Platte maintains that the premiums have damaged and will continue to damage its competitive position versus that of other pipelines providing similar transportation. While Platte states that it is not asking the Commission to regulate shipper marketing efforts, buy/sells, or in-line transfers, it asserts that the Commission cannot ignore the market impact of the Current Procedure. Moreover, Platte claims that the Pipeline Proposal will resolve the issues raised in the Complaint Proceedings.

ii. **Intervenors**

100. The intervenors respond that Platte not only has the burden of proof that the Pipeline Proposal is just and reasonable and not unduly discriminatory, but it also has the burden of proving that the change is necessary.<sup>60</sup> They agree that Platte has done neither.

101. The intervenors contend that Platte cannot charge shippers more than the maximum rate established in its tariff for transportation on its system and that it is irrelevant that a marketer may be able to structure its product pricing to take advantage of an arbitrage opportunity between hubs on Platte's system. According to the intervenors,

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<sup>59</sup> Initial Post-Technical Conference Comments of Platte Pipe Line Company May 14, 2010 at 7-14.

<sup>60</sup> *Kinder Morgan Operating L.P.* "A," 99 FERC ¶ 61,133, at 61,559 (2002), *reh'g denied*, 101 FERC ¶ 61,017 (2002).

such business transactions are not regulated by the Commission.<sup>61</sup> They also assert that marketing of capacity in this manner is commonplace in the oil pipeline industry, as well as necessary for the markets to function properly. Further, they point out that, even if Platte's claims of premiums were true, Platte would not be placed at a competitive disadvantage versus the Keystone pipeline because of its lower rates and because the additional capacity in the region should alleviate the need for prorationing on Platte's system. Moreover, the intervenors emphasize that none of the unidentified shippers alleged to be disadvantaged by lack of access to Platte's system intervened in support of the Pipeline Proposal. Despite Platte's claims of premiums, ConocoPhillips states that, as one of Platte's largest shippers and a trader in the markets served by Platte, it has not paid any premiums of the sort alleged by Platte. Encore also states that it has not observed premiums of the magnitude claimed by Platte.

102. The intervenors point out that shippers might also choose to switch carriers due to the inadequacy of Platte's system following the expansion of the Express system and the resulting increased volumes transported from Canada to the Platte system. They also assert that a prorationing procedure such as the Pipeline Proposal, which creates uncertainty and opportunities for gamesmanship, is more likely to drive shippers to other carriers than would premiums. Further, they maintain that any premiums would reflect the value of transportation on Platte's system versus that of other pipelines. Nexen adds that the huge reserves in the North Dakota Bakken Field indicate that Platte's system will remain full. Suncor adds that capacity holders, regardless of the method by which they acquire the capacity, can charge a premium whenever a crude oil price differential exists. Suncor also dismisses Platte's claim of harm to consumers, arguing that premiums do not determine the price of crude oil in the markets.

103. Finally, the intervenors also dismiss Platte's assertion that the Pipeline Proposal will resolve the issues raised in the Complaint Proceedings, pointing out that Complainants Suncor and Frontier oppose the Pipeline Proposal.

### iii. Commission Analysis

104. Claims by Platte that its competitive position will suffer or even that it seeks to protect consumers are irrelevant to common carriage on oil pipelines under the ICA.<sup>62</sup>

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<sup>61</sup> The WPA cites *Bridger Pipeline LLC*, 126 FERC ¶ 61,182 at P 16 (2009) in support of its assertion that the Commission does not have jurisdiction over any part of the exchange or commodity aspects of oil markets; it only has jurisdiction over the transportation aspect.

<sup>62</sup> In *Williams Pipe Line Co.*, Opinion No. 154, 21 FERC ¶ 61,260, at 61,584 (1982), the Commission stated as follows: "Oil pipeline rate regulation is not a consumer-protection measure. It probably was never intended to be." The Commission

(continued...)

However, the Commission concludes that Platte has not shown that the Pipeline Proposal will resolve the alleged problems of capacity brokering and damage to its competitive position. As the intervenors point out, capacity brokering is commonplace within the oil pipeline industry and is not prohibited by the ICA or Commission precedent.<sup>63</sup>

105. Platte maintains that it has learned from shippers and “other market participants” that premiums are being charged for capacity on its system,<sup>64</sup> arguing that at least one party to this proceeding has acknowledged the existence of the premiums. Yet it declines to identify the parties from whom it has obtained this information, and it plainly admits that it does not know the exact amount of the premiums or the percentage of capacity subject to premiums.<sup>65</sup> It also claims that New Shippers are appearing on its system and pre-paying, presumably to avoid credit checks. Platte asks the Commission to consider the impact of the premiums on shippers and “others” affected by capacity brokering.<sup>66</sup> Even if true, such vague and generally unsupported statements by Platte do not provide a sufficient basis for adopting the Pipeline Proposal.

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also stated, “In oil pipelining, however, we have a very special situation. There are no ‘consumers’ here. The lines are used solely by business enterprises. Hence the clash between shipper and carrier differs fundamentally from the clash between utilities and their customers.” *Id.* at 61,655.

<sup>63</sup> The Congress long ago acknowledged a need for the regulation of brokers of motor carrier transportation. *See* former section 204(a)(4) of the ICA providing that it shall be the duty of the Commission “[t]o regulate brokers as provided in this [motor carrier] part . . .” and section 211(a) [*August 9, 1935, amended September 18, 1940*] providing: “No person shall for compensation sell or offer for sale transportation subject to this part or shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out . . . unless such person hold a broker’s license issued by the Commission to engage in such transactions.” The Congress, however, never included in the ICA any corresponding provisions to address any type of brokering relating to transportation on oil pipelines.

<sup>64</sup> Initial Post-Technical Conference Comments of Platte Pipe Line Co. May 14, 2010 at 8.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> *See* Initial Post-Technical Conference Comments of Platte Pipe Line Company May 14, 2010 at 7-10; Reply Post-Technical Conference Comments of Platte Pipe Line Company June 4, 2010 at 5-8.

106. Platte also contends that it has lost at least one major unidentified shipper and that it need not lose others because of alleged premiums being charged for its capacity. Again, even if that claim is true, there is no persuasive evidence that Platte is unable to market the amount of capacity previously used by that shipper. The intervenors repeatedly emphasize that Platte's system is full and that Platte, as the low-cost carrier in the region, has not shown that this situation will change to its detriment. Further, the intervenors point out that, if Platte does lose volumes to other pipelines, the need for prorationing is likely to disappear, and with it, the motivation for shippers to extract premiums from other shippers desiring to obtain transportation capacity on Platte's system.

107. If a single large shipper has left Platte's system, Platte has done little more than speculate that the departure results from premiums. As the Commission stated in the December 19, 2006 Order, "[A]dditional capacity on Platte's system is likely the most effective means of alleviating the prorationing difficulties Platte has experienced. . . ." <sup>67</sup> The intervenors repeatedly raise the same point. <sup>68</sup> In any event, the purpose of the ICA is to protect shippers, not to ensure that a carrier's commercial viability is protected. Consistent with that principle, the Commission has stated that the purpose of a prorationing methodology is to allocate capacity equitably among shippers in times of pipeline constraint. <sup>69</sup> A prorationing procedure cannot be designed for any other purpose.

