UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Petition for a Rulemaking of the Liquids Shippers Group, Airlines for America, and the National Propane Gas Association

Docket No. RM15-19-000

July 30, 2015

Open Meeting

Items on the Published Agenda

Commencing at 9:00 a.m..

FEDERAL ENERGY REGULATORY COMMISSION

888 First Street Northeast

Washington, DC 20426

Commission Meeting Room

Commissioners

Chairiman Norman C. Bay

Commissioner Cheryl A. LaFleur

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PANELS AND SPEAKERS

PANEL 1

Legal Policy Perspective Prepared Presentations

Steven A. Adducci, Venable LLP, on behalf of Valero Marketing & Supply

Matthew Corcoran, Goldstein & Associates P.C., on behalf of Tesoro Refining & Marketing Company LLC

Douglas F. John, John & Hemgerer, on behalf of Liquids Shippers Group

Steven M. Kramer, Association of Oil Pipe Lines

Richard F. Powers, Jr., Venable LLP, on behalf of Airlines for America, and National Propane Gas Association

Daniel J. Poyner, Stepteo & Johnson LLP, on behalf of Association of Oil Piplines

Panel 2

Technical Perspective Prepared Presentations

Steven A. Adduci, Venable LLP, on behalf of Valero Marketing & Supply

Dr. Daniel S. Arthur, the Brattle Group on behalf of Airlines for America, and National Propane Gas Association

Peter K. Ashton, Premier Quantitative Consulting, Inc., on behalf of Tesoro Refining & Marketing Company, Inc.,

Kenneth A. Sosnick, Pendulum energy, on behalf of Liquids Shippers Group

Robert G. Van Hoecke, Regulatory Economics Group, on behalf of Association of Oil Pipelines

P R O C E E D I N G S

MR. FAERBERG: We can get started. It is 9 o'clock. We have a full day ahead of us.

My name is David Faerberg. I am with the Office of General Counsel. With me this morning to my right is Adrienne Cook with the Division of Pipeline Regulation of OEMR. Then we have to my left Andrew Lyon with the Office of General Counsel. Peter Roidakis with the Office of General Counsel. Derek Anderson with the Office of General Counsel and Rukus Andras with the Office of General Counsel.

Let me acknowledge that Commissioner LaFleur is here and some of the other Commissioners may be monitoring the proceedings as their schedules permit.

The purpose of this conference is to discuss the petition for rulemaking filed by the Joint Petitioners concerning the changes to Form 6.

The format this morning is we will have a panel on legal and policy issues with a dialogue to follow and then later in the afternoon technical issues with a dialogue to follow for the first panel.

Everybody will be getting ten minutes each.

We are not going to be hard if you are in the middle of a thought, just finish up the thought.

To the extent that there is a lot of material you did not cover we can discuss that later in the dialogue portion.

With that the order will be starting off with the Mr. Powers, Mr. John, Mr. Kramer, Mr. Poyner, Mr. Adducci and then Mr. Corcoran.

With that, unless we have any questions, we will get started. Start with Mr. Powers.

MR. POWERS: Good morning. I am Richard Powers and I am appearing here today on behalf of the Airlines for America and the National Propane Gas Association.

I want to first thank the Commission, and I see Commissioner LaFleur is here, for opening this inquiry into potential business from page 700 to Form 6.

I have provided for the record and I will have copies outside a PowerPoint overview of the April 20, 2015 petition filed by the Liquid Shippers Group, A for A, Airlines for America and the National Propane Gas Association.

Also I have provided excerpts from certain Form 6's on several pipelines.

My comments will go to a few points and then I will be available to answer questions.

First, a few comments about A for A and MPGA. A for A is the nation's oldest and largest airlines trade association and its members account for more than 90% of the passenger and cargo traffic carried by US airlines.

A for A members include airlines that ship a substantial volume of petroleum products on the nation's interstate systems.

The airlines estimate that they ship approximately 85% or 15 billion gallons annually of jet fuel by pipeline.

The airlines have been active participants in a number of proceedings before this Commission including rulemaking proceedings as well as rate proceedings involving pipelines like Buckeye, Enterprise TE, SFPP, Colonial and so forth.

MPGA is the nation's trade association of the propane industry with membership that exceeds 3,000 companies including 38 affiliated states and regional associations represented by members in all fifty states.

They are primarily composed of retail marketers and other members include producers and transporters and wholesalers of propane.

Like the A for A they had been involved in a number of proceedings in front of this Commission not only rulemaking, but those involving individual pipelines like Enterprise, Mid-American and Dixie.

Both A for A and MPGA and member companies are direct shippers that refine products in propane on the interstate system and as you will see in the petition we have listed some of the proceedings we have been involved with.

As shippers of refined products in propane, especially jet fuel in terms of refined products, we are keenly interested in transparency and the transparency that Form 6 should provide us.

I am not going to go through this slideshow presentation, but just a quick overview of what it talks about.

It talks about the proposal that we made which we believe is very limited to add additional Form 6's for either oil or product pipelines or pipelines that already have segmented systems or file to make rates on the basis of those segmented systems or like segmented systems or portions of the pipeline.

We also talked about the shortcomings of the current rules and we give examples of the challenges that are set forth and then focus on how do we believe that this change we are asking for will expedite the consideration of many proceedings before this Commission including the proceedings involving challenges to indexed increases and to complaints.

And then the final ask in this of the two asks is that we be provided with the workpapers behind page 700 which are already required to be kept by the pipelines which in a recent Commission audit involving Colonial, the Commission itself recognized are important to understand what is contained in page 700.

With that one of the reasons that we think it is appropriate to make these changes is over the years, as I said, we have been involved in a number of litigations and I want to walk-through three or four examples of pipelines that we have litigated with on which Form 6, page 700, is filed for the entire entity or pipeline and on which the cases have been litigated on a basis of segmented cost of service so that for us in those proceedings looking at page 700 is not helpful and we do not believe it is helpful for the Commission.

Most recently, as many of you know, the airlines filed a complaint against Buckeye Pipeline and that was on Docket OR12-28.

In Buckeye we filed the complaint based on page 700, however page 700 for Buckeye covers four systems.

It covers their midwest systems, their Eastern Product system, their Long Island system and the Jetline System.

The pipeline when we filed our complaint criticized this initially for using page 700 and developing a systemwide fully allocated cost rates on the basis of that.

They said that it was not how they designed their rates.

As it turned out at hearing, Buckeye presented cost of service by system, the Eastern Product system and the Long Island system.

We may have had an argument in that case over what the proper system was, but Buckeye presented cost of service and designed their rates on the basis of those two systems.

Buckeye itself said that the segments or system should have rates designed on a segment specific basis and that it tracked cost and revenues by segment.

So in our view in that case Buckeye should be required to file separate page 700s for each of these four systems because if you are a shipper on one, say you are a shipper on the Long Island system, how are you going to know if you have got three other systems going to page 700 whether you, a separate system from the rest of them not interconnected with, for example, the Jet system or not interconnected with the Midwest system whether your rates are reasonable?

You are not going to know.

A second example would be a case like Enterprise. In 2012 Enterprise filed to increase their rates in Docket IS-12203.

That is a pipeline that has pipelines across thousands of miles and it identified in its filing two separate operating systems, the Southern segment and the Northern segment with their own separate costs of service.

You can also see if you look on their page, Form 6, page 123.1, for 2014, that they recently reversed the pipeline and it is called the ATEX

Pipeline to carry product from the Marcellus down to the Gulf. Well, that's not broken out either.

Yet despite having filed for rates on the basis of segmented systems they filed page 700 for one entire entity.

Another entity which we have dealt with in the past is the Magellan Pipeline. Magellan Pipeline is the huge pipeline which covers some 9,500 plus miles of ground in the mid-continent and Gulf regions in the United States and into the Rocky Mountain area.

In the last Form 6 proceeding, Magellan itself said the following: "The entire Magellan system is divided into three component pipeline systems. The central system which originates in Tulsa, Oklahoma and transports fine petroleum products to destinations in Oklahoma, Arkansas, Nebraska, Missouri, Iowa, North Dakota, South Dakota, Minnesota Wisconsin and Illinois.

"The South system which originates in the U.S. Gulf coast and transports petroleum products to Central, West Texas, and Tulsa.

"In the Mountain system which transports petroleum products from Kansas to Colorado."

Yet Magellan has only one page 700 where it reports an aggregate total company cost and revenue for both its crude oil and refined products systems.

In fact in a case we brought on behalf of a refiner back a couple years ago, it was Docket OR10-6, we asked for the page 700 to get support for our position and the response by the pipeline was that "it wouldn't have any meaningful information in evaluating, "The Mountain system that we were looking at."

There is evidence in the record that the pipelines themselves recognize that page 700 as it is today is not helpful.

We can look at other pipelines and some of the pipelines that I gave you excerpts of including Enbridge, Marathon and others report on their Form 6 that they transport both crude oil products and refined products so you can see and they define their own systems.

Sunoco, for example, talks about their "products pipeline system" and the "crude oil pipeline systems."

We believe that this is something that many pipelines are already doing, but without further information on individual systems the shippers have no way to really be able to determine where they are.

Final comment and I see my time is running out, on the workpapers, what we find in litigation, the first thing that is turned over in discovery is the workpapers.

They are on the shelf.

And these workpapers as with others, that Dan Arthur and Steve Adducci will talk about, these help to explain some of the entries on page 700, when, for example, there are inconsistencies between page 700 and the rest of the Form 6.

We think it is important to bring these forward especially when the Commission looks to the shippers to basically carry the ball and keeping sure that rates are just and reasonable.

As I noted before the audit that the Commission staff issued in Colonial Pipeline which was Docket FA 14-4-00 also says, "Audit staff needs page 700 workpapers in order to understand the derivation of page 700 data and verify the reported amounts."

The shippers are in no less in a position to need the workpapers and we also believe that this will cut down overall the administrative time before this Commission.

With that, I will stop and take questions now or later.

MR. FAERBERG: Thank you, Mr. Powers. Mr. John.

MR. JOHN: Thank you, Mr. Faerberg. I want to echo Mr. Powers, and thanks to you Commission LaFleur and members of the Commission for convening this Tech Conference.

I thank all the members of the panel and the staff who are seated in the room for their interest.

It is good to know that our petition has at least gotten us to the first step of what we think would be a very productive rulemaking process.

I am Dough John, by the way, and I represent the Liquid Shippers Group. The Liquid Shippers Group is not a corporate entity the way A for A or the MPGA are.

We are instead an ad hoc group.

We have eleven full-time members and I can run over their names very quickly for you. Anadarko Energy Services, Apache Corporation, Cenovus Energy Marketing, Conocophillips, Devon Gas Services, and Cana Marketing, Marathon Oil

Company, Murphy Exploration, Noble Energy, Pioneer Natural Resources and Statoil Marketing & Training.

Between them these eleven companies have production all over the country. They also buy and sell crude and liquids from a variety of third parties. They ship on virtually every pipeline of significance in this country.

Novis, of course, is Canadian-based and Statoil is Norwegian, so we are moving again vast amounts of crude and liquids on these pipes.

We came together in 2013 and it is a fairly new group and there are several reasons why it occurred at that time.

As we well know in the past several years there has been a great resurgence in production of shale, crude, and liquids based.

Shale has basically introduced a lot of new activities to the producing community. We rely on a lot more pipelines than we did.

At the same time over this period of time we have seen reorganizations in the industry.

For example, Conocophillips and Marathon Oil were in the not too distant past affiliated with pipelines. There were restructurings in each case separating the production companies into pure production for both Conoco and Marathon essentially giving the shipper roles but not transport roles.

At the same time we have seen a lot of consolidations of pipes and a lot of the newer pipe are built by the majors like TransCanada, Enterprise, Kinder Morgan and others in the country.

There has evolved here in the past couple of years something of an "us and them" mentality replacing what traditionally had been more of a "us with them" mentality.

A lot of issues were resolved perhaps in the back room in the old days but today it doesn't work as well so we have a little bit different dynamic among the members of this industry.

And a third factor is that over the past of couple as you folks well know the value of crudes and liquids has diminished substantially.

A $100 barrel in 2013 is now $50 barrel in 2015. With that kind of reduction in the commercial value of the product, the cost of getting it to market becomes that much more substantial and I expect that certainly applies to our end of the spectrum.

Dick Powers and Steve Adducci represent people primarily in the Middle Earth, the market end and our folks located upstream.

One of the questions that you posed in your supplemental notice, and I do not mean to address all of those questions now by any means, but one of the questions you posed was in terms of requesting workpapers who should be defined as an interested person?

Who should be able to request workpapers if the Commission in fact adopts the changed page 700 we're requesting.

I am not going to answer that comprehensively now, but I would point out that people that sell or buy from people that ship to me would be within that universe.

A lot of our folks we ship on pipes and we also sell quite a bit of product to third parties that ship on pipes and often the commercial structure of that transaction nets back those costs to us or requires us to share them.

It certainly seems to me that if there is going to be a limit on who might be able to benefit from having access to workpapers that shippers and others in common situations with us certainly ought to be included in that scope.

What are regulatory objectives? The LSG as I said is an ad hoc group. We have got two main goals certainly here in 2015. Number one is increased transparency.

We want to understand how rates are made, how this industry works. We are a little bit newer to this activity here than some of the others represented at the table and so we are learning our way to some extent.

We want to understand how to interpret data and to have it as usefully available to us as possible.

Why is that? Because we want the rates to be J and R. Statutorily we are entitled to that. The goal of this particular petition is to simply ask you to arm us with a bit more information so we can try and hold the carriers accountable where the preliminary evidence suggests the rates may no longer be J and R.

What do we consider in deciding whether to bring an action either a complaint or protest?

Number one, we take notwithstanding the "us and them" the dynamic that I described earlier we take very seriously relationships.

Most issues get worked out by settlement. It is true on the gas side, the power side, and it is true with crude and liquids as well.

We do not lightly take on a battle with a carrier that we are going to be doing business with for the foreseeable and distant future.

One of the things we want to do is to pick our battles carefully so as not to rupture or fray that relationship unnecessarily.

We also have limited budgets. These are big companies, but frankly the regulatory budgets are not particularly strong.

For one of our members or a group of our members to go to their respective managements and get approval to take an action against a carrier you have to demonstrate some reasonable expectation of success and of value.

To do that we need, as I say, the data we don't have right now.

When we file the petition in league with A for A, and MPGA, as I mentioned we have a lot more production activity around the country, a lot more pipelines, a lot greater need for transport and low prices on the net back side, so we really want to try and focus on this part of the business, this part of our cost.

I am actually in corporate restructuring and pipeline consolidations.

We began studying these Form 6's and we came to the realization that on a lot of the big pipes, the ones that have multiple segments, particularly, we simply could not determine whether the segment we might be shipping on was one that was over earning.

We can see an over earning presumption based upon the very limited information in Form 6 on page 700 to know if that deals with the rates we pay if that over-earning, presumptive over earning is going to trickle down to the rates we pay, we simply don't have the information to make that call right now.

A lot of us come from gas background and some of you do as well.

On the gas side these are a lot easier to analyze because you do not have with ETP or with Kinder Morgan or TransCanada, and Williams, Tallgrass, you do not have a single Form 2.

Every one of those operating pipelines files its own and as you have seen the result of that has been Commission initiated show cause proceedings in many years and certainly the customers are armed to consider their own complaints under Section 5 of the Gas Act.

We are simply to be better equipped to deal a pipeline that might have a come back rate filing obligation possibly to help settle those cases before they are even filed.

We understand the Interstate Commerce Act is not the Gas Act. We understand there is a statutory directive from 1992 toward lighter-handed regulation.

We are not looking to emulate everything that happens with gas. All we are talking about here is additional information.

Transparency.

Nobody's rates got affected immediately. We are simply looking for a little bit more help in the screening process.

We realize, of course, that this effort has been underway for a bit. I am guessing when we looked down the table to our friends the pipeline industry we are going to hear a reference to Orders 751 and 620 in which the Commission was asked to do some of the same things we are requesting here and at that time elected not to.

We do not think that the Commission has ever ruled out the validity of our request. We do not think we would be here if that were the case if this were deemed to be a collateral attack on something that has been once and for all.

This industry has changed.

Where 571 was issued in 1994, and 620 in 2000, where 21 and 15 years respectively down the road and the last three years I have described what has been happening for us.

We really think a fresh look with a fresh Commission is warranted here.

Why does the proposal make sense? Its limited scope, as Dick mentioned, and I think Steve and Matt will echo we are not talking about hitting every one of the 200 pipelines that is out there that file Form 6's.

We are talking about a very much more limited group.

The ones that have crude and liquids operations fairly would be in the line of fire and the ones that operate recognized systems and segments would also be included, but there are not that many of them out there.

Dick has identified some. Our petition identifies a bunch. Marathon, Mapl, SFPP, Sunoco, Magellan, Buckeye and some others.

We don't need today to define who all of them are, as I say, most of them are recognized. My sense is that to the extent there is a close call and a pipeline elects not to volunteer to file by segments, but petition by an affected shipper with a Commission to have that pipeline designated as segmented perhaps would be the right way to go in addressing that difference of opinion.

Limited burden. Dick said it. You will hear it again. We think the data are already required under the Part III 52 Regulations to be held by the pipe.

How do they made rates if they do not know what the properly allocated costs would be for a different for a certain service.

We are simply asking them to be put in a form that interested parties can examine to make decisions that right now we have to make to some extent in the dark.

We do not think there would be a great cost, but if there is, it is a one time cost.

Once these carriers have set their books up, if you will, to track the segmentation that we have in mind, certainly, it is done and the future of filings of page 700s in future years you would think would be much more simple.

I mentioned Orders 571 and 620, you told us that your interpretation or at least your policy in the wake EPAC 92 is that shippers ought to be the ones that bring forward the concerns.

We do not expect the Commission to find them all. We do appreciate the audits and the activities we have seen of late from the Commission actually is showing a bit more proactivity than we have seen in the past and that is very much appreciated.