108. Other intervenors cite different factors bearing on Platte's prediction of commercial harm. For example, Nexen predicts that the huge reserves in the North Dakota Bakken Field mean that Platte's system will continue to be full. Additionally, Suncor points out that the Keystone pipeline may eliminate the current shortage of pipeline space and the opportunity for arbitrage. <sup>70</sup>

109. The Commission's role is simply to determine whether the Pipeline Proposal will serve the interests of Platte's current and future shippers by allocating capacity equitably

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<sup>67</sup> *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 42 (2006).

<sup>68</sup> *E.g.*, Comments of Encore Operating LP Following Technical Conference May 14, 2010 at 19 (arguing that market participants are in the same position as they were in 2006 and that Platte is trying to cope with inadequate capacity instead of meeting market needs).

<sup>69</sup> *Belle Fourche Pipeline Co.*, 28 FERC ¶ 61,150, at 61,282 (1984).

<sup>70</sup> Reply Post-Technical Conference Comments of Suncor Energy Marketing Inc. and Suncor Energy (U.S.A.) June 4, 2010 at 8-9.

during times of constraint on the pipeline system. The Commission concludes that Platte's effort to justify the need for the Pipeline Proposal based on a desire to eliminate unsubstantiated claims of capacity brokering and premiums, as well as to avoid possible damage to its own competitive position, do not meet this standard.

**b. Compliance with Applicable Legal Standards**

110. More important than the fact that Platte has failed to demonstrate a need for the Pipeline Proposal, the Commission's examination of the Pipeline Proposal leads to a conclusion that it is unjust and unreasonable, as well as unduly discriminatory in violation of ICA sections 1(4), 1(6), and 3(1). The modifications offered by Platte – reducing the computation period to the four highest instead of the five highest of the last six months and implementing the Pipeline Proposal on a 12-month trial basis – do not cure its defects.

111. ICA section 1(4) provides in part that “[i]t shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor. . . .” Section 1(6) prohibits “any unjust and unreasonable classification, regulation, and practice. . . .” Section 3(1) provides in part that “[i]t shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage. . . .”

112. Platte has attempted to address the prorationing problems on its system since it implemented the Current Procedure in 2006. The parties agree that applying different prorationing procedures on each of the two pipeline segments has not been successful; however, the Commission concludes that applying the Pipeline Proposal to both segments likewise will not remedy the prorationing problems on Platte's system and may, in fact, create greater problems. For example, despite Platte's allegations, there has been no genuine showing that the historical prorationing procedure currently effective on the Guernsey-Wood River Segment should be replaced with the unprecedented and roundly criticized Pipeline Proposal. The intervenors have raised valid concerns about the potential operation and effect of the Pipeline Proposal, and Platte, which bears the burden of proof in this proceeding, has not demonstrated that such concerns are unfounded and that the Pipeline Proposal will in fact resolve the existing prorationing difficulties.

113. Although Platte claims that the Pipeline Proposal combines well-understood prorationing methodologies previously approved for itself and for other pipelines, the hybrid Pipeline Proposal represents a dramatic change from the admittedly-flawed hybrid Current Procedure,<sup>71</sup> which Platte claimed in 2006 would resolve the prorationing

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<sup>71</sup> Initial Post-Technical Comments of Platte Pipe Line Company May 14, 2010 Attachment B at 3-8. At page 3 of his Verified Statement, Mr. Hinger states, “Shortly after the [Current Procedure] became effective, it became evident that the new procedure  
(continued...)”

difficulties on its system.<sup>72</sup> The Pipeline Proposal is based on rolling historical allocations of shipments to defined Destinations, rather than historical volumes transported for individual shippers. Individual shippers' allocations of the Destinations' historical allocations will then be calculated on a pro-rata basis.

114. Mr. Hinger states that one goal of the Pipeline Proposal is to eliminate the privileged allocation of capacity to New Shippers. He asserts that such shippers acquire this capacity "for the lure of arbitrage opportunities." He further asserts that the "key problem is that the shipper does not need the capacity, but is acquiring it, or retaining it, solely for the purpose of remarketing it in a constrained market environment."<sup>73</sup> In his Reply Comments, Mr. Hinger argues that an analysis of the Pipeline Proposal applied to the Destinations' volumes from 2007-2010 demonstrates the flexibility of the Pipeline Proposal and that it would not cap allocations, as alleged by the intervenors.<sup>74</sup> Mr. MacFarlane's comments are consistent with those of Mr. Hinger.<sup>75</sup>

115. Other features of the Pipeline Proposal permit Platte to require shippers to verify or certify their nominated volumes. Capacity not subject to binding nominations at a Destination will be distributed to other Destinations. Shippers may apply to Platte to have additional Destinations added to the tariff, but any such additions, whether proposed by shippers or by Platte itself, will be added only upon Commission approval of formal tariff filings. Shippers may challenge proposed additional Destinations during the process outlined by Platte in the New Destination Acceptance Process, but also will be

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created certain problems."

<sup>72</sup> See *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 6-15 (2006).

<sup>73</sup> Initial Post-Technical Comments of Platte Pipe Line Company May 14, 2010 Verified Statement of Reynold Hinger at 13. In its initial filing, Platte states that the capacity on the Guernsey-Wood River Segment has "attracted the increased participation of shippers that do not need the capacity to meet their own refining or long-term contractual marketing commitments. . . ." Platte Pipe Line Company's Proposed Supplement No. 15 to FERC No. 1456 Cancelling Supplement No. 14 to FERC No. 1456 January 20, 2010 Transmittal Letter at 9.

<sup>74</sup> Reply Post-Technical Conference Comments of Platte Pipeline Company June 4, 2010 Reply Comment Verified Statement of Reynold Hinger at 1-2.

<sup>75</sup> Initial Post-Technical Comments of Platte Pipe Line Company May 14, 2010 Verified Statement of Kevin MacFarlane; Reply Post-Technical Conference Comments of Platte Pipeline Company June 4, 2010 Reply Comment Verified Statement of Kevin MacFarlane.

required to protest the tariff filing to express their objections to Platte's decision to accept a new Destination.

116. Replacing one flawed hybrid procedure with another will not resolve the prorationing problems on Platte's system. As the intervenors have argued, and as the Commission stated in the December 19, 2006 Order, "additional capacity on Platte's system is likely the most effective means of alleviating the prorationing difficulties Platte has experienced. . . ." <sup>76</sup>

117. Moreover, Platte has not demonstrated that the Pipeline Proposal will serve the interests of its shippers – the protected class under the ICA – by allocating the pipeline's capacity equitably among them when the pipeline system experiences constraints. This violates the common carrier requirement established in ICA section 1(4). <sup>77</sup> Although a pipeline such as Platte may adopt non-discriminatory requirements for shippers, such as quality specifications or credit requirements, it is not appropriate for a pipeline to define a "reasonable request" based on whether one shipper or category of shippers has a greater "need" than others, whether the shipper is a marketer, refiner, producer, historical shipper, or new shipper. Platte attempts to downplay its statements relating to the needs of certain shippers, although it continues to emphasize the need to prevent incumbent regular shippers from allegedly controlling the pipeline's capacity. <sup>78</sup> The lack of an objective reason for preventing particular types of shippers from having an equitable opportunity to obtain transportation on Platte's pipeline system could violate the ICA section 1(6) prohibition against any unjust and unreasonable classification, regulation, and practice, as well as the section 3(1) prohibition against any undue or unreasonable preference or advantage.

118. The intervenors also argue that the Destination-based prorationing procedure would inhibit the ability of shippers to redirect volumes to meet market needs. Further, they state that, by redirecting volumes, they would reduce their pro-rata allocations at the

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<sup>76</sup> *Platte Pipe Line Co.*, 17 FERC ¶ 61,296, at P 42 (2006).

<sup>77</sup> 49 App. U.S.C. § 1(4) (1988) provides in part: "It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor. . . ."

<sup>78</sup> Reply Post-Technical Conference Comments of Platte Pipeline Company June 4, 2010 at 18-20. At one point, Platte states that it has shown repeatedly "that all shippers are treated equally under the proposed methodology." Yet, within a page of that statement, Platte states that "[t]he end to the current guaranteed right of control of capacity by incumbent Regular Shippers, with all of the harm resulting from it, is the intent of the filing. . . ."

original Destinations if the Destinations' historical allocations are reduced. Platte responds that a review of its delivery and nominations history should diminish any concerns over changes in use between Destinations.

119. The Commission finds that allocating the pipeline's capacity first on the basis of historical deliveries to Destinations and then apportioning the Destination's allocation pro-rata among shippers would adversely affect the shippers' interests. For example, if receipts at a Destination decline over several months due to certain large shippers' inability or unwillingness to ship their usual volumes to that Destination, the Destination's rolling average of historical volumes will be reduced commensurately for the period that includes the time when the large shippers' volumes declined.<sup>79</sup> Then, during a subsequent prorationing period, the total capacity to be shared pro-rata by other shippers to that Destination could be reduced. Further, Platte's references to the history of nominations and deliveries on its system do not overcome the Commission's concern about the application of the hybrid nature of Destination-based prorationing, which by its nature interjects the calculation of historical volumes to the Destinations into the ICA-protected relationship between the shipper and the pipeline.

120. The Commission also is concerned about the process for adding Destinations. While Platte holds the power to designate Destinations, it is not clear how shippers' pro-rata allocations at new Destinations will be established. The New Destination Acceptance Process does not include specific criteria to be considered by Platte, although it does state that the process "applies only to existing connections or Carrier approved new connections," and Item No. 9.1 of the "Prorationing Procedure" provides that "Carrier may add new Destinations to this procedure upon request" as established in the New Destination Acceptance Process. The Overview section of the New Destination Acceptance Process lists the steps of the process (without any time requirements applicable to Platte) and states that each stage of the Acceptance Process will result in a documented approval or rejection. The Stakeholders may comment within 14 days, which appears to be calculated from the date of the formal request. Further, the New Destination Acceptance Process does not refer to a tariff filing with the Commission, although Platte states that the process of adding a new Destination "would at a minimum

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<sup>79</sup> Mr. MacFarlane stated that the Pipeline Proposal allocates pipeline capacity to "Destinations," . . . based on the collective historic delivery decisions of all shippers." Initial Post-Technical Comments of Platte Pipe Line Company May 14, 2010 Verified Statement of Kevin MacFarlane at 2. *See also* Initial Comments of Flint Hills Resources, LP May 14, 2010 at 5-7; Reply Comments of Flint Hills Resources, LP June 4, 2010 at 5-6. Flint Hills describes the effects of such a reduction in historical volumes to a Destination.

require Platte to make a tariff filing at the Commission, subject to shipper protest and full Commission review and if necessary, investigation.”<sup>80</sup>

121. There is no time limit for Platte to make a tariff filing after it receives a request and considers the request in accordance with the New Destination Acceptance Process. The Commission finds that this multi-step process is unnecessarily cumbersome because shippers could object to the request for a new Destination, but would be required to protest the tariff filing to provide the Commission an official basis for considering the shippers’ objections. Additionally, the New Destination Acceptance Process affords Platte almost unlimited discretion in processing, accepting, or denying a request for a new Destination and submitting a tariff filing to be processed by the Commission.

### **E. Shippers’ Proposal**

122. With the Commission’s conclusion that the Current Procedure is not just and reasonable for future prorating of the capacity on Platte’s system when both segments are constrained, as well as with the Commission’s rejection of the Pipeline Proposal, the Commission now addresses and directs Platte to adopt the Shippers’ Proposal for prorating both segments of its pipeline. The Shippers’ Proposal establishes a prorating procedure based on shippers’ historical shipments on Platte’s pipeline system.

#### **1. Summary of Proposal**

123. On May 10, 2010, Suncor filed the Shippers’ Proposal on behalf of the shipper parties in Docket No. IS10-108-000. Suncor states that the Shippers’ Proposal was proposed at the technical conference on April 22, 2010. Pursuant to the Commission Staff’s request, Suncor included a red-lined version of the Shippers’ Proposal reflecting the proposed changes from the Current Procedure.<sup>81</sup>

124. The Shippers’ Proposal revises section 8 of the Current Procedure to provide as follows:

- a. If the prorated segment is the Casper-Guernsey Segment, all ex-Casper volumes destined for east of Casper will be based on the historical methodology below [new section 10]. For shippers with multiple tariff delivery point volumes, adjustments to specific delivery point volumes to

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<sup>80</sup> Initial Post-Technical Comments of Platte Pipe Line Company May 14, 2010 at 28.

<sup>81</sup> Appendix B to this order.

comply with the capacity allocation will be at the discretion of the shipper when submitting revised nominations. Prorated shippers also have the right to increase Guernsey injections to fully utilize their nominations on the Guernsey-Wood River Segment when submitting revised nominations. Guernsey receipts onto Platte destined for tariff delivery destinations east of Guernsey will not be prorated, or the,

- b. Guernsey-Wood River Segment, then all ex-Casper and ex-Guernsey volumes destined for any tariff delivery point east of Guernsey will be prorated based on the historical methodology below [new section 10]. For shippers with both ex-Casper and ex-Guernsey volumes, adjustments to specific injection point volumes to comply with the capacity allocation will be at the discretion of the shipper when submitting revised nominations. Prorated shippers also have the right to increase Guernsey deliveries to fully utilize their nomination on the Casper-Guernsey Segment when submitting revised nominations. Ex-Casper volumes destined for Guernsey will not be prorated, or on,
- c. Both segments, then each segment will be prorated based on the historical methodology below [new section 10]. Adjustments to specific injection point and/or specific delivery point volumes to comply with the capacity allocations will be at the discretion of the shipper when submitting revised nominations. For clarity, shippers will not be subject to the payment obligations of 95 percent of binding nominations on one segment as a direct result of prorating on another segment either reducing the required supply or takeaway volumes.