But we still believe that we are the ones, the first line of accountability when we are requiring accountability and so all we are doing is asking you to give us a little bit more information that we can use in the screening process to make educated decisions.

MS. COOK: Mr. John, I am sorry, you time is up.

MR. JOHN: I am sorry. Thank you for your time.

MR. FAERBERG: Mr. Kramer and then Mr. Poyner.

MR. KRAMER: Good morning, I am Steve Kramer with the Association of Oil Pipelines and we appreciate the opportunity to participate in today's conference.

As we will discuss today, the proposals and the petition are not new. The proposals have been considered, but rightfully not adopted by the Commission many times in the past as they are unnecessary and inconsistent with the regulatory construct that applies to oil pipelines.

The proposals seem to reflect the desire for the Commission to break from the simplified and streamlined regulatory approach that has been mandated by Congress which has been working well for the past two decades.

The petition at page 6 provides, "That the Commission should reevaluate many of its regulations and policies applicable to crude oil and petroleum products pipelines," which apparently applied to page 700 and well beyond, so this is a broad petition.

While the petitioners claim that they need segmented page 700 data and workpapers as Mr. Poyner will discuss the record shows that the Commission has provided oil pipelines shippers the fair opportunity to assess and contest oil pipeline rates.

In fact, the petition does not point to any complaint or protest during the more than 20 years since EPAC has been put in place that has been dismissed due to a lack of such information.

The purpose of my statement today is to discuss the governing regulatory approach and provide some relevant history as it relates to the page 700 issues.

The Commission should not reject the proposal simply because it has done so in the past, but because its past rulings are consistent with the regulatory construct that was mandated by Congress.

Oil pipeline regulation contrasts markedly from the Natural Gas Act that applies to natural gas pipelines which, as you all know, are based on traditional costs of service rate regulation.

After jurisdiction of oil pipelines was transferred to this Commission from the Interstate Commerce Commission, the Agency grappled with how best to regulate oil pipeline rates and 1978 for the first time an appellate court considered the appropriate ratemaking methodology for oil pipelines.

The DC Circuit in Farmer's Union I remanded a pending oil and pipeline rate case to the Commission to consider whether the valuation ratemaking methodology should continue to be used or whether some other type of ratemaking approach is more appropriate.

While the court did not mandate a particular outcome, it recognized that Congress intended to allow freer play of competitive forces among oil pipeline companies than in other common carrier industries and distinguished that approach from traditional utility regulation which applies to industries like natural gas pipelines.

On remand the Commission adhered to the valuation methodology and in Farmers Union II the court remanded again, and on remand on that case in Opinion 154(b) the Commission adopted cost-base ratemaking for oil pipelines for so-called trended original cost methodology.

The importance of all of this is that the result of these series of decisions was a significant increase with a potential for protracted costs of service rate review before the Commission and Congress addressed that in EPAC, specifically in EPAC in recognition of the competitive circumstances in the oil pipeline industry and to reduce costs delays and uncertainties Congress mandated that the Commission streamline its procedures and implement the simplified and generally applicable ratemaking methodology.

EPAC also grandfathered most the rates in place in 1992 making them just and reasonable as a matter of law.

There are no comparable legislative directives with respect to the Commission's oversight of the other programs under Natural Gas Act or the Federal Power Act.

In response to the mandate, the Commission established indexing as the simplified methodology as you know and streamlined its procedures.

The Commission's regulations permit cost of service rates as an exception to indexing in certain circumstances once applicable threshold requirements are first met.

Oil pipelines may file cost of service base rates, but first must show us substantial divergence between their costs and revenues permitted under indexing.

Shippers may challenge a pipeline's index changes, but first must show indexing increases substantially in excess of the pipeline's actual cost changes.

Shippers may also file complaints against existing pipeline rates and as such cost of service rates are intended to be the exception rather than the rule in this industry.

In fact the DC Circuit has explained in an oil pipeline regulatory construct based in large part on cost of service rates will be inconsistent with Congress's mandate under EPAC.

Mr. Poyner will explain the Commission has consistently employed an approach whereby aggregate rates screening information is provided to show the relationship between a pipeline's costs and revenues and for the pipeline to provide more detailed information supporting its rates upon a challenge that makes a threshold showing.

For most oil pipelines, the first time they need to perform any system wide cost of service allocations is in response to litigation at the Commission and the great majority of oil pipelines have not been involved in cost of service rate litigation.

Mr. Van Hoecke will discuss on the second panel pipelines have always field aggregate data in the Form 6 as a uniform system of accounts which underpins much of the data in Form 6 requires a pipeline's expense of revenues be classified and recorded by account which reflects aggregate data.

Given the statutory regulatory construct the Commission has made clear that the changes proposed by the petitioners which would require the preparation of detailed segmented cost of service information annually before any threshold showing is made are inconsistent with the purposes of page 700.

In Order 571, the Commission created the page 700 and explained that that is designed to be a preliminary screening tool.

The Commission also made clear what it is not intended to do. "It is not intended to demonstrate that the pipeline's proposed or existing rates are just and reasonable."

In other words, page 700 is not intended to be a detailed segmented cost of service rates submission.

We are to provide a form for rate case

litigation like discovery, such information is required only if a pipeline's rates have been set for a cost of service hearing.

The Commission has consistently adhered to Order 571. For example, in 2000, the Commission issued Order 620 which denied a request for segmentation of page 700 data for the same reasons in Order 571 and then later in 2007, the Commission issued a Notice of Inquiry to review all of its natural reforms across the industries including the Form 6.

In fact, it can be the conference on Form 6 and I think it was called the workshop that one day received comments from interested parties and then terminated the proceeding without requiring any revisions.

Like here those representing shipper interests argue from page 700 workpapers and segmentation and then the Commission issued the Order in December 2008 which denied the proposals and reaffirmed that page 700 is not intended to be at the level of detail to litigate a rate case.

The Commission pointed out that the information in Form 6 allowed shippers for the preceding ten years from numerous complaints challenging rates and the Form 6 provided sufficient information to shippers.

These statements by the Commission continue to apply today as is evident from the protests and complaints filed over the past ten years and the rate matters set for further investigation the Commission has allowed shippers a fair opportunity to assess and contest pipeline rates.

The Commission has also not adopted these proposals in a number of proceedings since 2008, and importantly, the petitioners have not shown any change in circumstances to warrant a departure from the Commission's previous findings while they claim there is a much different landscape now than in the early 1990s and 2008 when oil production was declining there is no demonstration how these general industry activities support the proposals, the claim that the increase and merger activity is caused by page 700 data to become even more aggregated is also not supported and there have been many new entrants into oil pipeline industry and there is no evidence of greater concentration.

In fact since 2008 a number of Form 6 filings has increased by more than 15%.

Similarly with the generalized argument that the change is in ownership such as corporate spin-offs has caused a change in oil pipelines that work with shippers.

Independent oil pipeline is certainly not a new phenomenon. It has been going on for a long time nor does it provide any basis to impose new page 700 requirements, if anything, spinning off pipeline assets to an independent company helps to protect against undue discrimination or undue preferences.

Further, given the sophisticated nature of the shippers and most cases pipelines and shippers continue to reach agreement on ratemaking matters.

The fact that some pipeline assets may now be owned by independent companies rather than the large integrated oil company provides no reason to change reporting requirements on page 700.

Finally, while there have been an increase in new pipelines, new pipelines must justify their rates of on cost of service basis unless they obtain agreement with their shippers, for example, by offering discounts or premium rate service through widely publicized open seasons and you all see that in your petitions for declaratory order.

No change in circumstances has been shown that would justify requiring pipelines to repair an annual detailed segmented filing or to create litigation-type discovery process by providing access to the workpapers before any rate is even challenged.

There is no basis to seek a departure from this streamlined regulatory approach the Commission has been effectively implementing for the last two decades and in the end we believe the petitioner's proposal would lead the Commission back to the very circumstance that caused Congress to streamline and simplify oil pipeline regulation in the first place, a significant increase in the potential for protracted cost of service rate review in an industry that is markedly different from the traditional utility model such as natural gas pipelines.

Those conclude my remarks for this morning. Thank you.

MR. POYNER: Good morning. My name is Daniel Poyner. I am with the law firm of Steptoe & Johnson and I am here today on behalf of the Association of Oil Pipelines.

The main purpose of my comments is to provide some context about how page 700 data is actually used in rate litigation and to explain why the additional segmented page 700 data that is requested is not necessary to file a challenge against oil pipeline rates.

We will also briefly discuss the workpaper issue and explain why that is also not necessary to challenge pipeline rates, and in fact, requiring pipelines to provide workpaper data to any interested party upon request leads to some significant unintended problems.

First, with respect to the segmented page 700 data.

The petitioners claim they need the page 700 broken into segments in order to be able to challenge oil pipeline rates, but it's not necessary for shippers to have this under the Commission's regulations to bring a challenge.

In fact, the Commission has never dismissed a complaint or protest by a shipper against an oil pipeline in the more than two decades since EPAC was passed or even before that time because of the absence of segmented page 700 data.

The current Form 6 and page 700 it is important to understand what it actually shows and it provides a wealth of useful information that shippers have used to file challenges successfully against oil pipeline rates.

First, obviously, the page 700 shows whether the pipeline is over earning or under earning on a cost of service basis on a total company basis.

If the pipeline shows total company over earning that is something that shippers have been able to use prima facie basis for challenging any of the pipeline's rates.

After the cost of service case it may or may not we will see whether they are just and reasonable, but its ability to file a prima facie case.

Even if the pipeline is under earning, there is a lot of information that shippers have that they have successfully used to have rates to have cases set for hearing.

First, the page 700 shows the total interstate barrels and barrel miles and the Commission recognized when it set up the page 700 that this was useful information to be able to have the shippers calculate an average rate on a barrel basis or an average rate on a barrel mile basis.

Some shippers in recent cases have even

calculated estimated fully allocated cost rates by taking distance related costs and allocating them on an average barrel mile basis non-distance on an average barrel basis.

This allows you to calculate over a total company what the average rate would be. That is not necessarily what the just and reasonable rate would be, but it gives shippers the ability again to make a prima facie case.

If the individual rate they pay, say, for a group of systems or a particular individual rate that they are interested in, if it's above the average that would provide something that shippers have used at least in the past to say, "This is a prima facie case, please set this for hearing."

And the Commission has done so.

And that is just looking at comparing what the reported cost of service is.

The Form 6 that provides a wealth of cost of service data broken down that can be used to challenge the reported cost of service.

For example, operating expenses are broken down by a count by year so that you can see what the individual categories of expenses are, salaries and wages, fuel and power, outside services, rentals, insurance, taxes, depreciation.

You could use that again to calculate an average or see how it compares from year to year to see how it compares to other pipelines.

The amount of property broken down, the retirements, the additions, revenues are broken down by transportation revenue as well as other revenue and shippers have used rentals or oil losses and shorts.

Shippers have used these particular other revenues claiming they should be credited against the cost of service and those have been used in complaints that have actually been set for hearing.

Again, the capital structure that is used for the rate of return, long term debt cost, equity cost, the marginal tax rate that is used to calculate the income tax return.

All of this useful information that can be used to challenge the cost of service itself.

It is important to emphasize that in requesting segmented data that is even more than what the pipeline itself, if a pipelines is filing a new cost of service rate, it is required by the regulations to file cost of service on a total company basis, not a segmented basis and that is an interesting point as well.

I want to address the seven specific pipelines that the shippers have pointed out that have multiple segments.

These examples actually prove the point that it is not necessary to have segmented page 700 data.

Four of the seven have been involved in rate case litigation as the Commission well knows.

SFPP for probably the past 30 years it has been involved in litigation the bulk of those years.

Enterprise TE, Mapl, and Buckeye, all of these shippers have been able to successfully have complaints set for hearing with the information they have.

The other three, Marathon, Magellan and Sunoco, there is no indication of any shipper, there have been no complaints or protests that have been brought and been dismissed because these three pipelines do not file segmented page 700 data.

It is also interesting on those three they have extensive base rates which is just another example of why it's not appropriate to try to have each pipeline to fit it into the cost of service methodology when its rates may not be set on that basis.

The four examples of SFPP, Mapl, Enterprise TE and Buckeye would show you can file a complaint. I will not go into, they speak for themselves, except for one that is interesting.

Mapl of the shippers say has three systems. Rocky Mountain, Central, and Northern system, the page 700 did not keep them from challenging these rates in the 2005 - 2006 rate case has not kept them from doing it since.

In fact, in 2010 a shipper called Flint Hills filed a complaint against Mid-America's certain rates for heavies movements, butane, naptha, that sort of thing on Mid-America's Northern system.

At that time Mid-America the page 700 actually showed that it was under earning on a total company basis, so it is the filing of a total company page 700 was an impediment to filing a complaint you would think they might not have been able to have it set for hearing, but it was.

Flint Hills looked at the percentage change in the rate. It also claimed that certain of the costs related to expansions probably related to other systems.

In other words it made various arguments and the complaint was set for hearing. It ultimately settled as most do. But it shows an interesting point that the segmentation is not necessary.

Let me briefly talk about the workpapers issue with just a few minutes left.

Petitioners ask that these be made available to interested parties upon request and the Commission has repeatedly rejected this as Mr. Kramer indicated that nothing has really changed to say that the Commission should revisit that.

The shippers, the petitioners claim, "They have them so why not just provide them."

The burden is really related to the disputes that will come about if these are provided as well as an issue that I will just discuss briefly about the potential confidential information related to that.

First, there is going to be potential disputes about what is a workpaper? The pipeline will give them what they consider their workpapers, but inevitably the shipper is going to want more.

What about this? There is more clarification I need here and there. If the disputes about the workpapers are not sufficient gets bubbled up to the Commission that is just going to lead to additional burdens on everyone's time and resources.

Beyond the disputes about the definitional aspect, it's going to turn what is currently supposed to be an annual financial report into basically something that akin to a cost of service with the aspect of discovery from any interested party that is not policed by a presiding judge or the Commission or anything.

It will lead to potential disputes related to the costs and related to the page 700 that are even outside of a rate case.

It is also important to look at the potential for confidential information being in the workpapers.

The risk of this happening is greater if you segment the page 700 and then require those workpapers to be presented.

The shippers have said, "You could require someone to execute a protective order.

A protective order may work when the parties are actual parties in a rate case before the Commission where they are subject to sanctions from a presiding judge or the Commission if they violate that order.

But any interested party there is really no way of policing what they do with that information. It's important to look at who these interested parties might be.

They very well are likely to be competitors of the pipelines. Other pipelines, rail, trucking, barge, other competitors that would love to see the segmented cost information of their competitor.

I do not think it is good policy from the point of encouraging competition for the pipeline to require competitors to share their details segmented cost information.

I see that my time has expired, so thank you very much.

MR. FAERBERG: Mr. Adducci.

MR. ADDUCCI: [Off mic.] Good morning, I would like to thank the Commission and its staff for this opportunity to speak to the issues raised by the petition for a rulemaking filed on behalf A for A, MPGA, and the Liquid Shippers Group.

My name is Steve Adducci. I am appearing here on behalf of Valero Marketing and Supply Company.

VMSC is a wholly owned indirect subsidiary of Valero Energy Company. Valero Energy owns and operates across the United States -- VMSC is responsible for among other things -- Do you want me to start over?

My name is Steve Adducci and I'm here appearing on behalf of Valero Marketing and Supply Company.

VMSC is a wholly-owned indirect subsidiary of Valero Energy Company. Valero Energy owns and operates approximately 15 refineries across the United States and abroad the.

VMSC is responsible for among other things the acquisition of the crude oil and other feedstocks for the refineries and for the transporting and marketing of the refined products coming out of the refineries.

As a result VMSC is one of the largest shippers of crude oil and refined products in the nation.

Because VMSC is dependent on interstate crude oil and refined products transportation the ability to monitor the reasonableness of the rates of these pipelines is paramount.

I will try not to repeat some of the comments that have been said already on the panel. VMSC agrees and supports the comments of A for A and MPGA in the Liquid Shippers Group.

One of the primary purposes of the Form 6 page 700 is to be a central tool by which shippers and other interested persons can monitor the reasonableness of a pipeline's rates and if necessary be the basis for seeking an investigation with the Commission into whether crude oil or refined products pipeline's rates are just and reasonable.

In its current form, the Form 6 page 700 does not provide shippers with the necessary information and tools to adequately evaluate the reasonableness of numerous crude oil and refined products pipelines rates for individual systems and or segments.

As the Commission found in Order No. 571 and reconfirmed in Order 620, page 700 should not be misleading and for many pipelines the current structure of the page 700 is just that.

While I expect further discussion from AOPL and its representatives regarding the alleged cost feasibility and burden associated with the petition from Valero's perspective we do not see a significant burden or substantial costs in meeting the petition for rulemaking's request. Certainly not any undue burden or cost.

The benefits for shippers on the other hand are substantial.

Most pipelines will not likely be affected by the petition's request at all. To the extent that the pipelines ships only crude oil or refined products and does not establish or construct rates on a segment specific basis currently, this rulemaking would have no effect.

Those pipelines will continue to file their Form 6 page 700 as it does today. The petition will affect those pipelines which have both crude oil and refined products transportation operations.

To put this in context, in 2014, approximately 193 pipelines filed Form 6 and 22 of the 193 pipelines are approximately 11% reported that they had both crude oil and refined products operations.

For approximately 11% of the industry's

pipelines filing Form 6's these pipelines would be required to separate their page 700 reporting to reflect the distinct interstate costs, revenues, and throughput associated with their crude oil operations and the distinct interstate costs, revenues, and throughput associated with their refined products pipelines or pipelines of refined products pipeline system.

Mixed crude oil and refined products pipelines are already requiring the Commission's regulations to maintain their costs, revenues, and throughput data on a crude oil and refined product specific basis.

Given that this information is already tracked separately there should be no undue burden in reporting this disaggregated crude oil and refined products cost, revenue, and barrel information on separate page 700s.