125. The Shippers' Proposal eliminates section 10 of the Current Procedure, which applies the pro-rata allocation methodology to the Casper-Guernsey Segment. In the Shippers' Proposal, existing section 11 of the Current Procedure becomes section 10 and is modified so that the historical methodology currently applicable only to the Guernsey-Wood River Segment will apply to both segments of Platte's pipeline. The principal revisions include the following:

- a. Subsection i is clarified to indicate that capacity on the pertinent segment will be allocated to allow 10 percent for New Shippers and 90 percent to Historical Shippers.
- b. Subsection ii is revised to define New Shippers as those having moved injection volumes in four or less of the six consecutive months utilized in the historical calculation "of the pertinent segment."
- c. Subsection iii is revised to clarify that pipeline injection volumes by shipper, and in total Historical Shipper throughput, are summarized by

segment for each of the six months prior to the month in which nominations are due. It provides that the Carrier shall advise Historical Shippers of their Preliminary Allocations two business days before the nomination due date.

- d. Subsection iv is revised to provide that injection volume is defined as custody transfer metered volumes injected on to Platte. Volumes injected at Casper will contribute not only to the Casper-Guernsey Segment history, but also to the Guernsey-Wood River Segment history if those volumes both are destined for delivery east of Guernsey and they also have been shipped through the Casper-Guernsey Segment. For clarification, volumes transferred from one shipper to another after injections do not modify either shipper's history.
- e. Subsection v is revised to clarify that the allocated pipeline space on the pertinent segment to each historical shipper in volume (barrels) will be the allocated pipeline proportion ratio for each Historical Shipper on the segment multiplied by the Historical Shipper capacity allocation.
- f. Subsection vi is revised to provide that, if the allowed space for new shippers on the pertinent segment is oversubscribed by nominations, the nominations will be prorated equally such that the total prorated nomination is equal to the 10 percent allowance for New Shippers, subject to the three percent maximum for any individual New Shippers.
- g. A new subsection viii is added and provides that shippers shall have at least one business day from notice of allocations to submit their revised nominations.

## **2. Positions of the Parties**

### **a. Shippers**

126. The intervenors points out that virtually every active intervenor in attendance at the technical conference supported the Shippers' Proposal. They observe that this included long haul Historical Shippers, short haul Historical Shippers, New Shippers, refiners, producers, and marketers. The intervenors also observe that, had Platte adopted the Shippers' Proposal, the Complaint Proceedings would have been withdrawn. The intervenors further maintain that Platte's rejection of the Shippers' Proposal is an attempt to leverage its activity as a common carrier to order the unregulated market to suit its own interests.

127. The intervenors observe that the Shippers' Proposal would allow shippers to modify their injection points to take advantage of their entire awards of capacity when both segments are prorated. Specifically, they explain that shippers using both segments

of the pipeline would be able to shift some volumes to a Guernsey injection point after nominations are received and allocations established, thus allowing them to use their full downstream allocation.

128. The intervenors emphasize that the historical prorationing methodology is used on many pipelines, is well-understood, and could be easily implemented on the Casper-Guernsey Segment. They add that the historical methodology would reward Platte's Historical Shippers, but would allow New Shippers to become Historical Shippers.

129. Frontier states that the modified provisions of 8.a. and 8.b. conform to Platte's operational procedures and are not unjust and unreasonable. Frontier explains that these provisions would allow a shipper shipping on both segments to adjust its injection point if constraints on one system would prevent it from shipping its full allocation on the other. Frontier emphasizes that this does not change the available capacity on either segment, but allows shippers that have been prorated on one segment to take advantage of any awarded space on the other segment. According to Frontier, this protects a shipper that uses both segments and has the ability to inject into either from having its nomination reduced unnecessarily, but it does not allow shippers an opportunity to manipulate their capacity assignments. Frontier adds that it is appropriate for this to be available to shippers with nominations for injections on both segments because they are the only ones that would be affected when prorationing on one segment restricts their ability to ship their full allocation on the other segment, and it would not change the allocations of other shippers on either segment.

130. Suncor emphasizes that the Shippers' Proposal tracks the proposal made by Platte in 2006 when it sought Commission approval to implement historically-based prorationing on the Guernsey-Wood River Segment, but applies this methodology to both segments. Suncor explains that, under the Shippers' Proposal, capacity allocations on one segment would not give rise to a preference or priority on the other segment and there would be no double prorationing. Further, Suncor states that the Shippers' Proposal eliminates the penalty for failure to ship 95 percent of a binding nomination when such failure is the direct result of prorationing. Suncor adds that, in order to maintain a congruent set of histories on the respective segments, volumes injected at Casper for deliveries east of Guernsey would count toward history on both segments when they have been shipped through the upstream segment. Finally, Suncor states that to establish historical allocations for the upstream segment, the last six full months of shipper history would be utilized, which is fair because such shippers have not been restricted by prorationing in the last six months.

**b. Platte**

131. Platte argues that Shippers' Proposal is beyond the scope of the proceeding in Docket No. IS10-108-000, in which the only issue is whether the Pipeline Proposal is just and reasonable and not unduly discriminatory. However, in its reply comments, Platte

acknowledges that the Commission could consider the Shippers' Proposal under ICA section 15(1)<sup>82</sup> if it had consolidated the Pipeline Proposal in Docket No. IS10-108-000 with the Complaint Proceedings.

132. Platte contends that the Shippers' Proposal is flawed and that the intervenors have not shown that the Current Procedure is not just and reasonable because they have denied the existence of arbitrage, the abuse of the new shipper category, and the resulting harm to Platte. According to Platte, the Shippers' Proposal would extend these problems to the upstream segment.

133. Platte also contends that the Shippers' Proposal appears to allow shippers to make adjustments to specific injection or delivery point volumes to comply with capacity allocation without regard for increasing or decreasing the volume differential between deliveries into Guernsey and domestic crude injections out of Guernsey. According to Platte, changing the volume differential moving in and out of there will impact the available capacity in both segments, thus changing the prorationing percentage for all shippers every time a change is submitted. Platte maintains that the Shippers' Proposal introduces the opportunity for gaming because only those with nominations for injection on both segments could redirect their nominations; however, the impact of their actions would be felt by all shippers.

134. Platte argues that, even if the Shippers' Proposal had been presented in a complaint proceeding, its unreasonable features and other factors would require full hearing and notice to potentially affected shippers, only a fraction of whom are intervenors. The problems Platte identifies are: (1) the listing of Marathon as supporting the Shippers' Proposal although it is not an intervenor; (2) the intervenors have ignored a non-public letter from a shipper that supports the Pipeline Proposal; and (3) many Regular and New Shippers as of 2009-2010 have not intervened, which undercuts the impression of unanimity.

135. Finally, Platte asserts that section 8.c. of the Shippers' Proposal is inconsistent with the Commission-approved language of section 13.3 Payment Obligations by modifying the 95-percent rule. According to Platte, it appears to give broader dispensation to shippers based on the reduction of supplies on other segments and would create confusion.

**c. Commission Analysis**

136. The Commission concludes that adoption of the Shippers' Proposal would establish a just and reasonable and not unduly discriminatory prorationing procedure on

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<sup>82</sup> 49 App. U.S.C. § 15(1) (1988).

Platte's pipeline system. Accordingly, the Commission will require Platte to submit a compliance filing within 30 days of the date of issuance of this order adopting this historically-based prorationing procedure.

137. While Platte argued that the Commission could not consider the Shippers' Proposal in the tariff proceeding addressing the Pipeline Proposal, Platte conceded in its Reply Comments that the Commission could consider the Shippers' Proposal under ICA section 15(1) if it had consolidated it with the Complaint Proceedings. As stated above, the Commission is consolidating Docket No. IS10-108-000 with the Complaint Proceedings in Docket Nos. OR09-6-000 and OR09-7-000. Accordingly, the Commission properly addresses the Shippers' Proposal in this order.

138. The Complaint Proceedings highlighted the ambiguity in the Current Procedure insofar as it relates to the prorationing process when both segments of Platte's system are constrained. Platte acknowledged this problem by filing the Pipeline Proposal. As discussed above, the Commission concluded that future application of the hybrid Current Procedure would not be just and reasonable. Likewise, the Commission rejected the vague, complex, and unprecedented hybrid Pipeline Proposal as unjust and unreasonable and unduly discriminatory. By applying the easily-understood, historically-based prorationing procedure to both segments, the Shippers' Proposal eliminates the flaws inherent in the Current Procedure and the Pipeline Proposal.

139. The Commission finds that the Shippers' Proposal will afford shippers the flexibility to maintain their historical allocations, while accommodating both long-term and short-term events affecting demand. The Commission also emphasizes that the Shippers' Proposal will reward shipper loyalty, which may aid Platte in maintaining the shippers it fears will seek transportation on other pipelines.

140. Moreover, implementation of the Shippers' Proposal, which applies historically-based prorationing on the Casper-Guernsey Segment will minimize disruption on the entire pipeline system. Under the Shippers' Proposal, the historical allocation methodology will be applied separately to each segment so that all shippers will be able to receive their maximum allocations on both segments. Capacity allocations on one segment will not grant the shipper a preference on the other segment, although volumes injected at Casper for deliveries east of Guernsey will count toward history on both segments.

141. Additionally, the Casper-Guernsey Segment shippers' initial historical allocations will be based on the last six months of those shippers' histories. This is similar to the Commission's action in Docket No. IS06-259-000, when it afforded potential New Shippers a period during which they could establish a shipping history.

142. Platte's arguments against the Shippers' Proposal have no merit. For example, although Platte claims that many shippers have not had an opportunity to address the

Shippers' Proposal, Platte's tariff filing and public notice of the technical conference served to alert shippers to the fact that Platte's Current Procedure likely would be replaced. Further, Platte raises again its allegations that arbitrage, abuse of the new shipper category, and resulting harm to Platte's competitive position, all of which the Commission rejected above.

143. In the 2006 proceedings in Docket No. IS06-259-000, Platte emphasized the failure of its then-applicable pro-rata prorationing procedure in effect for both pipeline segments. Platte urged the Commission to permit it to adopt historically-based prorationing on the Guernsey-Wood River Segment. Platte stated that, in response to requests from its shippers, it had proposed two historically-based prorationing procedures and that its filing of Supplement No. 7 to its FERC Tariff No. 1456 reflected the more popular option.<sup>83</sup> Platte pointed out that the Commission has accepted historically-based prorationing procedures for other pipelines. It stated that historically-based prorationing appropriately awards capacity to shippers that have used the pipeline and continue to rely on it. Further, Platte maintained that such a procedure would allow for changes in historic shippers' shares over time because it established a means by which New Shippers could become Historical Shippers.<sup>84</sup> In the course of the 2006 proceedings, Platte recognized the importance of the shipper-pipeline relationship: "The premise of the common carrier system is that the fundamental relationship is between the shipper and the pipeline, not between the person who sells to the shipper or the person who buys from the shipper."<sup>85</sup>

144. In the December 19, 2006 Order, the Commission emphasized, as it does again, that there is no single prorationing methodology that will satisfy the competing interests of the pipeline and its shippers. The Commission also pointed out, as it does again, that additional capacity on Platte's system likely will be the most effective means of alleviating the prorationing difficulties on Platte's system. However, the Commission emphasized that it does not have statutory authority to order such an expansion.<sup>86</sup>

145. Under the circumstances currently existing on Platte's system, the historically-based prorationing procedure offered by the Shippers' Proposal and applicable to both

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<sup>83</sup> See *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 9-10 (2006).

<sup>84</sup> *Id.* P 20.

<sup>85</sup> Reply Post-Technical Conference Comments of Platte Pipe Line Company, *Platte Pipe Line Co.*, Docket No. IS06-259-000, at 16 (August 18, 2006) (citation omitted).

<sup>86</sup> See *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 42 (2006).

segments will provide a just and reasonable and not unduly discriminatory procedure that will protect the shippers' interests, as required by the ICA.

The Commission orders:

(A) The proceedings in Docket Nos. OR09-6-000, OR09-7-000, IS10-108-000, and IS10-108-001 are hereby consolidated.

(B) The motions for leave to intervene out-of-time in Docket Nos. OR09-6-000, OR09-7-000, and IS10-108-000 are granted.

(C) The complaints in Docket Nos. OR09-6-000 and OR09-7-000 are denied, as discussed in the body of this order.

(D) Supplement No. 15 to Platte's FERC Tariff No. 1456 (the Pipeline Proposal) is rejected, as discussed in the body of this order.

(E) Within 30 days of the date of issuance of this order, Platte must submit a filing adopting the Shippers' Proposal, as discussed in the body of this order.

(F) One year from the date on which Platte implements the Shippers' Proposal, Platte and its shippers must file comments addressing the effectiveness of the new prorationing procedure. Reply comments must be filed within 20 days after the deadline for initial comments.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix A**  
**Docket No. OR09-6-000, *et al.***  
**PLATTE PIPE LINE COMPANY**  
**Pipeline Proposal**

**1. Definitions**

- 1.1 “Binding Nomination” and any other derivative thereof, means the Binding Nomination as described in Item 13.1 of the Rules and Regulations.
- 1.2 “Carrier” means and refers to Platte Pipe Line Company.
- 1.3 “Day” means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Mountain Time. The reference date for any Day shall be the calendar date upon which the 24 hour period shall commence.
- 1.4 “Deliver” and any other derivative thereof, means delivered by Carrier to Shipper at the outlet meter at one or more of the locations on Carrier’s Facilities which have been designated by Carrier as a delivery point in Carrier’s tariff.
- 1.5 “Delivered History” means the average of the five highest Monthly Deliveries from the previous six Months.
- 1.6 “Destinations” means the following refineries or merchant terminals serviced by Carrier’s pipeline:
- ConocoPhillips’ Wood River refinery at Roxana, Illinois;  
Eighty-Eight Oil’s merchant terminal at Guernsey, Wyoming;  
Frontier Oil Corporation’s refinery at Cheyenne, Wyoming;  
Koch Pipeline Company LP’s terminal at Wood River, Illinois;  
Marathon Pipe Line LLC’s facilities at Wood River, Illinois;  
National Cooperative Refinery Association’s refinery  
at McPherson, Kansas;  
Platte Pipe Line Company’s merchant terminal at Guernsey, Wyoming;  
Platte Pipe Line Company’s merchant terminal at Salisbury, Missouri;  
Suncor Energy’s refinery at Commerce City, Colorado;
- 1.7 “Intermediate Destination(s)” means any facility between Carrier and a Destination. Intermediate Destinations are not allocated capacity as a Destination under this procedure but may be used as a means for delivery to a Destination subject to verification by the Destination under Rule 3.