193 pipelines that filed in 2014 a Form 6, 93 were in 100% crude oil operation and 66 run 100% refined products operation.

Of these pipelines only those pipelines which establish their design rates on a segment specific basis whether via a litigation or through its own internal processes would be impacted by the proposed rulemaking.

For those pipelines which already establish rates based on a segment specific basis the burden and cost to prepare a segment specific page 700 would likely be minimal since the pipeline is already aggregating and accumulating this data to evaluate its own rates to determine whether a rate change needs to be met.

Accordingly, VMSC is unaware of any adverse impacts resulting from the proposed rulemaking and VMSC joins the A for A, MPGA, and the Liquid Shippers Group in requesting that the Commission promptly issue a Notice of Proposed Rulemaking proposing to revise the Form 6 page 700 as requested in the petition to further enhance crude oil and petroleum product pipeline reporting transparency.

VMSC agrees that these changes are necessary to provide the Commission, its staff, shippers and other interested parties with the additional information necessary to evaluate the reasonableness of a carrier's rates and determine whether a challenge is warranted that requires a carrier to justify its rates.

I will save my other comments regarding the individual questions addressed in the appendix for the dialogue portion.

Thank you.

MR. FAERBERG: Mr. Corcoran.

MR. CORCORAN: Hello, my name is Matthew Corcoran. I'm representing Tesoro Refining & Marketing Company, LLC today and I am from the law firm of Goldstein & Associates.

Tesoro Refining owns six refineries throughout the western United States and that they are dependent both on crude oil pipelines that go into their refineries and the refined products by pipelines that leave their refineries to get their load to market.

They are dependent on Form 6 information to figure out whether the rates that are being charged are just and reasonable and they have in the past had complaints dismissed on the sole basis that the Form 6 did or did not show that there was a reason for a complaint.

As a general matter refineries and shippers need to evaluate whether they can bring a complaint is not a minor matter and the refineries and shippers don't do so without regard to the risks involved.

That concludes my comments.

MR. FAERBERG: Then we have a little extra time here so we will go right into the dialogue portion.

Before that, does the Chairman or Commissioner LaFleur, do you have any questions of the panel?

CHAIRMAN BAY: Thank you all very much for your comments this morning as we consider these very important issues.

I appreciate the testimony that each one of you has provided.

My question would be for either Steve or Daniel. I believe in your opening remarks today you indicated that the statute would preclude the seeking of this more segmented data, is that correct?

MR. KRAMER: I say the statute, what this proposal is largely about is seeking a segmented cost of service review, and the courts, the DC Circuit has explained that this is not a cost of service industry, so it is inconsistent with the intent of the statute and that's why Congress actually acted.

As I mentioned on remand when the Commission implemented the 150(4)(b) methodology and there is this potential for projected cost of service rate review, Congress stepped in and said, "We want to simplify it in a generally applicable ratemaking methodology in this industry."

I understand the Natural Gas Act background and this is a very different industry of course as you well know.

CHAIRMAN BAY: Steve, is there any specific statutory language that you would point to as precluding the access by shippers to the segmented data?

MR. KRAMER: As Steve mentioned, it would be inconsistent with the languages that simplify are generally applicable and that the purpose of EPAC is not to have any unnecessary costs or delays with respect to oil pipeline ratemaking.

Unnecessary is the key part there. But it is not would it be useful? Is it is necessary for the ratemaking construct that has been set.

The Commission obviously has a discretion under Chevron to interpret statutes and it has interpreted that and so it has had a consistent interpretation of what that means and to change it would require some type of good reason that something has changed and in our view that that has not been shown.

CHAIRMAN BAY: Is there not an important distinction though between the approach that you used to actually set rates versus the data that pipelines might have to report?

MR. POYNER: There is. Reporting is not the same as setting, but there is, as Mr. Van Hoecke will talk about a bit, a significant burden on doing it and there is sort of a disconnect where if the industry is supposed to be simplified and generally applicable and you are not supposed to have any unnecessary cost or delays related to ratemaking.

So many rates are set on market base or agreement or indexing as you know, that then requiring the pipelines and many of them the 200 that are never any rate cases to go through and set a cost of service rate when they would never have to do it otherwise is it's inconsistent in my view with what the statute intended.

CHAIRMAN BAY: Let's talk about burden for just a second because one of the arguments of the shippers are making on is that the burden here is not that significant because it is not going to apply to every pipeline.

It is only a pipeline that ships both oil and oil products and which also has segments specific rates.

It's a fairly limited number of pipelines, so how burdensome will that be if the pipelines already have to track the data with respect to oil and oil product pipelines under Commission regulations on a separate basis.

MR. KRAMER: Maybe I will comment on that a little bit and then Daniel you' can fill in where I make a mistake.

There are a couple of things to consider. One is that this industry has not had a reason to put in place cost the service rates on a segment by segment basis, so the very nature of the reporting, the regulatory construct has not required that.

The idea that there is rate setting out there that correspond to fully cost of service develop rates for segments, and Mr. Van Hoecke will talk about this in a lot more detail, but that is just not the case.

As I understand it, Daniel is more involved in the rate is litigation, but this issue of segmentation is a hotly contested issue when you actually do get to a rate case and the limited number that have been, and commonly, it's an argument between shippers because how you set a segment will shift costs, of course, the different customers, so it's actually quite a complicated process and there will be more discussion on the second panel.

But I am not aware that pipelines other than those that have been through a fully allocated cost of service and a set of segments have this information, and I believe that's the case.

MR. POYNER: Bob will get into that. I guess I look at it from the point of view where first there is the question in my mind of what does it mean to be an established segment.

Does that mean like say an SFPP that has been through rate litigation for 30 years and the Commission has in some cases said, "No, these are your segments. These are your systems. Design them this way."

Well, perhaps that is, but I am not sure about the definitions. It depends how broad it would define how much it would affect that particular pipelines.

If what we are talking about if the handful of pipelines that have been in rate litigation had cost of service rates it seems to me incongruous to have the whole industry basically have to calculate cost of service rates when the ones that shippers care about they have challenged, they have had them set on segments, they know how to get them and those pipelines are already in the rate cases.

I don't know if that helps.

MR. KRAMER: If I might add, just one other point, of course this is a very dynamic industry. There are a lot of changing flows.

There are differences in business structures and the like. These segments are not necessarily static definitions either.

They change over time as different market characteristics change so it's not just something that's necessarily set in stone for all time.

CHAIRMAN BAY: Thank you.

COMM. LAFLEUR: Chairman Bay asked the very question I was going to ask which is whether the statute prohibited our changing of this page of Form 6 over what you were just arguing that we should not do it in our discretion.

I just want to ask Steve and Daniel if they want to comment on the figures that Mr. Adducci said that if we were to simply require that if I understand it what is already required in Form 700 be broken out between crude oil pipelines and refined product pipelines.

I do not understand why that would require the creation of a whole cost of service as you said.

Isn't that just producing the same information? I would like comment on that and whether you agree that it's only 11% of pipelines?

MR. POYNER: The numbers are right, they came from Form 6. I don't know the precise one, but it sounds right to me the numbers that are filing of those Form 6's.

Again, Mr. Van Hoecke will talk a about that a little more because he does the accounting of it.

My understanding is that while certain costs are required to be recorded separately for revenues and miles for crude and products that would not be all you need to do a page 700 and property of data going back perhaps to 1883 to calculate the starting rate base, figuring out which assets should be in the right category for depreciation purposes because you are currently on a group method and all that and other possible allocation issues and other ratemaking issues like the allowance for deferred income taxes.

Bob can say how much he thinks time that would be, but it is not, just because certain costs are being recorded it doesn't mean it would be sufficient file.

COMM. LAFLEUR: I understand, but should we choose to require more breakdown between those two different business lines, wouldn't some of those things maybe be worked out in the rulemaking?

You would have to have simplifying, if it's true that some of these costs are not readily available for some of the pipelines we would have to work out simplifying assumptions and all that, I presume, just like all the other forms, you could not just use Xerox what we have now for Form 700 and do it.

I do not know where we are going to ago on this, but we would have to work all that out as we change the forms if we did. Yes?

MR. ADDUCCI: I would like an opportunity just to address what you had asked for.

In Order No. 620 dealing with whether crude oil and refined products should be separated the

Commission said specifically, "There are significant differences between crude and product lines in the way they operate, the markets they serve and the costs they incur that necessitates the reporting of such revenues and costs separately."

Mr. Poyner had mentioned that it would require certain divisions of carrier property and the accumulation of income tax accounts and that kind of thing.

What the pipeline that is using mixed operations right now is doing has to create a page 700 that has all of that, so right now there's an aggregated page 700 that has done the 154(b) cost to service which has the accumulated deferred earnings which has done the rate base.

The question is you separate that. It has already been done and as the Commission has already recognized these are completely separate assets.

They are easily identified by location code and business units within the company's own records and general ledger.

This is not a complicated task for pipelines that are very sophisticated.

MR. KRAMER: Commissioner, if I may? Mr. Van Hoecke is going to discuss about this in a lot of detail, but we also in my view sort of need to look at this in context and as we have discussed there has not been any instance in which a complaint has been filed that has been rejected for lack of this information, so there is a sort of fundamental question when you have a regulatory construct that is supposed to be simplified and generally applicable and there hasn't been a showing that any complaint or protest has been rejected for lack of this information to require pipelines to develop this cost of service which is as I understand it and as Bob will explain later is a detailed calculation going back to 1983 to develop your rate base and things of that nature, so it's not as I understand it a simple translation like that.

COMM. LAFLEUR: This seems to be the chicken and the egg for the last five years that I have had for all these meetings with the pipelines saying, "We are not getting a lot of complaints so they don't need the information," and the shippers are saying, "We can't file complaints because we don't have the information," so that we have gone around the merry-go-round every time this has come up.

MR. POWERS: Just to follow up on what the Commissioner and the Chairman talked about.

We do not believe there is any statutory prohibition against requiring segmented cost of service.

In fact in one of the pipelines I did not mention in my talks, but it has been mentioned and it has been in front of the Commission many times.

In SFPP, in the 1990s, this Commission ordered them to separate what was then the Southern system into the West and Eastern segments and since that time they have had the West Line and they have had the East Line and they have had the Oregon Line.

In all of those litigations whether it be challenges to index rates or complaints they have provided cost of service on those bases.

But their Form 6 does not provide that, and quite frankly, for us who have been involved with that pipeline for 15 or 20 years and have a lot of information that's great, but for somebody who may is a new shipper who has not been involved in those prior litigations and is looking at a Form 6, they cannot tell anything.

It's not just for the shippers in this room, but it is through the Commission and others.

A second point. They keep referring to that we have never been able to not bring complaints and so forth and so on, and I think Daniel referred to complaints against SFPP, Enterprise TE, Buckeye and Mapl.

I would like to go to Mapl just to raise that. When Mapl started out it started out by Mapl filing for an increase on what was their Northern system.

If you go to their Form 6 which is in that packet I handed out at page 123.1, it says, "Mid America is a Natural Gas Liquids Pipeline system that is approximately 8,000 miles in length. It consists of three primary systems.

The 2,800 mile Rocky Mountain System, the 3,100 mile Northern System and the 2,100 mile Central System. It goes on to describe those in more detail.

What happened to start that proceeding off, Mapl, Mid America, filed a rate increase on the basis of the page 700 claiming that there was substantial divergence. Well, the page 700 had all of those systems in it, the Northern, the Rocky, and the Central, and when we came to litigate it they presented a cost of service and it was litigated on a Northern segment system.

The judge in that case when we were complaining about they shouldn't have been even set for hearing without a showing of substantial divergence on the Northern segment, said, "In all fairness to the shippers, at least when a pipelines seeks to raise rates on only a segment of its total system it ought to be required to file segmented costs of service."

Otherwise you cannot tell what's going on and that is a system to look at when it has three systems and they have been building out the Rocky Mount System spending a lot of money, the capital has gone up, the expenses have gone up.

Yet it is reported in connection with the Northern system and the Central system people who ship, for example, the propane group that we represented in that proceeding on the Northern system have no way to know what the actual costs are for the transportation service that they are getting.

I throw that out. It is not as clear as one might say and it is easy to say complaints had not been denied, but that's because a lot of them have been brought by people who have been in those for years.

MR. POYNER: I hate to delay things, but I was in the Mapl case and have a little bit of a different perspective.

It started actually with a 2005 rate increase for all three systems at that time, Rocky Mountain, Central, and Northern, the Rocky and Central settled, then another rate increases brought for the Northern system.

It was a rate increase so the protestants got the information. All they have to show is that they have a substantial interest in the rate and Mr. Powers clients who did have an interest in the rate were able to protest the rate and the rate was set for hearing.

The ultimate cost of service rate during the hearing was set on the basis of that segment as it should be.

The issue is about the substantial divergence and in their it is hard to say what is fairer for shippers.

The regulations require a pipeline and if they are going to change a rate, in other words to do something other than indexing. Normally they are capped by the Inflation Index.

If they want to go above the Inflation Index, if they want to go above that for any rate, they have to show substantial divergence on a total company basis by filing a total company page 700.

That is a protection for shippers.

That is the requirement that they have to do. The shippers are able to protest any particular rate filing just by showing they have a substantial interest in that rate and once it goes to hearing all of the information is produced in discovery, probably settlement beforehand, everyone has an ability to do it.

I also noticed that we just mentioned that for pipelines and shippers that have been involved in active litigation for many years there is an intermediate step that they could ask for the information before they file like a complaint or protest, they have the ability to complain, they have the right to complain by having very little threshold, so they have the ability to have a lot of leverage over the pipeline, they could complain against any of their rates.

If they are just interested in one or two, again, there has been no problem in setting those for a complaint but they can certainly ask for the information about that.

But, as I said, Mapl after that case, also Flint Hills went and filed a complaint against a specific one of the rates and that was set for hearing without any issue.

COMM. LAFLEUR: Experts at the table.

MR. ADDUCCI: Just quickly on the point of the statutory requirement. The pipeline representatives have indicated that EPAC calls for simplicity.

EPAC does call for simplicity. That simplicity goes to the ability of the pipeline to change rates in a non-complex manner.

The Commission's indexing scheme accomplished that simplicity. Nowhere in EPAC does it say anything that diminishes the requirement that crude oil and refined products rates must be just and reasonable, and as the Commission has delegated it to shippers to be the primary monitors of the reasonableness of rates, they need the information that would allow them to evaluate that reasonableness, and currently, for instance, on a crude oil and refined product pipeline there is no way to identify what a crude oil rate reasonable evaluation would be based on the aggregated data.

Finally, one other thing on the Flint Hills comment. What Mr. Poyner fails to reflect is that the Flint Hills complaint that was filed was filed near the end of the original Mapl proceeding and relied on significantly the existing hearing record that had already taken place.

Thank you.

MR. JOHN: Thank you, Commissioner LaFleur. I wanted to follow up on the discussion of the risk of more complaints and somehow the burden that will be imposed on the pipeline industry.

It is entirely possible there will be fewer complaints. What we as shippers are entitled to under the Interstate Commerce Act is just and reasonable rates. That is statutorily clear.

All we are looking for is a better basis upon which to decide if we are, for example, being charged just and reasonable rates in a given context of either the case of a filing or the case of a rate that is on file.

Today we have to make these decisions in the dark. We don't have the data. We certainly have the privilege of filing a complaint being told by the pipelines we haven't made a prima facie complaint, and thankfully, the Commission generally let's us go forward and then we get to go through expensive discovery, challenged every step of the way, and ultimately we may decide this was a mistake now that we see the data we will elect to pull back having spent money, having affected our relationship with the carriers, we have no intention as the Liquid Shippers Group of undertaking those kinds of campaigns.

But we think we have the entitlement under the statute to be informed sufficiently to make those calls up front.

That is what we are asking you to help us do is to give us some information to help us make educated calls and if we are satisfied the rates are properly classified, allocated, and structured, you will not see us here with a complaint or protest.

As I said most of the ones that get filed, get settled, they get settled because of presumably on the basis of more granular data the shippers understand a little bit better about what it is they are trying to accomplish.

If we see the data up front, as Mr. Poyner said, We may go to the pipes. We may sit down and discuss our concerns in ways that can lead to resolution without having to bring the Commission into it, but if not, we really feel the need to have a forum that we can come to on the basis of educated information.

Thank you.

MR. FAERBERG: Thank you, Chairman Bay and Commissioner LaFleur for getting off the dialogue to a great start.

I have some questions. I will just limit mine so we can have other members of the staff if they have questions and to have you interact with each other.

The first question and this could be either for Mr. Kramer or Mr. Poyner and then also one response from one of the shipper representatives.

On the issue with the potential disputes on the workpapers, could we not set up some sort of, as part of the rulemaking, and potentially part change of the Regs of some sort of procedure where, for example, an ALJ is designated to deal with these like we have settlement judges, could we have some procedure where the Chief ALJ and we could have in the Regs that the Chief ALJ appoints somebody to deal with these so we have any issues concerning confidentiality and the scope of the workpapers and protective orders could be dealt with by somebody who has experience in that.

Also potentially if we could as far as the concern, as I said, sort of people going on fishing expeditions could we not also as part of the rulemaking define who might an interested person be to also deal with those types of disputes?

MR. KRAMER: Thanks, Dave, for the question. Yes, certainly the Commission has broad discretion over its procedures.

From my perspective, and I think from the folks perspective, it needs to be considered again in the context of the regulation of the industry and the fact that the page 700 is an annual filing.

It is a financial form that is filed at the Commission. What you are anticipating and rightfully so is a potential for a discovery like process in connection with that because inevitably there will be requests for information about underlying details.

There was mention of the Colonial audit and certainly an auditor has rights to look at workpapers. That is clear.

One of the interesting things related to that is that in that audit report there are no material findings about how those workpapers did not support the page 700, so I think there will be disputes that will likely come.

You certainly have discretion over the procedures but what we are talking about is a potential annual discovery process which you are right to be considering.

MR. FAERBERG: If you would respond to that.

MR. POWERS: Yes, I would and I appreciate the question. I do not believe that it will lead to a discovery process.