- 1.8 “Month” and any other derivative thereof, means the period beginning on the first Day of the calendar month and ending at the same hour on the first Day of the next calendar month.
- 1.9 “Monthly Capacity” means the pipeline’s hydraulic capacity based on the type of Nominated Petroleum or Crude Oil, carry-over, and pipeline maintenance requirements.
- 1.10 “Nomination” and any other derivative thereof, means the volume of Petroleum or Crude Oil to be specified in the Monthly Nomination Form as described in Item 6.1 of the Rules and Regulations.
- 1.11 “Person” means a natural person, firm, trust, partnership, corporation, government, or government agency.
- 1.12 “Procedure” refers to this Prorating Procedure as set forth herein.
- 1.13 “Pro Rata” means the determination of a fractional share of available capacity whereby the numerator of that fraction is the specific volume of a Shipper or Destination and the denominator is the total volume of all Shippers or Destinations.
- 1.14 “Rules and Regulations” means the Rules and Regulations published in Carrier’s F.E.R.C. Tariff No. 1456, supplements thereto and successive issues thereof.
- 1.15 “Shipper” means a Person who uses the transportation service of Carrier pursuant to the rules, regulations, and rates in Carrier’s Tariff.
- 1.16 Capitalized terms in this Procedure that are not defined in this Procedure are defined in Carrier’s Rules and Regulations.

## **2. Communication**

- 2.1 Communication between the Carrier and Shipper will be by telefax or e-mail with the current designated Shipper contact on file with the Carrier’s Shipper Services department, or other designated Shipper contact as requested in writing by the Shipper. Communication between the Carrier and Shipper can also be by other means as agreed to in writing by both Carrier and Shipper.

## **3. Nomination Verification**

- 3.1. Carrier reserves the right to require Shippers to:

- 3.1.1 Verify Nominated Petroleum and Crude Oil volumes to the satisfaction of Carrier; and
- 3.1.2 Certify Nominated Petroleum and Crude Oil volumes by an officer of the company in writing.

#### **4. Applicability**

- 4.1 For any Month, where the Carrier determines that Binding Nominations exceed its Monthly Capacity, the Carrier will apply this Procedure to the affected segment(s):
  - 4.1.1 Casper, Wyoming to Guernsey, Wyoming; and
  - 4.1.2 Guernsey, Wyoming to Wood River, Illinois.
- 4.2 Petroleum and Crude Oil volumes Nominated for Delivery to Casper, Wyoming received by the Carrier's terminal in Casper, Wyoming will not be subject to this Procedure unless constraints occur within Carrier's Casper, Wyoming terminal. If required, Shippers will be allocated a Pro Rata share of capacity using Binding Nominations.

#### **5. Prorationing Procedure**

- 5.1 Destinations are allocated capacity using the highest of either:
  - 5.1.1 Five percent of the Monthly Capacity for each segment; or
  - 5.1.2 A Pro Rata share of remaining capacity based on Delivered History.
- 5.2 Shippers are allocated capacity by:
  - 5.2.1 Receiving a Pro Rata share of the Destination's allocation using Binding Nominations

#### **6. Allocation of Unused Capacity**

- 6.1 If a Destination's total Binding Nominations are less than the Destination's allocation the unallocated capacity will be allocated first to Destinations receiving allocations under Rule 5.1.2 by the allocation method used in Rule 5.1.2; any remaining capacity will be equally distributed to Destinations receiving allocations under Rule 5.1.1.

**7. Penalties**

- 7.1 Capacity allocated using Rule 5.1.1 can not be reallocated or redirected to another Destination unless such Destination is operating below, and will continue after the redirection or reallocation, to operate below the maximum allocation provided for in Rule 5.1.1. In the event that this Rule is violated, the allocated pipeline capacity for all Destination's involved in the violation shall be reduced by the amount of unauthorized capacity obtained (or the Carrier's estimate thereof) for the current Month and the next five Months in which this procedure is applied.

**8. Purchased Assets**

- 8.1 In the event a Destination exits the Petroleum and Crude Oil business by selling substantially all of its Petroleum and Crude Oil assets, then the Destination may assign its pipeline capacity and volume history to the purchaser(s) of such assets, and the purchaser(s) of such assets shall be entitled to the capacity and historical status associated with the purchased assets.

**9. New Destinations**

- 9.1 Carrier may add new Destinations to this procedure upon request pursuant to the Platte Pipe Line Prorationing Procedure New Destination Acceptance process.

[Example Omitted]

**PLATTE PIPE LINE COMPANY**  
**Prorationing Procedure**  
**New Destination Acceptance Process**  
**January 20, 2010**

**Background**

The Platte Pipe Line Company Prorationing Procedure New Destination Acceptance Process (Acceptance Process) allows Shippers to request the addition of a proposed Destination to Carrier's Prorationing Procedure. The Acceptance Process applies only to existing connections or Carrier approved new connections.

Acceptance Process refers to this Platte Pipe Line Company Prorationing Procedure New Destination Acceptance Process. Capitalized terms in this Acceptance Process that are not defined in this Acceptance Process are defined in the Carrier's Prorationing Procedure and then in Carrier's Rules and Regulations.

**Overview**

There are four stages to the Acceptance Process:

1. Formal Request (presented by Shipper or potential shipper to Carrier)
2. Stakeholders' Comments (collected by Carrier from all Shippers)
3. Review Process (completed by Carrier)
4. Destination Acceptance (announcement by Carrier)

Each stage in the Acceptance Process results in a documented approval or rejection.

**Stage 1. Formal Request**

The Formal Request will be made by the requesting Shipper(s) or potential shipper(s) who wish to add a proposed Destination to Carrier's Prorationing Procedure. The formal request will be submitted by the proposing party or parties to Carrier, and must include a completed New Destination Acceptance Form. A copy of the New Destination Acceptance Form is contained on Page 2 of this document.

**Stage 2. Review Process**

The review process will be conducted by Carrier upon receipt of the completed Formal Request. The Formal Request will be reviewed for:

1. Name and Location of the proposed Destination.
2. Type of Destination.
3. Route to Destination after delivery from Platte.
  - a. The request for a proposed Destination may be rejected if the proposed Destination will receive or deliver petroleum from or to a Destination defined within Carrier's Prorationing Procedure.
  - b. If the proposed Destination requires transportation on a common carrier pipeline used by another Destination, then the common carrier pipeline may be defined as the Destination within Carrier's Prorationing Procedure.
  - c. The request for a proposed Destination may be rejected if the proposed Destination is affiliated with another Destination using the same Delivery Point as defined in Carrier's Rules and Regulations.

### **Stage 3. Stakeholders' Comments**

Stakeholders, Shippers, and interested parties will have fourteen (14) days to express their comments in regards to the new destination. All comments will be directed to Carrier in writing. Carrier will compile all feedback, and will work to resolve any and all issues related to the approval of the new Destination.