I believe like Mr. John that this could be a way to shortcut having to get into discovery.

The workpapers are going to tell us a lot and Dr. Arthur who will give testimony in the next panel can get into it more, but it's going to tell us a lot especially when we see discrepancies between page 700 and the other parts of the form.

It will show you methods of allocating costs and so forth. I don't think it is going to lead to discovery.

Our experts, Dr. Arthur, and others can look at those and see if they make sense.

Presumably they are prepared in the form of a 150(4)(b) because the Commission requires that, so those workpapers should be done according to what the Commission has already said, so I do not think it's going to lead to a bunch of discovery.

In terms of confidentiality, I will say this. There may be in some things that a pipeline would not want to let go. On the other hand, there is a lot of information that could be public.

As an example in the latest case that we have now, and I cannot talk about the merits of the case, but I can tell you that one of the Buckeye cases that we have a settlement pending on in that hearing at the hearing introduced into the public record real workpapers.

Now there was a portion of the workpapers dealing with volumes and so forth that were not made public.

You have to be careful when you say confidential information, stuff on property, expenses, costs is not what they are talking about.

Yes, there are some volume specific information that may relate to a particular shipper that you would have to be careful of, but you can set up a process as we do in the hearings if you need to to handle that.

I don't have any other comments than that, but I don't think it's going to lead to a fishing expedition.

The point that may well satisfy the shippers and prevent them from filing complaints or protests gets index filings.

MR. FAERBERG: Would you have any issue if it gets rulemaking considering some sort of a process where, for example, like an ALJ might deal with it if it comes to a dispute since you guys are used to dealing with them and they are used to dealing?

MR. POWERS: I do not know exactly what context. I have no problem dealing with an ALJ or any process that the Commission wants to set up.

It is more important than the workpapers and some of this other information be made available.

The process, we can live with almost anything, we have done it before, and frankly, we would like the Commission to know what's in some of those workpapers. Maybe the Commission staff wants to look at it.

The Commission in my view even though for years it has taken sort of a back seat in letting the shippers carry the burden.

As we have said before rates need to be just and reasonable. We want the Commission to understand. A process like would be perfectly acceptable to us if that is what it takes to get it done.

MR. FAERBERG: I have just one more question and then we can have the other members of the staff give you an opportunity to ask questions of each other.

It was Mr. Poyner who pointed out potential disputes about what is a segment or what is a system, and obviously, as Mr. Adducci pointed out, there are ones that are now just sort of generally recognized.

If there were disputes about that, could there be a process put in place where, for example, some sort of a complaint, a declaratory order where any of the shipper community says, "We think that X pipeline has recognized segments and that there is some procedure for the Commission."

Mr. Poyner and then Mr. John can answer that afterwards.

MR. POYNER: You could. A shipper could file if there was a requirement that you segment and a pipeline did not do it the way that a shipper thought it should be done, they could file a complaint as with any practice saying, "It is not doing it right."

The problem is that those are incredibly detailed and fact specific issues in rate litigation. Often it is shippers fighting other shippers to try to shift costs from one segment to another and what assets go into a particular system is a heavily contested issue in a rate case.

The Mapl case that Mr. Adducci mentioned is another good example.

At the time of the 2005-2006 rate case they split it into three segments, the Rocky Mountain, Central, and Northern, but there was a lot of dispute about, especially the Central and Northern, which storage assets were going where, and as they mentioned in the petition, there is a lateral line in Kansas that goes out from sort of the middle of them and there was a big dispute which system should it be in?

It was never resolved because the case settled and then subsequently there was a whole rate case about that Kansas lateral that took place just fine without page 700, but it just shows that there was a big dispute about it.

Even with Mapl now they file a tariff for ethane propane mix movements on the Northern system that is a separate tariff.

It is not clear whether shippers would consider, the petitioners would consider that a separate segment.

I just mention to you, yes, you could have a process for a complaint to be brought, but it would likely be a major deal and to do that on a regular basis would seem not worth it.

MR. JOHN: Dave, we addressed that briefly when I was giving my opening remarks, I was flowing through a number of points and I believe I mentioned in passing that that was an idea we had had as well, that in the event a particular carrier and its shippers are at odds as to whether it should or it should not be the subject of this new rule or this new requirement for page 700 that we think is a streamlined petition for declaratory order or a declaration by a staff member on that issue would be the way to go, so we do believe that that's a useful option.

MR. FAERBERG: Thank you. I am done. We will let some of the other staff ask questions.

MR. ADDUCCI: Dave, I just have one follow up response to what you said. At the outset the pipeline has the discretion to set what it considers to be its system or segment.

It is a clear distinction between crude oil and refined products, those are two separate systems.

When it comes to individual segments within the system the pipeline has the discretion to do that and it can identify. It can say that it has no segments when it files.

The shipper can then take that information and do with it what it will. It could disagree and file a complaint or it could say, "That's fine, so now if I do want to challenge the rates, I can challenge it on a total system basis looking at the average barrel mile information," that Mr. Poyner talked about, but then when the pipeline comes back it should not be allowed to say, "No, no, it should have been on a segment basis," right?

MR. FAERBERG: Just one more follow up to this. As far as the potential changes to Form 700, I would assume that you would sort of foresee page 700, a C for crude and then let's say an R, or whatever, for the Refined and then within those it would be broken down by segment to the extent they would have them?

MR. ADDUCCI: Yes.

MR. FAERBERG: Great, thank you.

MR. KRAMER: Could I just comment on that since we got to the other side commenting.

What we are talking about here then is a recognition that if we are going on this path we are talking about a pretty significant change in an oversight of an annual report.

I am just listening to discovery process, complaints, things of that nature over the annual Form 6 report.

Again it needs in my view, our view, you need to consider it in the context of the Commission's regulatory construct to oil pipelines.

If you don't believe in the past, obviously, the Commission has rejected these type of proposals because it is very concerned about turning this simplified and generally applicable ratemaking construct into a public utility type of regulatory construct and that is the direction that it seems that we would be going in here having complaints whenever against Form 6 filings about segmentation which are hotly contested in a rate case litigation which change over time because as Doug talked about the industry is going through a lot of changes.

There are a lot of changes in flow, direction to flow, expansions, so we are talking about different segments potentially changing from year to year, not on every system, we recognize that, but there is a potential for change.

On the segments there is potential for discovery disputes before administrative law judges.

That is just something that should be recognized that that is the path that is being discussed here.

MR. FAERBERG: Derek had a question.

MR. ANDERSON: I will set this out for the entire panel. There has been a lot of discussion about Form 6, page 700 data as it relates to cost of service ratemaking, Mr. Kramer, and whether the oil pipeline industry in general is a cost of service industry or not.

Can you briefly discuss, all of you, how this data is currently used in the indexing methodology and what effect segmented data would have on reviewing of indexed rates as opposed to individual cost of service rates?

MR. ADDUCCI: I will take that first. Currently with respect to indexing, can I ask one clarification?

Are you talking about the establishment of the index level like, for instance, in the five-year review, or are you looking at it from the standpoint of indexing on a yearly basis around July 1st?

MR. ANDERSON: I am talking about the July 1st annual implementation of the index, not the establishment of the index that we will talk about later today.

MR. ADDUCCI: When you look at it from the standpoint of every July 1st somebody comes in and makes an index, the Commission has different rules.

You can protest or you can file a complaint. The protest has its determination of 9.9% is automatic and they pretty much reject all protests after that notwithstanding even if the pipeline is over-recovering in that context.

In the context of a complaint, however, if you can show that the pipeline has reduced its cost year over year and is over-recovering and that the index would allow a substantial increase in that over-recovery you can use that information to bring the complaint and in that context the Commission has indicated that that is a simplified hearing process and complaint proceeding that you can then move forward instead of a full-blown base-rate case.

So that's how that is used.

What was your second question?

MR. ANDERSON: My second question is how would changing the requirements to a segmented requirement which we are discussing today do you think would affect your review of these annual indexing increases?

MR. ADDUCCI: Using the segmented affect is in fact, I believe, there is SFPP had a prior case where it made its index filing, the shippers were able to determine and show that the increase in the cost that was shown on a total system basis was primarily centered around an East line expansion.

So the Commission at that point said, "We need to look at this a little bit closer." I cannot remember if they rejected the index or not, but they said they need to look at that closer because it wasn't clear whether the East line could have its rates indexed or whether the total system should have it.

But segmenting it would allow for a complainant or a worshipper or a protester or a challenger to look at it, and say, "Is the pipeline over-recovering? Has that segment reduced its costs year over year such that the index would actually exacerbate the over-recovery?"

That's s how the segment could work. Right now you could have situations where the cross-substation between segments is completely mapped by aggregated data.

The segmented data would allow transparency to that so you can see what was happening on the individual systems or segments.

MR. JOHN: Derek, if I could add to that. Let us say we have a carrier that has got four discreet systems, once we have got the granularized data, the shippers on that system, the one that may be over-recovering once you have broken down these costs, would be the ones, of course, that may consider bringing the complaint that the index has in fact exceeded the 10% threshold.

The shippers that will not benefit from that will not show up. There is no reason for them to intervene or take an active role in a case that ultimately does not benefit them.

It seems to me that you are reducing and refining, if you will, the universe of affected shippers in a very useful way.

MR. POYNER: It is a good question because there is a real question that is not clear from the petition at least about whether the index showing, whether it is a substantial change in the costs versus the index or substantially exacerbates the over-recovery for a complaint, whether that showing needs to be made on a segmented or a total company basis even if you require segment page 700s.

In my view, the purpose of indexing is again it is supposed to be inflation based cap based on industry-wide cost changes showing how the oil pipeline industry cost compared to a set inflation measure the producer price index for finished goods.

It is supposed to be industry-wide and so in my view it makes more sense, if you are looking at should the pipeline be in or out, there is a safety valve, the pipeline has a safety valve without being able to go file cost to service.

If it shows that it is not recovering its cost on a total company basis, it has to meet that threshold in order to raise any of its rates.

It seems that by the same token the shippers should show it on a total company basis in order to challenge an indexing increase.

If you break it down into segments it seems inconsistent with, again, the idea of the inflation cap that is supposed to be an industry-wide inflation cap and breaking it down could lead to perhaps inconsistent results from an inflation perspective.

Let's say you have pipeline safety costs which are very substantial costs for the industry as everyone knows, the testing to make sure that the pipelines are safe, and under the PHMSA regulations they are often conducted on a five year review, a five-year schedule, you do not pig the same pipeline every year, you do it maybe every five years or something like that.

What I'm getting at is, if you had different segments, you might be doing these substantial costs on a rolling basis.

What that might show is, if you are breaking what is supposed to be a high-level inflation cap down into a too detailed level that you might see these rolling each year one segment is just too high, but if you look at the overall basis that company is not over-recovering or it may or it may not be, but you wouldn't get an accurate perspective of it by taking too detailed a look at it and it seems to be consistent with the inflation of the generally applicable inflation cap.

It is not clear what the petitioners have in mind, but there is a real danger of that if you were to do it on a segmented basis.

MR. LYON: Didn't SFPP itself in one particular year, it made an overall industry pipeline wide index increase and then when it was challenged they withdrew the index filings for the East line, the North line, and the Oregon line and elected to litigate just the West line itself?

MR. POYNER: They may have. They may have. It is one thing perhaps they choose to litigate is what happens, but I don't know that. It is a real issue whether you want to impose as the rule if you're going into an industry-wide thing where everybody has to segment.

SFPP, I will just say is perhaps, its litigation history as everyone knows is not the norm for the oil pipeline industry and setting rules based on SFPP may not be the right way to go.

MR. LYON: But that clearly indicates that it is possible.

MR. POYNER: It seems like it is possible now based on what the pipeline that does when it is set for hearing, but if you want that at least on a protest level for a snapshot, I do not know that the Commission would want to do that.

Even if it's permitted, if you split everything down into segments and you required these segmented page 700s, you would be increasing the chances of that and perhaps, and as I said, whether it is permissible or not, it would lead you to less accurate results possibly.

MR. FAERBERG: You were given the example PHMSA cost, but if the information was broken down could not a shipper easily see that for that segment what you would consider the over-recovery would be attributable to those costs?

MR. POYNER: It may be, but the issue was whether that would be an accurate basis for a protest.

The idea of indexing is that it is supposed to be a simple methodology that each year you look at it. You look at a snapshot of the page 700. We just look at its face. We calculate the percentage change and that is the way we see whether a protest you should go ahead or not.

But if you split it down into segments, in my view, it is not consistent with having the industry-wide inflation cap because, one, you are going to have more page 700s to look at which will increase your burden, it will also not necessarily generate the most accurate results.

MS. COOK: To make sure I understand exactly what the proposal is. When you are saying to essentially segment based on crude and product, that is the first cut. Then the second cut would be the original example was Magellan in which they had with crude and product and they also had segments.

The first cut is crude or product, correct, and then you do, as Dave suggested, was 700, to do it that way instead of cutting it by segments and then crude and product?

MR. JOHN: The segmentation really is independent of the crude and products. You may have a line that has only crude or only products but operates four segments, so that carrier would be subject to this requirement as well even though it is not shipping both.

MS. COOK: Would it be possible, and I know you are representing the 11% of the industry, a smaller percentage of the industry that would be ensnared in this kind of segmentation issue, could you drill down to a point where almost everyone is affected or is it purely just geographic like segments and how far down would you go to quibble over those boundaries?

MR. POWERS: I guess our proposal to begin with separated out the crude and refined products and then it went to whether the pipeline had established and recognized segments which corresponded to how their rates are established or designed.

Now we know on several carriers that we have talked about they are designed on a system basis or a subsystem basis, so in those cases you would have to file a corresponding page 700.

There are some carriers and we had, for example, filed complaints against Colonial.

Colonial is a big system, but Colonial didn't indicate in any way that they were segmenting their system, so they had a page 700 for the entire system.

We are not suggesting that they change that approach at this point in time. That's true of other pipelines, that complaints had been filed against, but that doesn't mean that the pipeline or the shipper at some point in time might not be able to come in and challenge that treatment.

Much like what happened in the SFPP case a long time ago when they had Southern segment one of the shippers from the East didn't think that was fair so they raised the issue.

Fair enough.

A pipeline could do the same thing. It could say, "I historically have treated these the same, but now I want to break them out."

We are suggesting that we go through pipeline by pipeline and do that, but many of them, the bigger systems, that has already been done.

When they identify to you in their Form 6 what their systems are, then that says something about how page 700 ought to be filed.

MS. COOK: You are saying it is a rebuttal presumption on either side where you may disagree with the pipeline's representation that they have no segments, whereas, you may think differently, then that would be something that we have to work out in the process?

MR. POWERS: Yes, at some level it may be. As an example, when we filed the complaint against Buckeye, we did it on their total system cost of service and the Commission set it for hearing.

The pipeline came in, and said, "We have four systems. We have the Midwest system. We have the Eastern product system. We have the Long Island system. We have the Jet system.

In that case, the issue was what system. We were shipping from a certain point in Linden to the New York City airports. We believed that the system should be the Eastern product and the Long Island system combined.

That was an issue for the hearing.

There are times when litigation will determine how that results. If a pipeline first says, "Here is my system," we should be able to challenge it. We may or we may not. That is why getting access to things like the workpapers where you can see whether allocations are reasonable, is the property base reasonable will help us. It is something that comes up from time to time.

Many times there is going to be an agreement because from a shipper standpoint it is not an easy thing to do to come in and challenge how the pipeline system is set up, right?

That is a huge burden.

To the extent I don't think this is going to result in an inordinate amount of litigation like that, but there are things that the Commission has said in the past determines whether a system is a system, which shippers are on it, where does it go, do they interconnect?

Basically now if you hear from some other panels your regulations for accounting for property for this or that or you look at a Form 6 they are segmented to some extent.

There are accounts set up, right, there are cost centers set up, and the question really becomes how much aggregation do you do? Do you aggregate it to the total or do you just aggregate it to this level?

I hope I answered your question.

MR. JOHN: I am going to follow on Dick's last point. We are all attorneys. We are all hired guns here at this table.

We are here to try to get the Commission to make good rules that are available to us as a failsafe in the event the way the real-world works breaks down.

The real world isn't down here at the Commission everyday. In fact, our clients value, the LSG values relationships with the carriers.

Most of the carriers we ship on they let us know when they plan a tariff filing, a rate change something they warn us about ahead of time so frankly we do not come charging in here unnecessarily to go after them.

And our shippers generally return the favor. In my experience, if there is a beef we have with a carrier we are more likely going to take it to the carrier before we take it here.

That will continue.

If the carriers know that you are here for us through one of these procedures that Dave suggested earlier, one of these declaratory order requests where they disagree with us, then the incentive is there to work this stuff out and you probably will not see us.

It may be on a particular day in a particular part of the country on a particular carrier with a particular set of shippers it doesn't work and we will come and seek assistance, but I do not think it is going to be a very common occurrence.

MR. KRAMER: I appreciate that. The pipelines and shippers do work well together. They reach agreement as we have discussed in almost all of these cases there is a settlement agreement that is reached.

I do think though that we are creating a different process here and there are a couple of concerns.

We have talked about good rules and 20 years a regulatory oversight shows that the Commission has good rules.

There hasn't been a complaint or protest rejected for a lack of this information ... yet.

Secondly, this is an industry that needs regulatory certainty and there is a need for investment.

There is a lot of investment going on and I believe that what we are talking about here is a lack of clarity as well.

That is just one of the problems.

A segment associated with a rate could mean a lot of things, of course, from what I understand and Mr. Van Hoecke will talk about this more on the second panel.

If you look at individual rates and tariffs there are over 600 that are filed. I do not think you suggested that, but it could be interpreted that way.

We don't know in the future a segment associated with a rate may be interpreted, again, for over 20 years now the Commission has had a consistent interpretation here and now we are talking about a significant change when we are talking about discovery and complaints and petitions, talking about page 700 and Form 6 and we are also introducing a level of uncertainty.

What is a segment?

That's not clear from the petition at all. There are some examples provided, but when you talk about the amount of mileage of pipeline in this country it is unclear.

And as we talked about these are hotly contested issues in litigation and neither side wants to litigate rates. We are an industry that works in a respectful way.

The shippers are very sophisticated parties that have a lot of resources with experts to look at this stuff and they have been able to work well for the last 20 years.

Now that we have a proposal which we do not know how to define a segment or a system, in fact, because very few pipelines have been through a cost of service rate review.

And while they may refer to systems we are not talking about systems on a cost of service rate basis.

So they haven't been developed that way. Very very few have. I do not know that SFPP has been through rate litigation. I do not know for a fact that there have been others that have been through a fully cost of service rate litigated case that the Commission has decided, but they are very much the exception rather than the rule.

So we do have a concern among other things about the lack of clarity with this proposal.

MR. ROIDAKIS: It seems in the past, I have a feeling the reluctance to get more granular page 700 with respect to segments was just for the reasons that Mr. Kramer and Mr. Poyner are explaining about the complexity of it.

But I may have misunderstood in Mr. John's opening remarks, he said, "It would only be a small set of pipelines that would be affected, those with recognized systems and segments."

I understand what Mr. Kramer was just saying about how this hasn't been required before, but it might be that only, if you just wanted to take a small step and make clear in any new approach that only existing recognized systems and segments from like the historical Form 6's, page 700s that exist would be subject to this more granularity reporting.

It seems like it could result in less litigation because a shipper would not be interested in objecting to the cost recovery on his particular segment if he could see that it was not problematic.

I understand that both sides are presenting kind of the worst case scenario or the best case scenario for any change.

This has been going on for some time, and as you said, it hasn't gained any traction in any aspect before.

I recall an informal meeting where someone might have said from the shipper point of view, "If we could only get the workpapers, that's all we need."

At other times I have heard, "But the

workpapers without knowledge of the segments are not useful."

I'm wondering if you could comment, if you had to have one get from the proposal from the shipper's side, would the workpapers be satisfactory, and is it possible to just obtain the workpapers without too much complexity based on recognized systems and segments or does it really involve workpapers without the segmentation part of your proposal wouldn't work?

Would you just live with the workpapers?

MR. ADDUCCI: Workpapers and the segmentation go hand in hand. Right now you have an aggregated page 700 total system.

The workpapers would show allocations that maybe come through, but doesn't break it out, you still have the same situation of does one segment subsidize the other?

Is there a cross-substation going on? If you require the segmentation the workpapers are just as important because at that point you get to look at what did they use to allocate certain common costs for joint facilities and that is what the workpapers will provide you.

So if you have a total system cost to service you don't have segments, the workpapers are vital, they are critical to determining how are these numbers derived, how can we validate those numbers?

If there is a crude and refined product and you separate those out, the workpapers for that are just as vital because they look to it, and you say, "How are things divided? How are certain costs allocated?"

You are going to have direct cost assignments to these assets, the refined and the crude, but there is going to be those joint, there is going to be joint costs, common costs, that are allocated and the workpapers will provide the detail and how that is split.

The Commission has well recognized allocation methodologies, the K and the mass formula, the volume, the barrel miles, you name it.

The pipeline gets to have the discretion to say, "Here is how we are going to allocate it." So with the workpapers will show us how do they do it.

We can agree or disagree and then we can do what we do now. We can look at a page 700 and make a determination on how to challenge or whether to challenge and that is no different in this context, it is just that workpapers provide the foundation and the validation and the justification for what is summarily provided in the page 700.

MR. JOHN: I agree with that. I appreciate your diplomacy, Peter, but we need them both. We need one to validate the other. They exist.

We are not looking to burden the company with preparing workpapers that do not exist, so there seems no reason to provide those to us under reasonable terms in order for us to validate what we see in the subdivided page 700s.

MR. ROIDAKIS: What did you mean in your remarks to Mr. John when you said, "recognized systems and segments"?

It sounded to me like it wouldn't be so burdensome the way you explained it, and yet, talking about the administrative judge processes and disputing segments, it seems like then you are down the slippery slope of all these oil pipelines are involved, so is there any way that we could just tread carefully so that we don't go down that slope and just maybe get a start on some more information?

MR. POWERS: Two things, Peter. It is clear that an easy start are the pipelines that already acknowledge in their Form 6s that they have the separate segments and in most of those they have, and especially the ones that have litigated cases or they filed separate cost of service and we know they keep those, so that is an easy thing.

We know they are there.

And someone said, "It might be more confusing if we get them." I will tell you, it could lead to more resolutions. Our clients like to have settled results too, but I have approached in the real world a lot of pipelines before filing a complaint to ask for more information, I don't get that.

Once you file a complaint you start getting it.

Now this is a process which hopefully could facilitate some meaningful dialogue without the shipper having to go through the process of filing a complaint in order to look at the workpapers and the backup.

We may agree with a lot of what is in there. It starts a dialogue. This is pro-resolution and it facilitates what EPAC wanted in terms of expeditious proceedings.

I also believe in the earlier question that you need both, but there are examples of pipelines, and you can ask the pipeline companies, "Do you set your costs on the basis of a total system or segmented?"

I have a hard time believing that some of these big companies with many systems that are disconnected do not look at each of these segments to see whether they are profitable or not.

That would boggle my mind that they do not implement that and you know through the various meetings that the pipeline industry holds through AOPL, and so forth, that there are standards that they propose for the type of workpapers, all the workpapers we have seen for the pipelines that we have litigated against come in the same form, right, they have the same costs that are set out on page 700.

That is another reason why we do not see the burden there. This in many cases is done. We know for the cases we have litigated it is done and in other cases, I suspect, it is also.

MR. KRAMER: Peter, you raise a good point as to what is sufficient. We have a lot of confusion.

It makes it sound simple. I do not prepare page 700s or Form 6, but Bob Van Hoecke who is on the next panel his firm does quite a number of them so he will be able to address this in more detail.

I do think, as Bob will discuss, it is not the simple exercise that we are talking about here.

I do not want to keep repeating what I have said, but for 20 years the Commission hasn't found that it is necessary, their regulatory construct has been directed by Congress, and there hasn't been any lack of information as far as protest or a complaint being rejected.

We have to in my view come back to the basics and look at how the industry is regulated.

Even the information that they are talking about you have a good concern about the slippery slope because it could be that that information, they are looking for rate by rate and things of that nature.

We are talking about an annual form filing that could be turned into something along the lines of a staff top sheet or something like that annually.

That is not a simple exercise to prepare that kind of information, but then have it be subject to a potential discovery process.

We need, of course, to think about it in context.

MR. LYON: We had a very general discussion here, segmentation versus no segmentation. What the Commission has before it right now is a petition for rulemaking and if the Commission were going to go forward with a rulemaking it would have to first issue a notice of proposed rulemaking which requires more than just a general statement that we are going to require pipelines to segment.

How would you propose that we actually go forward that defines segmentation and what would we actually require our pipelines to do regarding that segmentation so that we could then write particular rules to put out for comment because we cannot just do it on a general basis.

I throw that out for anybody who wants to answer or say anything negative about that.

MR. JOHN: As one of the petitioners, I would respond this way, Andy.

It is a very good question. It is one we pondered. It is one that may be best addressed in the supplemental comments on September 25 and I know our time is short and rather than wing it in front of the panel.

As we go we are learning how best to really reduce to writing what it is the rulemaking would request and I really feel that we will be able to help address that issue in the written comments.

MR. FAERBERG: We are getting to the end here so maybe we should just wrap it up with that.

Just to take off on Andy's point. I was going to suggest, and I am less diplomatic than Peter, we actually just go down the road of all of the scenarios so when you do the comments it would be very helpful to the staff for doing it is to get into all the Reg texts, what would the Form 6 look like? What would the instructions look like?

Things about discovery disputes.

So get as detailed as we can.

Our goal here is, assuming this ends up in a rulemaking, that the work can be done up front instead where two years down the road in some Order C or D of a rehearing of a rulemaking where we can get it.

I understand that.

You guys at AOPL are obviously opposed to this, but you cannot just sit on your sidelines.

You probably want to have some input on this as well assuming it does come, so we really would like a lot of detail as much as you can give in thinking about all the possible scenarios.

With that we will take a break until 11:05 and we will come back and convene the technical panel.

(AFTER A 10 MINUTE RECESS)

PANEL NUMBER 2

MR. FAERBERG: Now we will get our perspective on the rulemaking petition, so as with the other panel we will be doing prepared presentations and then dialogue.

Mr. Adducci is on the panel, but he indicated that he did not have a prepared presentation, so we will keep the time as it is and we will start off with Mr. Arthur.

MR. ARTHUR: Thank you.

My name is Daniel Arthur. I am here on behalf of Valero Marketing & Supply Company, Airlines for America, and National Propane Gas Association.

I have been working at the Brattle Group regarding oil pipeline, regulatory issues for 18 years since finishing a Ph.D. in economics.

I have worked on numerous oil pipeline cost of service proceedings before FERC and regulatory commissions both on behalf of shippers and on behalf of pipelines.

These projects have included the examination in preparation, cost of service data reported on page 700 of the Form 6 including the workpapers underlying the page 700 calculations.

The areas I intend to address are the cost and benefit of making workpapers available to shippers prior to when they are available on the current state of the world.

I will discuss the current level of aggregation and page 700 reporting is adequate or reasonable.

I will discuss the feasibility costs and benefits of requiring more disaggregated page 700 data at an individual system or segment level.

I have been involved in seven proceedings before the Commission where page 700 workpapers have been produced in discovery and I have also worked with a pipeline company that owns multiple crude and product pipelines in preparation of cost of service calculations underlying page 700 reporting.

With respect to the cost of making workpapers available to shippers prior to a formal hearing, process in my opinion, the cost is minimal.

The workpapers are prepared and finished prior to Form 6 being filed.

It is common that there are workpapers included beyond just the cost of service calculation which include allocations, adjustments to carrier property or operating expenses and side calculations such as accumulated deferred income taxes.

These allocations and adjustments that are currently required to drive a page 700 cost of service can be extensive and are required to separate and enter intrastate operations, carrier and non-carrier property at the current aggregated level of reporting.

But fortunately there are established techniques for performing these allocations that rely on a limited set of inputs.

As I will discuss later these commonly used allocation factors are also used to allocate common costs between systems or segments if a cost of service is to be calculated in that manner.

Next, we will discuss the benefits to

shippers of seeking the workpapers instead of simply the 25 line items reported on page 700.

As the Commission has recognized the non-page 700 data reported on the Form 6 is not sufficient to derive a cost of service calculation consistent with the Opinion No. 154(b) methodology now is the basis for requiring pipelines to calculate, to report a cost of service on page 700 in the first place.

The Commission has also designated to shippers the responsibility of evaluating the reasonableness of currently collected rates.

In order to evaluate the reasonableness of rates by a comparison and by their cost of service to revenue or by a comparison of cost of service per barrel mile to a collected rate per barrel mile a reasonable cost of service calculation is required.

In my opinion without seeing the underlying page 700 workpapers, one could not validate the page 700 total cost of service and related cost and revenue amounts as well as determine if the calculation has been done in accordance with the current 154(b) methodology.

For example there can be significant

adjustments to asset and expense data reported elsewhere in the Form 6.

The cost of service calculation I prepared on behalf of a products pipeline involved a significant issue whereby a lease of assets from another entity was ultimately treated as a capital lease which meant that the asset and asset amount was included in rate base associated with the lease and the expenses associated with the lease were removed from operating expenses.

This caused a disconnect between what is included in the cost of service calculation and what is included elsewhere in the Form 6.

Without access to the underlying workpapers how and what adjustments were made is not knowable. Numerous other adjustments are also commonly made to operating expenses on page 700 calculations such as replacing expenses recorded as accruals with actual cash expenses are normalizing adjustments.

Typically, there are footnotes on the page 700 workpapers providing explanations of adjustments made to the base data elsewhere.

Two more significant areas of page 700 workpapers provide relevant information not reported elsewhere in the Form 6 are the allocation factors used to derive the cost of service as well as the treatment of other non-trunkline revenue that can add up to tens of millions of dollars and these two can have a significant influence on the resulting cost of service.

Under current reporting requirements in the 25 line items that are filled in one cannot determine what allocations were performed nor how other revenue is accounted for in the cost of service, however this data is included in the page 700 workpapers.

But also expect there to be a better quality of reporting that is known that the calculation can be reviewed similar to in effect from the limited number of audits conducted by the Commission's Office of Enforcement staff.

Based on my review of the 2014 page 700 data there are some apparent errors and low-quality reporting on some Form 6's.

Next, I am going to discuss whether the current level of aggregation for some pipelines and page 700 reporting is adequate or reasonable.

In order to appropriately evaluate whether currently collected rates are reasonable relative to the underlying cost of providing service, the cost of service ultimately needs to be calculated on the same system or segment basis as how the rates would be determined in a formal proceeding.

Currently the reported cost of service on page 700 for a limited number of pipelines is not at a level that would be calculated in a proceeding to determine reasonable rates for any of their rates if combined on a crude and product system no rates would be set on that basis.

With respect to the feasibility of reporting a page 700 data at a system or segment level all pipelines that I am familiar with track revenues and costs, asset and operating costs, at a more disaggregated level than a system or a segment.

With respect to revenues all pipelines, track revenue and volumes by tariff rate, and rates are readily identifiable with a specific system or segment.

With respect to costs, all pipelines commonly rely on an accounting system that tracks expenses and assets by business unit or location code which specifically tracks the expenses and assets of individual geographic locations along a pipeline's operations.

Then a segment or a system's costs are an aggregation of the individual costs associated with the specific location codes, but those location codes that contain common costs being allocated between segments or systems using established techniques.

This aggregation of location codes and costs associated of the codes is currently being performed so the question becomes where to stop the aggregation process.

The difference in order to calculate a segment level cost from a higher aggregated level is the need to identify business units and location codes as being specific to a single segment or to multiple segments, those that are identified as being common to multiple segments can then be allocated using established techniques.

It is certainly feasible to calculate segment and cost of service based on the way accounting data is maintained and in my experience pipelines are in fact calculating segmented costs of service that are not been reported in the page 700.

For the pipeline that I prepared the cost of service for the individual system, the specific reason we did that was an order to evaluate the reasonableness of that system's rates in relation to the cost of providing the service.

After we broke out the segment it was then aggregated with the other systems, the crude and product systems, back into a single entity for page 700 reporting as if it didn't make any difference.

I am also familiar with SFPP, Mid-America, Enterprise TE Products and Buckeye Pipelines all performing segmented costs of service calculations prior to a formal hearing process.

With respect to the costs associated with segmenting the segmented cost of service we calculated on behalf of a pipeline took an estimated ten hours of internal company personnel to identified the direct and common costs associated with this system, the segment, and to help gather other relevant data and 90 hours of my group's time to actually do the cost of service calculation.

Segmenting is also typically a one-time cost to identify direct or segment specific cost centers, identify common cost centers that require allocations and to choose those allocation factors.

Once that structure is established updating segmented cost of service requires compiling a new years set of direct costs, common costs and then updating the allocation factors.

This is the same process that is currently used if the data is reported on a more aggregated basis.

With respect to the benefits segmented data the benefit of segmented cost and revenue data is to be able to perform a reasonable preliminary evaluation of whether existing rates are within a zone of reasonableness which is what I understand the intent of reporting page 700 data to be.

For those pipelines reporting aggregated products and crude cost of service data or aggregated segment data under the current reporting requirements the reported cost of service in revenue can be very misleading if the underlying costs and revenues associated with a specific segment do not reflect the aggregate ratio of costs and revenues.

From my experience shippers not willing to incur the expense of challenging the reasonableness of existing or proposed rates without some preliminary evidence that the rates are unreasonable, and if rates are to be determined on a segmented basis, the preliminary evidence should be based on at least some estimate of a segmented cost of service which often can be difficult not reliably done based on the current aggregated data reported in the Form 6.

Overall, in my opinion, the cost of providing page 700 workpapers to shippers is minimal. The benefits of the workpapers is to provide additional highly-relevant information not contained elsewhere in the Form 6 are knowable to those who are tasked with evaluating the reasonableness of pipeline rates.

Also in my opinion it is certainly feasible to calculate annual cost of service on a segmented basis and pipelines are currently doing so for purposes other than page 700 reporting.

Costs associated with creating segmented cost of service are largely one-time costs and the benefits of segmented recording is to be able to provide an appropriate comparison of the reasonableness of existing rates to the underlying cost of providing transportation service.

Thank you.

MR. SOSNICK: Good morning, my name is Kenneth Sosnick. I am a principal at Pendulum Energy.

I'm here this morning as a representative of the Liquid Shippers Group. I am here to discuss the technical aspects of supporting the request of the Commission to issue a NOPR which would propose to do two things.

First, to revise page 700 of the FERC Form 6 to further enhance crude oil and petroleum product pipeline financial reporting transparency.

And, two, make carrier page 700 workpapers available to shippers and interested parties upon request.

Prior to joining Pendulum, I was a senior project manager at MRW & Associates. For two years I worked on Natural Gas Pipeline proceedings. Prior to MRW, from 2003 to 2005, I was an auditor on FERC staff.

In, 2006 I moved Office of Administrative Litigation where I reviewed natural gas pipeline rates as well as product pipeline rates.

I worked on thirteen different Commission proceedings where I filed testimony. Two of those were complaint cases and product pipeline and oil pipeline proceedings and two pipeline initiated rate proceedings.

Furthermore, I was a member of the team that assisted the Commission in modifying the FERC Form 2 in Docket No. RM 07-9-000.

In the Commission's final rule, Order 710, it laid the foundation of why the forms are being modified, "The Commission is revising these financial forms to provide in greater detail the information the Commission needs to carry out its responsibilities to ensure the just and reasonable rates and to provide customers and the public the information they need to assess the justness and reasonableness of pipeline rates."