### **Stage 4. Destination Acceptance**

Final acceptance of the new Destination will be issued by Carrier on successful completion of the Acceptance Process.

**PLATTE PIPE LINE COMPANY**  
**Prorationing Procedure**  
**New Destination Acceptance Form**  
**January 20, 2010**

*Application form for new Destination to be included within the Platte Prorationing Procedure. Please complete all fields on this form.*

Contact Information

Company Name:

Contact Person:

Email:

Phone:

**1. Proposed Destination Name and Location:**

Proposed Destination Name:

Proposed Destination Location:

**2. Proposed Destination Type:**

Proposed Destination Type (Storage Facility, Refinery, Common Carrier Pipeline):

**3. Route to Proposed Destination after delivery from Carrier:**

Route to proposed Destination from Platte (list all intermediate Destinations):

Can the proposed Destination receive or deliver petroleum from or to a Destination currently defined within Carrier's Prorationing Procedure?

Explain why the proposed Destination should be added as a Destination within the Carrier's Prorationing Procedure:

**Appendix B**  
**OR09-6-000, et al.**  
**Platte Pipe Line Company**  
**Shippers' Proposal**

1. **Requirement for Platte Pipe Line (“Platte”) to be Prorated** – Pipeline operating hydraulic capacity for the Month is determined for the applicable pipeline segment, based on the Crude Oil heavy/super heavy content, expected carry-over and pipeline maintenance requirements.
2. **Crude Oil Volumes not affected by Platte being Prorated** –
  - a. Volumes nominated for Delivery Points in Casper, WY that have been received by the Platte Terminal in Casper will **NOT** be prorated unless constraints occur within Caspar Terminal.
  - b. Volumes nominated to Casper from trucks or connecting pipelines at Casper Terminal (currently Frontier Pipeline and Sinclair Pipeline) will **NOT** be prorated as a result of constraints on the Platte mainline.
  - c. Only volumes destined for Tariff Delivery Points east of Casper will potentially be prorated on mainline constraint(s).
3. **Communication** from the Carrier to the Shipper will be by fax or e-mail to the current Shipper contact of the Carrier’s Shipper Services department, or other Shipper contact as requested in writing by the Shipper.
4. **Throughput capacity on Platte** may be limited because of high Nominations in a particular Month and a number of other factors including the ultimate Crude Oil slate, maintenance, carry-over and batch lineup. Carrier will determine the deemed capacity, by segment, based on all pertinent factors. For illustrative purposes only, the usual range of capacity for each segment is as follows:
  - a. Casper-Guernsey, WY 150,000 – 165,000 bbl/d
  - b. Guernsey, WY-Wood River, IL 135,000 – 143,000 bbl/d
5. **Platte-bound Express Pipeline (“Express”) Volumes** (for a Month that the pipeline is declared to be prorated, but was not prorated the previous Month) that are destined for Platte will be prorated to Tariff Delivery Points as follows:
  - a. **In transit on Express**, these batches will be kept whole for delivery onto Platte at Casper to the extent possible. To that end, Shippers will be

requested to maintain a ratable schedule to allow pro rata or aggregate Delivery Point adjustments on volumes not yet received in Hardisty, AB, or

- b. **Express Volumes not yet received at Hardisty**, these batches will have the Nomination reduction amount (that results from the Platte proration application) redirected to Delivery Points that are not prorated on Platte.
  - c. The above will be applied to batches on a pro-rata and aggregate basis for each Shipper for the Month, such that the total nominated volume destined for Platte prorated Delivery Points for that Shipper, is equivalent to the respective pro rata allocation for the Month.
- 6. Batch Change Requests** – During a Month where Platte is prorated, batch change requests for change or Delivery Point on Platte, will be accepted only when:
- a. both the current and requested Delivery Points are prorated, or,
  - b. neither the current, nor the requested Delivery Points are prorated.
- 7. Nomination Verification** – Platte/Express reserve the right to require Shippers to:
- a. verify nominated volumes to the satisfaction of Platte / Express, when requested by Carrier, and/or
  - b. certify their nominated volumes by a officer of the company in writing.
- 8. Application to Pipe Line Segment** – Following the receipt of Nominations for a Month, Carrier will determine if the prorated segment of the pipeline will be the Casper-Guernsey segment, the Guernsey-Wood River segment or both. If the prorated segment of Platte is the:
- a. Casper-Guernsey segment, then all ~~eastbound~~-ex-Casper volumes destined for Tariff delivery destinations east of Casper will be prorated ~~equally,~~ and based on the historical methodology below. For shippers with multiple Tariff Delivery Point volumes, adjustments to specific delivery point volumes to comply with the capacity allocation will be at the discretion of the shipper when submitting revised nominations. Prorated shippers also have the right to increase Guernsey injections to fully utilize their nomination on the Guernsey-Wood River segment when submitting revised nominations. Guernsey receipts onto Platte destined for Tariff delivery destinations east of Guernsey will not be prorated, or the,

- b. Guernsey-Wood River segment, then all ex-Casper and ex-Guernsey volumes destined for any Tariff Delivery Point east of Guernsey will be prorated based on the historical methodology below, ~~and ex.~~ For shippers with both ex-Casper and ex-Guernsey volumes, adjustments to specific injection point volumes to comply with the capacity allocation will be at the discretion of the shipper when submitting revised nominations. Prorated shippers also have the right to increase Guernsey deliveries to fully utilize their nomination on the Casper-Guernsey segment when submitting revised nominations. Ex-Casper volumes destined for Guernsey will not be prorated, or on,
- c. ~~Both segments, then the Guernsey-Wood River Segment, (all ex-Casper and ex-Guernsey volumes destined for any Tariff Delivery Points east of Guernsey) will be prorated first~~ each segment individually and without regard to the other segment will be prorated based on the historical methodology below ~~and if still required: the Casper-Guernsey segment, (all ex-Casper and ex-Guernsey volumes destined for any Tariff Delivery Points east of Casper) will be prorated based on the prorating methodology below.~~ Adjustments to specific injection point and/or specific delivery point volumes to comply with the capacity allocations will be at the discretion of the shipper when submitting revised nominations. For clarity, shippers will not be subject to the payment obligations of 95% of binding nominations on one segment as a direct result of prorating on another segment either reducing the required supply or takeaway volumes.
9. **Methodology** – In a Month where the Carrier determines the requirement for Platte to be prorated, **ALL** Shippers nominating to Tariff Delivery Points on the affected segment(s) of Platte will have their nominated volumes prorated at the Platte injection point at the level of prorating in the affected pipe line segment. This will include the following Platte receipts destined for Tariff delivery destinations on the Platte system:
- a. Express batch receipts at Casper, WY,
  - b. US domestic receipts at Casper, WY, and,
  - c. US domestic receipts at Guernsey, WY.