We here today to specifically address product pipeline customers and the public's need to have access to information such as segmented costs and revenue data for a preliminary assessment of the justness and reasonableness of product pipeline rates, not to litigate what those rates should be but to have the access to the data for a preliminary analysis.

As I turn back to the FERC Form 2, Final Rule, upon implementation of the new and revised schedules, the Commission began a robust self-initiated review of natural gas pipeline rates.

As a result the Commission initiated rate investigations, not resetting of rates, but investigations of those rates.

I had firsthand opportunity to review the costs and rates for Northern Natural Pipeline, Kinder Morgan Interstate Gas Transmission, which is now Tallgrass Interstate Gas Transmission, and Wyoming Interstate Company.

As a result of my aforementioned experience, I have firsthand knowledge of the challenges facing the petitioners in trying to unravel what is included in the FERC Form 6, page 700, and the difficulty in evaluating a preliminary analysis of just and reasonableness of the rates.

Requesting the Commission to issue a NOPR would enhance transparency of information reported on the FERC Form 6, page 700.

This action will help ensure both shippers and the Commission to have the data necessary to properly monitor and analyze jurisdictional pipeline rates for reasonableness to determine whether those rates should be challenged and set for further investigation.

Shippers need this data and especially acute in light of the Commission's historic practice of relying on them to mount rate challenges instead of initiating FERC investigations in the crude oil and petroleum product pipeline rates.

Shippers are well aware of the pipelines and the segment of pipelines they are shipping product under.

For pipeline customers to even begin analysis into the reasonableness of the rate they are paying to look at more than just the Form 6, page 700, but the whole entire Form 6.

An example of the complexity of the analysis is the current SFPP Form 6, page 700. SFPP currently has on file with the Commission seven different tariffs.

The North Line, the East Line, the West Line, the Oregon Line Sepulveda to Watson Movements, SFPP to Kelmat Movements in a joint rate tariff with SFPP and Kelmat.

A customer ownership run, SFPP's Oregon Line, they currently would have access to SFPP's total system costs and revenues and no cost or revenue data associated with only the Oregon Line.

Plus it would not be feasible for a shipper to engage in rate review of the Oregon Line without having any of the cost to revenue data for the Oregon Line broken our from the rest of the SFPP's overall costs and revenues.

A segment could be defined as a tariff that is on file. Those shippers on each segment as defined at least by a SFPP have there own tariffs and they have their own tariff rates.

So understanding what conditions they are shipping under and the rates they are paying is laid out on their tariff.

As stated earlier this morning the Commission would not allow Kinder Morgan or Energy Transfer Partners or any other major natural gas pipeline ownership group to file a single FERC Form 2 to capture costs and revenues, but that is exactly what happens on the FERC Form 6.

The benefits of transparent reporting in the FERC Form 6 will enable shippers and the public to fully understand the costs and revenues associated with product shipments and having disaggregated information major pipeline systems will not face the risk of unsubstantiated rate reviews.

This benefit saves the Commission, customers, pipelines and consumers time and resources and not bring in complaint cases to the Commission.

On the other hand having disaggregated information will enable shippers to file a more supportable complaint case and thus only have the Commission set reasonable complaint cases for hearing.

Under the uniform system of accounts electric utilities, natural gas pipelines, and product pipelines, must account for costs and revenues for their entire system.

Given the fact that utilities have multiple business segments such as transportation, storage, gathering, et cetera, maintaining costs and revenues for each segment of their business is crucial for asset management and planning.

Additionally, cost fluctuations change for certain segments in certain years.

For example, property taxes and our assessments can change annually, accumulated deferred income taxes may change if they are able to take an accelerated depreciation in one year compared to another so with having annual changes being able to track in workpapers on an annual basis to see whether those changes are important.

To fully evaluate product pipeline rates, volumes and revenues, must be required to be provided by segment. It does not make sense to only have disaggregated cost data which is only telling half of the story.

The volumes and revenues associated with each segment complete the evaluation and allow for a preliminary assessment of the just and reasonableness of current rates.

As the Commission and one of the questions I have asked about cost allocation methodologies, cost allocation methodologies such as the mass formula in KM are the Commission's standards for corporate cost allocation and functionalization of costs to different segments of pipeline operations.

For example, SFPP is owned by Kinder Morgan. As a result, corporate overhead costs are directly assigned and residual corporate overhead costs are allocated to different segments of Kinder Morgan's business including SFPP.

As I noted earlier, SFPP has multiple segments and thus must allocate the Kinder Morgan corporate cost to its different business segments.

In establishing either a separate Form 6 page 700 for each segment or having access to workpapers will enable the Commission and shippers to fully understand the type of cost allocation methodology being utilized and have the ability to review such methods for its proper application.

As it relates to workpapers provided, once a rate proceeding or a complaint has been initiated the timing of obtaining this data does not factor in the time and costs associated with the initial analysis of the FERC Form 6, page 700.

Understanding the FERC Form 6, page 700, as it is today puts the Commission or a shipper in a position of guessing what costs and revenues are associated with a specific product pipeline segment.

Additionally, the burden the Commission has historically maintained for a shipper to initiate a complaint proceeding has forced a robust initial analysis of the FERC Form 6, page 700.

A shipper cannot know if they will even be able to meet the Commission's burden, thus the current burden has put a deterrent for shippers to challenge the just and reasonableness of product pipeline rates.

The FERC Form 6 is filed annually thus shippers and interested parties should have access to workpapers to support the filed FERC Form 6 annually.

Having this material in Microsoft Excel or in a format that enables the Commission, shippers, and interested parties to quickly review and evaluate the reasonableness of the current costs and revenues for the segments of a product pipeline just makes sense.

There can be major changes in pipeline ownership or major income tax and implications that occur from year to year that shippers need to have access to in the supporting workpapers to understand those impacts.

An example would be an entity changing its ownership from an MLP to a corporation and the workpapers would be able to completely show or a least take a shipper through the process of what those changes look like.

From a process standpoint obtaining the workpapers should have shippers or interested parties directly contacting a designated representative from the product pipeline to coordinate access to such workpapers.

This access to workpapers can include a secure Internet in site, a CD, or similar methods.

Access to such workpapers should be protected by a nondisclosure agreement or similar mechanism.

No one is looking for potentially confidential data to be filed with no protection at FERC for competitors to have access to.

In conclusion the proposed petitioners request for a NOPR to revise the FERC Form 6 page 700 to disaggregate information by segment and have access to workpapers supporting the FERC Form 6 page 700 will enable the Commission to have a transparent and functioning preliminary rate review for product pipelines.

What the petitioners request will not overly burden the product pipelines or make cost perspective or time perspectives.

FERC's mission statement is to assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.

Fulfilling this mission involves pursuing goals such as just and reasonable rates, terms, and conditions. That is the goal of petitioners today.

Thank you.

MR. VAN HOECKE: Good morning, I am Bob Van

Hoecke, principal at REG.

Last year approximately 200 page 700s were submitted to the Commission.

My firm, REG, prepared sixty of these reports on behalf of pipeline clients.

I am speaking this morning on behalf of the Association of Oil Pipelines. The purpose of my comments today is to discuss the significant burdens pipelines would face if petitioners proposals were adopted.

Requiring oil pipelines to prepare and submit segmented page 700 filings would impose a significant increased burden and would fundamentally transform the current annual page 700 reporting requirement from a screening tool into a segmented cost of service top sheet that would encompass many of the burdens typically incurred in litigated rate proceedings.

Under the unique regulatory framework that applies to oil pipelines there is no need for the vast majority of pipelines to compile accounting and ratemaking information on a system or segment basis because the vast majority of oil pipelines rates were grandfathered under the Energy Policy Act of 1992 and subsequently have only been adjusted for inflation pursuant to the Commission's oil pipeline index.

Most oil pipelines have not been involved in cost of service rate litigation and therefore have no reason to prepare the kind of cost of service contemplated by the petitioners on a segmented or even a system basis.

Consequently, oil pipelines generally to not prepare comprehensive data allocations based on segments as part of their normal business activities.

Requiring carriers to file segmented page 700s would fundamentally alter the structure of many accounts currently required under the uniform of system of accounts would substantially change the process in which the Form 6 is assembled, would require extensive assumptions and ratemaking judgments as the basis for the allocations, would impose huge burdens on the pipelines, and would inevitably lead to large disputes of the Commission over the methods carriers use to segment cost information and the content of workpapers.

In fact, the Commission's existing regulations, Part 346, only require that a carrier submit total company cost of service information if it seeks to depart from the Commission's indexing requirement and establish cost base rates.

The petitioners' segmentation proposal seeks to impose a more stringent annual reporting requirement than is currently required for filing cost-based rate increases.

The petitioners have failed to provide any evidence which suggest that the increased burden is warranted or that it is outweighed by the potential benefits that they assert.

REG has developed segmented cost of service for clients engaged in litigation proceedings.

One of the commenters on the prior panel says, "All of these segmented cost of service look the same. They must have some pattern." That is because REG has done the work for them. There has been about five or six of them in the industry in the last fifteen years. We have worked on each one of them. That is why they look the same. There is no industry-wide standard.

A brief overview of some of the steps required to prepare segmented cost of service information demonstrates the enormous burden that such a requirement would impose.

First, each filer would need to define what constitutes a system or segment. This is not the easy task that shippers make it out to be.

To determine whether a pipeline should be divided into systems or segments, and if so, how many is often a highly contested fact intensive issue reserved for oil pipeline rate case litigation wherein different groups of shippers seek to shift costs from one segment to another or otherwise propose a segmentation approach that advantages themselves.

Second, the uniform system of accounts which underpins much of the data shown on the Form 6 requires a pipeline to record their costs and revenue pursuant to a prescribed chart of accounts which reflects aggregate, not segmented data.

Contrary Mr. John's statements in the earlier session, Part 352 does not require cost segmentation.

Pipelines generally record and maintain discrete accounting data in a combination of ways based on location cost centers, business units, and asset classifications.

However, these cost centers are unlikely to correspond to systems or segments or the classifications that petitioners propose.

For example, under depreciation the Commission's group method is computed based on a composite depreciation rate applied to a property account classification, not on a segmented basis.

An asset retirement in one property account can affect the net book value of other assets in that property account even if those assets were in a different segment.

Third, once the individual cost centers are mapped to discrete segments the carrier would need to conduct an analysis to identify the direct cost related to the carrier property and operating expenses for each segment.

Fourth, because certain common and shared costs are shared across multiple segments these costs must also be identified and a method developed to assign or allocate these costs to each relevant segment.

The process of identifying and compiling related costs information for each system or segment will potentially require numerous allocations of shared facilities, services, and overheads related to the pipeline and its parent.

As a general rule most pipelines do not perform these types of allocations as part of the normal business record keeping.

In a reporting requirement to report segmented results, would introduce both a new and a recurring burden on carriers to perform these allocations.

These types of allocations would involve case-by-case judgments and allocation decisions that are normally developed in contested litigated rate proceedings.

Fifth, it should be recognized that in order to prepare cost of service under the Commission's 154(b) standard each filer would need to compile property data for each segment back to 1983 in order to calculate various rate based elements including the allocation of shared assets as previously mentioned.

In my experience this effort has often required several dedicated people many months to prepare in litigated proceedings.

Sixth, certain cost elements required for page 700 purposes such as the starting rate base write up, deferred earnings, accumulated deferred income taxes are not typically compiled and maintained by carriers on pipeline segments.

Valuation data issued by the Commission back in 1983 would need to be developed on a segmented basis.

This detailed information is likely not reflected in the Commission's final valuation order so additional allocations would be required.

Seventh, when movements to reverse one system or segment significant issues may arise in determining the appropriate segment information.

In these situations a carrier may have volume data regarding shipper nominations from an origin to a destination or receipts and deliveries and individual custody transfer points, however it would require additional effort not typically performed during the normal course of business to compute volumes on a segmented basis.

To the extent the carrier assesses a single rate for movements that originate on one segment and terminate on another there will be a potential issue with defining the proper level of revenue to assign to each segment especially if different segments reflect different cost structures, utilization rates or ratemaking methodologies.

Absent a reasonable level of volume in

revenue, any segmented cost of service would lack a meaningful benchmark.

Requiring filers to report separate page 700s for each segment would involve a substantial commitment of resources by the pipeline in personnel and outside services.

It is difficult to define the specific number of additional page 700s filings that may be required as petitioners have not specifically defined what they mean by segment.

However any requirement to separately report segmented cost information would be problematic as there is no clear guideline and circumstances vary from carrier to carrier making a one size fit all rule impractical.

In a meaningful delineation would need to vary from company to company and possibly year to year depending on the specific facts and circumstances of each entity.

Given the dynamic nature of the oil pipeline industry a filer's segment or system definition could change over time making year to year comparisons of questionable value.

Petitioners have also requested the pipeline separately report page 700 results for crude and refined product services arguing that because the affected carriers were already required to separately report certain costs and throughput data for crude and product movements, there is no additional burden associated with this request.

This assertion is incorrect.

As previously discussed, the uniform system of accounts only requires certain operating information be reported for crude and product services.

Significant additional work would be required to compile all the information required to file separate page 700s for crude and product pipelines.

For example, carriers would need to compile separate carrier property data and depreciation going back to 1983, develop various cost of service elements for each page 700 such as starting rate based deferred earnings and accumulated deferred income taxes and we need to establish certain overhead allocations.

As previously discussed development of these cost of service items would be extremely time-consuming and potentially contentious.

Petitioners have failed to quantify or

demonstrate any significant benefit in the new requirement to separately report crude and product pipeline results that would justify this additional burden.

Petitioners also suggested that the Commission should instruct pipelines to segment cost based on how pipeline rates are established or designed.

It is not clear what this means since as noted most rates are not established on a cost of service basis.

However, to the extent petitioners assert that separate tariffs would establish separate segments there are currently 650 effective oil pipeline rate tariffs with approximately 200 Form 6 reports filed annually defining segments based on tariff filings would more than triple the number of page 700s being filed with the Commission.

Again, petitioners have failed to quantify or demonstrate the significant benefit to shippers of separately reporting on a tariff basis.

Moreover, as a practical matter several of these tariffs likely reflect movements over the same pipeline segments.

Based on my experience in performing costs of service segmentation in litigation purposes, I estimate the additional burden of segmenting page 700 would have on carriers could easily exceed 1,000 hours in the first instance just to identify the relevant segments, develop the segmented cost of service inputs needed to perform cost of service analysis and prepare the individual cost of service models required for each segment.

In the SFPP the judge provided SFPP six months to develop segmented information in that case.

Once the initial segments are established ongoing efforts to maintain separate and discreet information for each segment would likely exceed 500 hours on a company bases plus an additional 100 hours per segment to prepare each additional page 700 report and related workpapers.

Assuming that proper segments could be established, these segments would likely change periodically due to operational reasons, market dynamics, acquisition sales resulting in additional burdens as carriers would need to develop a new segment inputs and segments requiring carriers to redefine segment data back to 1983, once again, and modify or recreate cost of service models used to compute the page 700 for the affected segments.

This would represent a burden that is at least half of the initial effort required to establish segmented inputs in the first instance.

Given the contentious nature of ratemaking assumptions and allocations to be performed and potential disputes over the content of workpapers many carriers would inevitably face increased burden in responding to the shipper initiated arguments before the Commission concerning annual page 700 filings.

This morning we talked about petitions to the Commission to establish segments or special hearing judge to come and listen to issues about workpapers, all of that results in additional time and burden on the carriers.

The principal purpose of the page 700 was to establish a Commission review of the effectiveness of the simplified and general applicable approach of indexing and tracking industry costs yet variations in allocation methodologies and variations in annual problematic maintenance expenditures such as integrity, tank painting at a segment level, can make this comparison less meaningful, not more, which would run afoul of the Congressional mandate under EPAC that the Commission streamline its regulation of oil pipelines.

Thank you.

MR. ASHTON: Thank you and good morning. I would like to thank the Commission for having this technical conference.

I believe this is a very important issue that needs to be addressed.

My name is Peter Ashton and I am with Premier Quantitative Consulting. My background and experiences is as an economist working on regulatory matters before FERC and other regulatory agencies for over 35 years.

I have represented various shippers including Tesoro Refining and Marketing for whom I am appearing here today.

Also I have had a role of assisting a couple of other pipelines in preparing page 700 and associated cost of service and workpapers, so I am familiar with this issue from both perspectives of a shipper as well as a pipeline company.

My prepared remarks will mainly address some of the questions that were posed in the notice and I will be happy to talk about some of the others in the discussion period following.

In terms of defining segments, I think it is first useful to understand that the number of pipeline companies are likely to be effected is relatively small.

I did an independent review of Mr. Adducci of the some 200 companies or close thereto that already filed, detailed Form 6 data, and I came up with a figure of somewhere between 15% to 20% of those companies that, as I understand it, would have to file either segmented data or separate crude and product pipeline data that also might then have segment of data.

I believe the definition of segment should follow naturally from the way in which the pipeline conducts its operations and also designs and establishes rates.

For example, SFPP, we have heard a lot about SFPP, that is also where a lot of my experience is. They design rates really for four separate lines, the North, East, West and Oregon Lines.

A company that I had some experience with this is Enterprise TEPPCO, they design rates and publish tariffs divided up between both a Southern and a Northern segment.

In terms of the additional cost, and I am sure you are scratching your heads at this point because you have heard two very dramatic and different estimates of the additional costs to report disaggregated information.

In my view while there is some additional cost most of it would be what I would characterize as sort of one time setup costs and thereafter the cost would be relatively minimal, but it is very important to understand those costs in the context of the benefits that having disaggregated data would have.

These would include greater efficiency of the process to allow shippers to focus on individual segments in pipelines which in my view would greatly enhance the focus and specificity of potential challenges and also in my view likely eliminate some of the protests and complaints that we see.

The benefits of requiring disaggregated information. The current page 700 in aggregated form does not permit a shipper to evaluate the reasonableness of rates on a specific segment or between crude and product lines because the cost and revenue data do not correlate with the segments or type of pipeline.

As a result the aggregated data can mask both deviations and differences among the segments that disaggregated data would show.

For example, a pipeline with three segments might show no substantial over-earning of its cost of service on a consolidated basis, however on a disaggregated basis the revenue for one segment might substantially exceed its cost raising questions about the reasonableness of rates on that one segment.

I did provide ahead of time four exhibits. I will not spend much time on those, although I do want to talk about one.

I did provide two exhibits that are simply page 700s that show what consolidated reporting looks like for two pipelines that have either segments or both crude and product data or operations.

I did provide an example which was my Exhibit 3 which again comes from SFPP. There is one part of that exhibit that shows their actual consolidated cost of service, that is on the left-hand side of the exhibit.

On the right-hand side is a hypothetical calculation that I did to simply show what a breakout of the page 700 might look like if it were broken out on a segment or disaggregated basis to show what that would look like.

The other reason that I provided that is again strictly for illustrative purposes.

I do a calculation, again hypothetical, which shows that in fact when you break down the cost of service and the revenues on a segment by segment basis you see in this hypothetical two of the segments over-earning by substantial amount which for those shippers on those two particular lines might call into question the reasonableness of those rates.

But for the two other segments there would be no over-earning and shippers on those two particular lines would not be our concern necessarily about rate reasonableness which, again, illustrates the potential efficiency of having segmented data.

I will also call attention to the fact that the Commission in the past has also recognized that this is a problem for pipeline companies such as SFPP that provide information on a consolidated basis when having it on a disaggregated basis is really the only way to make any kind of determination about specific rates on specific segments in terms of their reasonableness.

Do pipelines currently track revenues and operating expenses by segment? Yes. In my experience many pipelines do this as part of their internal accounting and they are required to do so in other places on the Form 6.

Furthermore, these pipelines likely do a full cost of service analysis to evaluate their rates on a segment by segment or breaking out between crude and product operations.

The Form 6 in fact requires disaggregated reporting in some instances already.

Revenues are broken out between crude and product and interstate versus intrastate on page 301.

Operating expenses are broken out between crude and product pipelines on pages 302 and 303 of the Form 6.

Volumes in barrel mile data are broken out similarly. Property taxes are broken out by state. Carrier property is broken out between gathering trunk and general categories, plus there is a separate breakout for undivided joint interest pipelines and a breakout of non-carrier property.

In fact there are some attempts and some data being reported that is broken out that is already done.

If pipelines are required to provide cost information should they also provide revenue and volume data?

My answer to this is, yes, as this is the only way for a shipper to be able to adequately compare segmented costs and cost of service information with revenues to evaluate the reasonableness of rates.

Volumes are typically already tracked separately and volumes are actually also frequently used as an allocation mechanism among segments.

Since rates are reported separately by segment revenue data basically already exists in a disaggregated form and certainly if not reported that way certainly all of that data is currently maintained by the pipeline to report it that way.

Let me talk a little bit about allocation methods that are already being used to look at things like shared costs and overhead costs.

Various methods are already used to make these allocations. For example, for some indirect and shared costs pipelines will use direct assignment of costs which rely on location codes or activity centers as a basis for direct assignment.

A location code is a unique identifier for where either an asset or a particular function such as a pump station or a personnel operating group exists and therefore is already identified with a particular segment or location.

For an activity or function center the same is true and these are again already broken down effectively on a segment by segment or type of pipeline basis.

For other types of shared or indirect cost the pipelines often use a volumetric basis of either barrels or barrel miles to allocate costs.

For example, a terminal may serve two segments with volumes flowing into that terminal from both pipelines.

Relative volumes are used then to allocate the costs of operating that terminal between the two segments.

Pipelines also have other cost allocation methods to allocate costs between interstate and intrastate service as well as carrier and non-carrier assets and functions and for other indirect costs there are methods such as the Massachusetts Method and the Kansas - Nebraska Method to allocate costs one of the drawbacks of the current process of providing workpapers once a proceeding has been initiated.

First, it is important to recognize as you have heard several times this morning already that shippers are the ones with the primary responsibility for monitoring and evaluating whether a pipeline's rates are just and reasonable.

Therefore shippers need the tools available to evaluate rates prior to the initiation of a proceeding.

In my view this would greatly enhance the efficiency of the process and actually reduce the costs involved in evaluating reasonableness of rates.

Providing workpapers ahead of the filing of a proceeding would make the entire review process more efficient perhaps leading to fewer complaints or protests being filed and at least making such proceedings more streamlined and focused on specific lines or segments.

Just briefly with regard to the frequency with which shippers or others might be entitled to access workpapers in my view since the Form 6 and the page 700 is provided once each year, that is when the workpapers might be requested.

There are some occasions where revisions are filed. If those appear to be significant there might be some right to require workpapers that go to the revision to be provided as well, but generally it should be on an annual basis at most.

My experience with regard to workpapers is that they are typically prepared in electronic Excel spreadsheet format and so provision in this type of format would be helpful.

I provided again as the last of my four exhibits to you all really an example, again, of a hypothetical pipeline but very similar to one that I worked on in terms of the workpapers that would provided to give you some idea of the type and classification and subject matter that is covered by those wallpapers.

I don't believe that standardization is required, but my experience, and maybe it is just because I have been just looking at all of Bob's, but my experiences is that they are largely all prepared the same way.

As far as additional costs of making workpapers available, since they are going to be prepared and are already prepared as part of the preparation of the page 700, I do not see any substantial cost there.

Certainly accessing them by shippers can be done electronically through secure emails, secure websites, again, my experience in litigation is that that process works very well.

That concludes my remarks.

Thank you.

MR. FAERBERG: Thank you, and now Mr. Adducci indicating that he does not have a separate presentation, but will be participating in the dialogue so we can start off the dialogue portion of the panel.

The first is not a question but a request, Mr. Van Hoecke and also Mr. Ashton and to the extent anybody else has something.

If we can, either if it is already prepared filed on the Docket or perhaps is an appendix to the comments, your estimates of the burdens, that is something that obviously the Commission has to undertake this sort of analysis for purposes of rulemaking, it is just fair for both sides to see the information to indicate, "Why do you think it is going to take so long or it is not going to take as long."

If those are available we would like to have them in the Docket either if they are now, file that in the Docket, and if not, then as an appendix to the comments so each party, all the groups can get an opportunity to look at them and comment on them in reply comments.

My first question is, and this is somewhat of a clarification. This is from the shipper community.

You are not telling the pipelines that if they don't already have recognized segments or systems, you are not telling them, "We want you to gin something up as far as segmentation."

Because I am getting the feeling that that's kind of at least what AOPL is saying, "You are making them all do this when they do not do this."

If a pipeline has recognized segments, or systems, you want them to do it and obviously we are going to give it some detail of whether there is some dispute and how we work that out, but you are not telling them all pipelines to do this.

Is that correct?

MR. ARTHUR: That is correct. In my opinion the definition of a segment is at the discretion of a pipeline.

A shipper can challenge that at some point in a formal rate proceeding if they think that's a relevant issue, but the initial definition of a segment is typically tied to the operations of the pipeline and the integrated nature of those operations, the pipeline is in the position to know whether it considers a portion of its total system to be a separate segment.

In the recent Buckeye proceedings there was a dispute about what was a segment. That dispute came about because Buckeye changed its position in the current proceeding from what it presented in the prior proceeding.

In an earlier proceeding it said, "Our segments are defined this way."

In the current proceeding it changed the segments and then the dispute came, "Well, which of the two is reasonable?"

But it certainly is describing, determining the segment at the initial stage is at the discretion of a pipeline because it is related to the integrated operation of the system.

MR. VAN HOECKE: I am not sure how we will do this? Is it one for one or we are going four and one? What is the protocol here?

Maybe I get to rebut each one.

There are a couple of things. Buckeye, what he is talking about is a case in 1987 in a case that occurred here in the last year and between those two periods of time there have been some differences in how segmentation was being done.

I do not want to leave you with the impression that pipelines are just flipping definitions of what they might consider to be a segment willy-nilly here.

There is a big time gap in between these two as I even mentioned market dynamics where are going to change where things might look a little different.

Earlier, and I am not sure if Dr. Arthur speaks for all of the petitioners. He said it is up to the pipelines to set the segments, whether all the petitioners agree with that or not, but it is clear that they want the ability to challenge that at the Commission which is going to lead to the burden of pipelines having to come in and defend.

You have heard some people say it is based on tariff filings which again that would be a 300% increase if that was the situation.

We heard earlier where people are referred to Enterprise TEPPCO as having two recognized segments. I was in that case. I did the cost of service analysis in that case and I dispute that.

Enterprise has one system. They filed a total company cost of service and when they got into the rate case and they got under rate design they were establishing rate design based on the refined products in the Southern portion of the system and liquified petroleum gases on the Northern part of the system past Todd Hunter.

They presented total company cost of service and admitted it was the rate design when they started doing their allocation where they had two separate zones in which they were doing the rate design.

I do not think if you go look at the

Enterprise tariff filings you will see them describe their system as having a North system and a South system like Mr. Adducci or Mr. Powers have represented.

In that case the shippers were arguing that it is one entire system. The pipeline was saying rate design based on these two separate zones and the shippers were saying, no, it was one complete system.

That case settled.

Is there a recognized segmentation of that pipeline? I do not think you can look back to that case and say that because the case settled. The Commissioner never made a ruling on it.

It is not as easy as the petitioners are trying to make it sound and it is not going to be 15% or 20%. We know it is 11% of the crude pipelines and then we are going to have to start going through with refined product pipelines one at a time.

I have been in cases where shippers have asked for cost of service information for a lateral off of a main line even though that lateral was not a very substantial lateral off the system.

This is much more burdensome than it is being made out to be.

MR. SOSNICK: Just to be clear. When I say tariffs it is not every tariff that is on file.

If there is a rate tariff on file that is generating revenue that was really the kind of specific tariff that I was discussing, not every tariff, not duplicative of tariffs that may have shipments over the same pipe, so I wanted to clarify that.

In terms of segmenting and looking for these additional page 700s, we have talked about SFPP a lot, and it was brought up and it is in the examples in proceedings that happened over a four-year period.

The corporate overhead allocation methodology changed every year. I believe over a four-year period they had six different methodologies.

When we talk about the level of detail and have these additional page 700s or segments it is trying to have a transparent look at the total.

When you are in rate proceedings and you are in litigation pipelines tend to only want you to look at one certain cost.

If we are talking about Line X and they have

Lines A,B, C, D and E, you do not have to worry about any allocations to any of those.

What we are looking at here in terms of having separate page 700s is just that, an annual look at each system as it relates to the rates that are being charged to the individual shippers on the individual segments.

It is not seeking in this NOPR outcomes from litigation or each pipeline being required to segment somehow.

That is not the Liquid Shippers Group's position and sometimes the risk or threat of litigation, the term litigation is being thrown around, those happened because those happen.

We are not here to litigate any of this. We are here to really figure out what material is needed in the page 700 for a valid initial preliminary analysis, not a resetting of rates just from a review of the page 700.

MR. ASHTON: Just to go back to the 10% to 15% number, that is a valid number.

If you look at the sum of close to 200 companies that file Form 6's, a very large number of them are basically what I would call sort of single or close to single origin destination pair types of pipelines which very clearly would not be required to file segmented data.

Also there is a fairly significant number of other pipelines. We heard the example of Colonial mentioned this morning, they clearly don't operate separate segments.

They don't report volumes that way.

It is pretty clear and it will be pretty obvious once the rulemaking is hopefully provided who has to provide segmented data and who does not and it will be based on the way they conduct their operations.

MR. ADDUCCI: I agree with the shipper panelists. We are not looking for every pipeline to determine segment.

Segment your rates now.

If you do it you should provide your page 700 on a consistent basis.

That's not what we're looking for.

The pipeline has the discretion. The pipeline can file, and say, "We don't do anything like that. We look at our rates on a total system basis."

The pipeline could disagree just like they can disagree with it now. The pipeline files on a total system basis.

If the shipper finds that something is abnormal or anomalous with that that affects the reasonableness of those rates that shipper can come in and file a complaint with the Commission today.

What it sounds like what the pipeline representatives are saying is that simply because there may be an issue with people disagreeing we should not allow it to be seen.

That is not the way this Commission works. This Commission is supposed to look at it and determine and ensure that the rates are just and reasonable. Right now you cannot do that from the form you have got.

By providing and giving the pipeline the opportunity to say, "If you segment your rates provide the page 700 on that basis.

"If you have a crude or a petroleum product system, you should provide a separate set of 700 for those two distinct systems."

That is all we are asking for.

That way the shipper can make the evaluation and talk to the pipeline, and say, "Are you sure you want to do this because I do not think this is right."

There can be a dialogue and if that dialogue goes nowhere they have the option of filing a complaint with the Commission and let the Commission resolve that.

It is no different than it is today under the current system.

MS. COOK: Hypothetically, pipelines have the option, and I am not talking specifically segment on crude and products, but on geographics segments, for example, those are broken down or noted in the Form 6.

Hypothetically, if pipelines were kind of forced to do this type of segmentation that you are requesting, would it not be easier just to say, "We do not do segments anymore?" and then we are back into a litigated or to a rebuttal of presumption of folks fighting over that definition?

MR. ADDUCCI: What I would say is this. In that hypothetical the pipeline has a choice to correct what Mr. Van Hoecke had said earlier, "I am looking directly the refiled tariff sheets and the edit price in the TEPPCO proceeding where they said, 'We have a cost to service and we are separating that into a Northern and Southern segment.'"

That means you have two costs of service, no matter how you cut that, that means you have two costs of service.

If they come in and they file their Form 6, page 700, and say, "We have one cost of service," and they are filing with you that says that they made a representation to the Commission that they have two costs of service, two segments for that pipeline, the shipper can bring that to the Commission's attention, and say, "You agree with this?" or they can bring an action, a complaint, a challenge with the Commission to say, "This is not accurate in our opinion. The pipeline has designed its rates based on two costs of service.

"Now they are saying one cost of service. We have no way to determine how to evaluate the reasonableness of these rates.

"Please direct the pipeline to tell us how you look at this."

But they could file a complaint too, and say, "That's the case. You are doing a total cost of service. We don't believe the rate based on an average barrel mile basis is appropriate."

We are in the same position right now. It is not going to change anything.

If the pipeline wants to game the system by changing the wording in its Form 6, to say, "We really don't have a Rocky Mount system. We have a pipeline that runs through this area and we have a pipeline that runs through this area and it is not really the Northern system or it is not really the Central system anymore."

They renamed it. If they want to game the system, it is going to cause problems, but we don't think the pipelines are in the process of trying to game the systems and neither are the shippers.

We want the information so that we can have some transparency and the valuation of reasonableness of rates.

MR. VAN HOECKE: Yes, Mr. Adducci and I look at what TEPPCO did differently. They filed total company information and then they provided the Commission with allocations down for those others but, he and I will probably not agree.

That case settled. There was no determination on who was right because the shippers are arguing an entire system rate design. The pipeline was arguing something different.

It seems part of the issue here is the petitioners are asserting that all pipelines should have an increased burden, so for those few times the Commission does have a litigated rate case it could be more streamlined and there is no justification for that increased burden.

One of the concerns that we have is this data is not being captured at this level of detail. Pipelines are not, despite what some of these people on the panel are suggesting, are not segmenting in their information on an ongoing business nor business by reporting basis.

When they have a rate case, yes, they will do that.

In fact, REG typically has done that. I have a good idea of what the time estimate has been because I have prepared those segmented analyses.

If you are doing it in ten hours or 100 hours you are taking some total company costs of servicing and you are hitting it with some broad gross allocation on barrel miles or something very simple which is not going to be reasonable.

Part of the concern I have here is people keep throwing out this term cross-subsidization as if there has been some predetermined notion that each segment or system should contribute equally to cover overhead and common cost and the Commission has never established that.

In 561 the Commission said point blank, "that fully allocated cost was not the standard that was going to be applied to oil pipelines, that pipelines could come in and argue that overhead costs can be recovered under some other form and so the notion that we are going to take the total company and just allocate it based on barrel miles or barrels or some other mechanism like the mass formula or the KM formula, to assume that every segment must then recover that level of cost is arbitrary and it is inappropriate and it will lead to bad ratemaking and bad policy.

If we are going to create segments and have reporting based on how rates are being established so carriers can then look at the cost of service then we need to come through and say for everyone who doesn't set rates based on cost of service whether it is market-based rates or contracts they no longer need to file page 700 because what will be the purpose in filing this when their rates are not even set on a cost of service basis and would not be reviewed on a cost of service basis by the

Commission.

MR. ADDUCCI: That is kind of where I thought Mr. Van Hoecke was going and I was not sure if he was quite there yet, but he has crossed the finish line on this one.

And it is directly contrary to your existing Commission precedent. You have already indicated in the context of Buckeye.

Buckeye came in and said, "Our rates are not set on a cost of service basis. They are set on some other basis.

"You don't need to see our page 700 anymore."

The Commission came back, and said specifically and clearly, "That's not the case."

In fact, they said the Commission explained, page 700 costs in revenue information is necessary to ensure that market-based rates remain within a zone of reasonableness and the mere grant of market-based rate authority does not automatically permit the charging rates outside the zone of reasonableness nor exempt a carrier from the cost and revenue reporting requirements such as would permit appraisal of the just and reasonableness of the rate charged.

The Commission in Order No. 572 discussed the use of Form 6 data as a way to monitor market-based rates.

What Mr. Van Hoecke is saying is not accurate. It is not what the Commission precedent is saying.

The DC Circuit has indicated that the cost of service information is relevant to evaluating market-based rates or rates that are established on some other method other than cost of service.

I disagree with that and I'm sure Mr. Van Hoecke disagrees with my recitation too.

MS. COOK: Mr. Van Hoecke, I know that you vehemently disagree with a lot of these characterizations and you said earlier that contrary to a lot of the shipper representations, companies do not do internal cost of services on specific business units or something like that.

Would you elaborate a little bit based on your knowledge of what exactly how businesses decisions are made without a similar analysis?