~~10. Casper-Guernsey segment:~~

- ~~i. **Binding Nominations** – For any Month, if the Carrier determines that Nominations exceed its capacity, then the Carrier will notify each Shipper and provide each Shipper an opportunity to reduce its Nomination, which~~

~~Nomination shall be considered a Binding Nomination. If a Shipper does not submit a reduced Nomination then its initial Nomination shall be considered its Binding Nomination. Carrier will provide each Shipper the opportunity to reduce their Nomination by notice to the Shipper before the end of the first business day following US Nomination Day.~~

- ii. ~~**Pro Rata Allocation**—Following the receipt/determination of Binding Nominations for a given Month, Carrier *shall* determine the capacity available in that Month. In the event that Binding Nominations for that Month exceed the capacity available, such capacity shall be allocated to Shippers on a pro-rata share of capacity available. “Pro-rata share of capacity” means the quantity of transportation service allocated to a Shipper in a Month whereby such allocation equals the product of the capacity of Carrier available for transportation service, times a fraction; the numerator of that fraction is the Shipper’s Binding Nomination and the denominator is the total of all Shippers’ Binding Nominations in that Month.~~
- iii. ~~**Pro Rata Declaration**—Except in the case of extreme circumstances surrounding Nominations, Carrier will announce Prorating and respective Pro Rata allocation to each Shipper, if required, before 6:00 PM Mountain Time on the second business Day after US Nomination Day.~~
- iv. ~~**Payment Obligations**—If after receiving Shippers’ Binding Nominations, the Carrier determines that it must prorate capacity then the following formula will be utilized to determine the Shipper’s payment obligation: If Shipper tenders a volume greater or equal to ninety five percent (95%) of its prorated Nomination the Shipper shall be invoiced based on its delivered volumes in accordance with the Tariff. If the Shipper tenders less than ninety five percent (95%) of its prorated Nomination then Shipper shall be Invoiced for its delivered volumes for that Month, plus the product of the applicable Tariff and volume equal to the difference between the actual volume tendered and a volume equal to ninety five percent (95%) of the Shipper’s pro-rated Binding Nomination pursuant to Item 10 ii above, as adjusted by further prorating or operational factors.~~

#### ~~11. Guernsey Wood River Segment: i.~~

#### 10. Historical Methodology:

- i. **Capacity Allocation** – Capacity on the pertinent segment will be allocated as follows: 10% of the capacity to New Shippers and 90% of capacity to ~~Historie~~Historical Shippers. Any individual New Shipper will not be allocated more than 3% of capacity.

- ii. **Shipper Category** – New Shippers will be defined as those having moved ~~Injection~~injection volumes in four or less Months, of the six consecutive Months utilized in the historical calculation of the pertinent segment. (Any New Shipper will remain in the New Shipper allocation until they have shipped volume in a minimum of five of the six consecutive Months used in the calculation for that Month.) Historical Shipper will be any Shipper that is not a New Shipper.
- iii. **Historical Volumes** – Pipeline injection volumes by Shipper, and in total Historical Shipper throughput, are summarized by segment for each of six Months prior to the Month in which Nominations are due. (i.e. – *the proration calculation for June is based on actual injection volumes from November through to April, inclusive.*) Carrier shall advise historical shippers of their Preliminary Allocation two (2) business days before nomination due date.
- iv. **Proportion** – The allocated pipeline proportion on the pertinent segment to each Historical Shipper as a ratio will be the respective 6 Month total injection volume for each Historical Shipper divided by the 6 Month summation of total Historical Shipper monthly throughputs (~~11~~10 *iii*, above). During a month when a New Shipper transitions to a Historical Shipper and that Shipper has injected volume during the five consecutive Months preceding the Month in which Nominations are due (the historical period), that Shipper will be assigned total injection volume for the six Month historical period based on their average monthly injection volume received during the five Month period. ~~For clarification, injection~~Injection volume is defined as custody transfer metered ~~delivery~~volumes off of Platte less transfers occurring downstream of the injection pointinjected on to Platte. Volumes injected at Casper will contribute not only to the Casper-Guernsey segment history but also to the Guernsey-Wood River segment history if those volumes both are destined for delivery east of Guernsey and they have also been shipped through the Casper-Guernsey segment. For clarification, volumes transferred from one shipper to another after injections do not modify either shipper's history.
- v. **Allocated Space** – The allocated pipeline space on the pertinent segment to each Historical Shipper in volume (bbls) will be the allocated pipeline proportion ratio for each Historical Shipper (~~11~~on the segment (*10 iv, above*)) multiplied by the Historic Shipper capacity allocation (~~11~~of that segment (*10 i, above*)).
- vi. **Oversubscription** – If the allowed space for New shippers on the pertinent segment is oversubscribed by Nominations: those Nominations will be prorated equally such that the total prorated Nomination is equal to the 10%

allowance for New Shippers, subject to the 3% maximum for any individual New Shipper.

1. Any one Nomination in excess of 3% of deemed capacity will be reduced to 3% prior to evaluation of the proration calculation; and
  2. All Nominations will then be allocated on a pro-rata basis such that total prorated Nominations are equal to the 10% allowance for New Shippers.
- vii. **Undersubscription** – If the allocated space for New Shippers or Historical Shippers on the pertinent segment is undersubscribed by Nominations (individually or in aggregate), the unsubscribed space will be allocated among ALL remaining Shippers using the same methodology defined for each category: up to the Shippers' nomination.

viii. **Revised Nominations** – Shippers shall have at least one (1) business day from notice of allocations to submit their revised nominations.

viiiX. **Shipper Affiliates** -

1. Any Company (not currently shipping on the system) seeking approved Shipper status with the Carrier in order to become a New Shipper will be required to provide certification from responsible company officials that applicant is not an affiliate of any existing Shipper on the Express or Platte systems.
2. Pipeline capacity allocated to any Shipper may not be assigned to another Shipper. Carrier may require written assurances from responsible company officials of Shippers that this provision has not been violated. In the event that such provision is violated or written assurances cannot be provided, the allocated pipeline capacity for all Shippers involved in the violation shall be reduced by the amount of unauthorized capacity obtained (or the Carrier's estimate thereof) for the current Month and the next five Months of proration. Transfers on batches-in-transit will be accepted in the normal manner.
3. Pipeline capacity allocated to any Shipper may be utilized by that Shipper only to transport Petroleum from all Receipt Points in accordance with the Tariff, upstream of the prorated pipeline segment. Nomination changes in Receipt Point will be accepted to the extent that capacity in the prorated pipeline segment is not

affected.

~~ix.~~x. **Exit** – In the event a Shipper exits the Crude Oil business by selling substantially all of its Crude Oil assets, then the Shipper may Assign its pipeline capacity to the purchaser(s) of such assets, and the purchaser(s) of such assets shall be entitled to the capacity and historical status associated with the purchased assets.

~~xi.~~xi. **Definitions** –

1. **Shipper Affiliate** – For the purpose of item ~~11-viii~~10 ix above, Shipper Affiliate means any Person:
  - d. that controls a Shipper;
  - b. that is controlled by a Shipper; or
  - c. that is controlled by the same Person that controls a Shipper; it being understood and agreed that for purposes of this definition the terms “controls” and “controlled by” shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with respect to the control of or by a corporation, the ownership of shares carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above.
2. **Assign** – For the purposes of Items ~~11-viii~~10 ix and ~~11-ix~~10 x above, the term assign or assigned means to convey to another Shipper, to permit the use by another Shipper, or to otherwise transfer or to make over the use of another Shipper.