MR. VAN HOECKE: I actually worked for an oil pipeline carrier for almost thirteen years, so I have direct experience in how business decisions are made and also on my consulting career of 17 to 18 years, I have worked with mostly all pipeline companies in the United States and with their senior management on these type of issues.

Pipelines do not take their overhead and allocate it down to individual segments and then make decisions on the number of accountants that they are going to maintain in their general office.

That would be a foolish decision. That is not how decisions are made. Management will look at the size of overhead and the support facilities to determine whether that is the appropriate and efficient for the operation that they have.

They don't go through and make allocations of parent company overhead cost or pipeline company overhead costs down to individual movements.

When you get into a rate proceeding the shippers are asked for this information, the ALJs will always provide it and tell the carrier they have to provide it and when they do it typically takes months to prepare this information.

If this was a ten hour or a 90 hour exercise you would have it done within the normal discovery turnaround cycle of ten or fifteen days.

Management will look at different business units, be it the shared overhead cost centers or the individual operating segments or cost centers and decide what is the right level of resources they need there and they don't look at it on a cost of service basis.

Management is not sitting here judging, "how many people I need at a terminal based on what my cost of service is?"

Cost of service is not the performance metric that is being used by pipeline managers day in and day out and definitely not on allocated basis.

I can go through a much longer explanation why from an economic basis it would be improper for an oil pipeline to turn down new business just because it is not contributing the same level of cost recovery to overhead as another segment might.

As long as that pipeline movement is contributing some cost to cover fixed income and overhead cost, it is actually beneficial for the pipeline and the shippers to bring that new business on the system.

The notion that every segment must somehow recover an equal portion of the shared costs or an equal portion of these overheads leads you down the decision-making path that if somebody is not recovering that level of overhead or common costs, then that is a line of business that we do not want to have and if you take that process to its ultimate conclusion you get into what I call the death spiral.

You start throwing out profitable business because it is not contributing as much as what another segment is.

What that does is it shifts that overhead in common cost business back across the remaining business on your system.

That would be a very bad ratemaking and policy for the Commission to establish.

MR. ADDUCCI: When I hear Mr. Van Hoecke is saying is he may disagree with how the rate design should happen and currently with the Commission, but I do not think he has answered your question.

Does a pipeline look at a pipeline segment or a system and determine whether it is recovering its costs?

Do they do that?

It is implausible for me to believe that a pipeline does not look at an established segment on its system, and say, "Do my rates cover the costs?" and that's what the page 700 does.

The page 700 gives you costs, revenues, and operational throughput, so that you can look at it from the standpoint of, "Is there an under-recovery or an over-recovery?" and, "What is the magnitude of those costs and revenues?"

We are not talking about rate design. We are not talking about detailed allocations from a litigation perspective.

What we are looking at is whether the costs and revenues and what is the magnitude of the difference?

We are not talking about that rate for a litigated case.

The pipeline has the discretion on how to make that allocation and present the costs and revenues. We just want it on a segment basis.

That is it.

MR. ARTHUR: Actually, I wanted to agree with Mr. Van Hoecke and say that when you are doing segment and cost of service you do do it on a careful basis.

You do not do some broad allocation down from a total company level to the segment, so in the case that we did we built that up from the ground up.

The company had maintained the input data required. We looked at where the allocations were required, made assumptions and allocation factors as necessary and created a cost of service.

When you are making a decision on a rate change which was the purpose of that analysis doing it in any other manner than a cost of service doesn't make sense if the rate change is going to be justified on a cost of service basis.

For cost of service we did was attached to a tariff filing. It was for a cost based rate change which I would argue is as high a standard that could be achieved for accuracy of costs that you want to reflect in that filing.

With respect to rate decisions the cost of service is on a segmented basis is highly relevant and the same perspectives is made by a shipper in evaluating the reasonableness of the rates.

In order to do that it needs to evaluate the costs on the same segmented basis as would be determined in a formal rate hearing.

To do it on another basis could be misleading.

MR. VAN HOECKE: Yes, in response to that, management does not typically look into individual segments. They look at the over company.

Obviously, if you have discreet disaggregated geographically located business units there might be a business unit that someone is reporting and there is some performance reporting there, but they may not still allocate certain overhead costs down to that unit when they are determining the profitability of that unit and they almost for sure never look at their performance on a cost of service basis.

One of the concerns I have about focusing so much on the segment and not on the company as a whole, and Mr. Poyner pointed it out before, I might have a segment and because of the PHMSA requirements or due to right-of-way clearing, or line relocation, or tank painting, something like that, that may incur problematic maintenance expenses on that segment in one period that are higher than what I would incur on the system overall as an average.

Is that going to allow me to come in and ask for a rate increase because all of a sudden I have all of this integrity work and tank painting going on in this segment?

I am only looking at a segment. It is going to look like that. If I am looking at those expenditures over an entire company usually because they are problematic maintenance expenditures the level of those expenditures will stay roughly equal over different periods of time.

But when you start drilling down to minutia you start increasing the variability in the data that you see.

MR. ARTHUR: But getting to that point, and I think I mentioned this earlier, would not this segmented information allow the shippers to see that the changes do to that particular well could be tanked? It wouldn't?

MR. VAN HOECKE: No, and I don't want to cut you off. The way the information is reported you do not have, for example, outside services or maintenance work or things of that nature, you are not going to be able to see the level of activity that is actually generating that which is going to then lead to requests from shippers, that part of the workpapers would include the general ledger of the pipeline so we can see exactly how these various expense categories that are listed in the uniform system of accounts what went into those this year to comprise those.

It's really just expanding more the definition of what workpapers are going to be because now I want to go back see what your general ledger had in it or what your asset ledger had in it so I can break down this line pipe.

I want to know exactly what locations that line pipe comes in at, so no, under the typical cost of service workpapers that are filed, statements A through G in the Commission's regulations you would not see that it was line integrity work or tank painting or right-of-way clearing or any other kind of expenditure that caused that increase in that segment in that particular year.

MR. ARTHUR: Mr. Van Hoecke is correct that you would not see the specific item that caused a change in cost.

What you do see is the cost by FERC account, so you see whether it is salaries and wages. You see whether it is an outside services operating expenses where pipeline integrity costs are typically recorded.

You would see if it was fuel and power or a rental expense or something, so if you see an increase in costs, then you will know the general category where the increase has occurred and you can compare that to other prior years and see is this year extraordinary? Has it gone up or is it extraordinarily low? It could be the opposite situation where you look at the cost of servicing you see an apparent over-recovery, but if that is due to an abnormal drop in one expense level that you would expect to come back up in the latter year based on the prior year's history, then it would not make any sense to believe that that over-recovery is going to persist and that a going forward rate change would be merited.

Why you don't know exactly what's driving the cost changes you do see the broad categories of the costs and have an idea where your costs are recorded and whether they fluctuate on a cyclical basis or not.

MR. FAERBERG: Getting to your point, would there be any changes required to the accounting regulations in order to implement?

MR. ARTHUR: I do not believe there would be any required.

MR. SOSNICK: If I could just add to that before Mr. Van Hoecke's rebuttal?

There is nothing that I wanted to do

follow-up on on comments this morning.

If you do see an increase in one account in one specific area, there is nothing to say that the pipeline cannot put a footnote in the workpapers to explain why this one year on one segment that they did have increased PHMSA costs or tank painting or whatever the issue is.

Additionally, if a shipper is in their preliminary analysis they can each out to the pipeline.

There is nothing here that the dialogue is somehow just on the paper. That sometimes maybe gets lost as this is a starting point and it doesn't have to go to the discovery or asking for more.

It opens a dialogue not necessarily a path to litigation.

MR. VAN HOECKE: Can I respond to that first before you start with your question?

Two things. One, I think you do have an issue with the uniform system of accounts because you are not required to maintain that information at that level of detail.

There may be some pipelines out there that say, "I do not have my cost at that level of detail. I am fully complying with the uniform system of accounts, but if you are going to tell me to do this will I have to come in and do something to allocations and it is going to require an effort to somehow break these costs down that the USA requires that I maintain into specific sectors."

My example earlier about property classifications you will typically record property by property type by the account type and then you will do depreciation under the group method for that entire property classification.

Now you are going to require us to take that down on individual segments, are we now going to start doing the group method of depreciation just on individual segment instead of a total company?

There are some issues around that.

The other thing that we are losing track of here is we keep wanting to come back and evaluate the rates based on cost of service which completely ignores that the Commission established indexing for a specific purpose to be simplified and generally applicable.

If you go back and look at the Commission's discussion of the merits of indexing they say point blank, "We are not going to dive into detailed cost of service analysis to review rates."

We understand that under indexing there is going to be some change between cost and the rates because the index is based on the overall industry average.

What we now hear people saying is, "That is not good enough for us. We want to see the actual carrier changing costs, not the industry average changing costs, and then we want to break that down to the segments and we can make sure that each segment, the changing costs for each segment is tracking the index.

That is far afield from where this started with a general simplified approach and applying an indexing for the year over year rate changes.

If a pipeline comes and files for a cost of service rate increase, absolutely, everything is fair game, the shipper can come in and ask for discovery and can ask for segmented information and ALJs at this Commission have always allowed that information to be provided during discovery.

But to go through a process for every pipeline has to provide this level of detailed information on an annual basis just to fulfill a reporting requirement is a burden that is going to be new.

MR. ANDERSON: Several of us have had some spirited debates down the hall about cost allocation.

The entire issue of cost allocation is contentious and costly to comply with and there are burdens involved.

What I have not heard from the shippers specifically is whether if this segmentation of data is required by us, do you expect the pipelines when they are segmenting data to go to the same level of not only direct assignments but cost allocation in their Form 6, page 700s, the same type of detail that we have seen in litigated rate cases, and if you are not going to do that, are you going to hold them to it?

By that, what I mean is, if they come up with a simplified way to allocate cost, they have two systems 50-50 parents, that is what they are going to do for their new Form 6, say, for example, and then a litigation comes about on those lines or one of those lines, are you going to then say, "Well, in the Form 6 you did it this way, you have to do that way and you cannot change it when there is a litigated case," are you going to hold them to that initial filing?

Because in litigated cases there have been people who have help them to filings, not only FERC filings, but SEC filings and other filings and people have argued whether they should do that or not, that is fine.

This is truly a two-part question.

Do they need that level of specificity when they are doing the initial segmented new version Form 6, and if not, what is their flexibility going forward?

MR. ADDUCCI: I will go first. The level of detail would be what type of an allocation are you making? That is the level of detail. Not broken down to specific line items in the general ledger.

If you have a common cost, what is split, if it's 50-50, it's 50-50, and if it's done on a volumetric basis, tells us that it was done on a volumetric basis.

That is the level of detail.

You are aware as I am from being in other proceedings together that the Form 6 page 700 and the workpapers come in at the very beginning and a lot of times where the pipeline goes after that does not reflect what the page 700 workpapers ever showed in the first place.

We do not hold them to it now. We are not going to hold it to them in the -- well, because we know in the litigation they will take litigated positions and take stuff that they have strategized to say, "This is best for us."

And whether it comports with the page 700 workpapers or not it has not been a concern in the past for pipelines, I do not think it is going to be a concern in the future.

We are looking for the simple allocation. We can look at it. We can determine what they are doing what the basis of that allocation is.

If it is completely contrary to what we believe that the Commission's current policies require we will bring it to your attention or we will raise a complaint, but at least let us see it.

MR. ARTHUR: I would like to add that the current reporting requirements require the allocations to be done, so it requires an allocation of overhead expenses made from a parent entity to the regulated subsidiary that is currently occurring allocations between inter and intrastate operations are occurring, allocations between carrier and non-carrier operations are occurring.

In order to do the segmenting, it involves some additional allocations of common costs that are common between segments, but otherwise would be aggregated.

That's the difference.

Further, if the company has already established a structure, I would expect them to use it. That would be the least cost method as long as they feel it is reasonable you update the inputs to the allocation, out comes a new percent, out comes a new segmented cost of service.

If they want to change that there is a basis for doing so, feel free, and one can evaluate that on the merits if you have the information on how the allocation is done.

MR. ANDERSON: What you are saying as a follow up, they already do a lot of what we litigate about, they already do parent to regulated entity, for example, et cetera, et cetera.

Now it is just one more step?

MR. ARTHUR: Yes.

MR. ANDERSON: You have to go from the

regulated jurisdictional intrastate entity and then just divide it up by however many segments they have.

Is that what you are saying?

MR. ARTHUR: Yes.

MR. ANDERSON: Thanks.

MR. ARTHUR: The second part of your question of whether to hold them to that? I do not believe that is the case currently. The change is between what is put in the page 700 and what the testimony positions are.

MR. SOSNICK: Just to follow up on that. Even in the Form 2 NOPR, there is no expectation that what you see in the Form 6, page 700, is going to be identical to a rate case that is filed if it was filed or a complaint that was filed because of assumptions.

Understanding what allocation methodologies are being utilized by a pipeline you see it, you can agree with it, you can disagree with it, you could file a complaint just based on the allocation methodology.

It is not saying that they are completely tied to that, that that's how their rates have to be justified.

I believe the Commission is looking at this as a preliminary tool for a preliminary analysis, not a tool for a final decision.

MR. VAN HOECKE: I disagree with that that allocation is currently being performed. I have billed clients thousands of hours to do this work.

It is kind of against by best interests to testify that we should not be doing this, quite honestly, it is not being done, so I disagree with what is being said.

There may be a few pipelines out there that may be doing certain types of allocations for other business purposes, but they are not the kind of allocations for ratemaking purposes that would be here at the Commission and that is only a handful of companies that are trying to separate out separate business units or separate non-jurisdictional from jurisdictional activities or things of that nature.

Mr. Adducci said that we should follow whatever current method we are using to allocate and establish the rates and my point is we are not doing that.

The rates are being established by applying an index to a ceiling.

Carriers are not going to through each year and doing these kind of calculations when they are not into a rate case.

In that situation I have no allocations, but my concern is, shippers are not going to be happy if I come forth, and say, "Didn't do an allocation this year, guys, sorry here is the company data."

They are going to come back and say, "No, no, you really should give us this segmented data," and you are going to set up a procedure where they come up in front of an ALJ and then all of a sudden we define segments on my system?

Again, getting back to this point. All of this is based on this notion that somehow each segment, it is appropriate to allocate costs equally across the segment using some allocator. It is a simple example.

Assume you to have two segments and each one of them had $20 worth of direct cost and you had $10 worth of overhead cost for the company, and if the volumes and the capital and everything was the same on both of those segments most of the parties here at the panel would suggest that you are going to allocate $5 to each one of those segments, so you would have a $25 cost of service on both segments.

But if for some reason the activity on Segment A would only recover $22, then the suggestion is, "Well, that $3 is lost," and that is not how I think it appropriate.

If in fact you try to charge that segment $25 and tell that shipper, "You have got to pay me $25 because that is the cost of that segment," they may go somewhere else and you lose that business.

Now that $10 is 100% assigned to the segment where the shippers did not leave and so instead of paying $25 or $28 they are now going to have a $30 responsibility.

This is the logic the Commission used in the Clede Decision in deciding, "You don't have to allocate overhead cost and shared cost equally across all movements."

The Commission has recognized on the gas side with its iterative gas discounting, drilling this stuff down to a segmented level you are starting off with the assumption that it is appropriate to allocate overhead costs equally across all segments and it is wrong.

MR. SOSNICK: I would completely disagree with that. I am not sure anyone on the panel has said that indirect costs or overhead costs should be allocated equally across any business segment and that would be in all of our litigated testimonies as well.

MR. ROIDAKIS: I don't want to say a "red herring." There's no simple way out of this. It seems like there is a lot of contention about how many pipelines will be affected, but to follow-up on Adrienne's question, it seems the pipeline knows where it is making money and where it is not because it would not be prudently running its business otherwise.

They just want a snapshot of that and whether they want it for all pipelines, which I don't understand them as asking, but just for a few that already do their business on a segmented basis, I guess that's for the comments to show.

MR. ASHTON: I have a point that is sort of a follow up to that but it also goes to a prior point is, (a), for those pipelines that would be, if you will, eligible for disaggregation or segmented information, most of them are in fact either making these kinds of cost allocations or if there are not they certainly have all the data available to them to do it, so there may be a one time setup to set up those types of things, but they have got the data, it is broken out that way to do it and it really shouldn't be that burdensome going forward after the initial allocations are made.

The second point is there is an important distinction between indirect costs on the one hand or I do not think any of us is suggesting that these should be broken out equally and then also shared costs which generally use different allocation mechanisms typically more volumetric types of allocations as opposed to more complicated methods, and again, that is the type of data that is all readily available and already collected.

MR. VAN HOECKE: Having the data and being a burden to prepare the calculations are two different things and shippers have not defined kind of segments, so you are asking for people to come forth with estimates of the time required to do the kind of segmentations.

Maybe the petitioner should come forth with specific examples of the carriers, all the carriers they expect to be segmented so we can actually look at that because some people say it is based on tariffs in which case it is a huge increase.

Some people say, no, its only 10% or 15% of the industry, we have no idea what is going to be the argument on what should be segmented and what should not be segmented.

MR. ROIDAKIS: That sounds reasonable.

MR. ADDUCCI: It sounds reasonable, but we don't know what the pipelines are constructing or establishing its rates on.

It may have a tariff with the rate in it on a particular location or geographic basis, but we have no idea whether the pipeline constructs that rate or establishes that rate based on that segment.

We don't know and it is not knowable for us unless we are asking the pipeline to tell us.

"Is that how you do it?"

For us to come in, and say, "Here are all the pipelines that we think are eligible for segmentation." It is not possible to come up with a delineated list.

We can say, "Here are the pipelines that have crude and petroleum products, but we don't know how the pipeline actually designs or constructs its rates for any particular segment."

It could be on a total system basis, but it has a tariff that is geographically based.

MR. ROIDAKIS: Mr. Adducci, that seems different from what Mr. John said in his opening remarks about how it would only affect the small subset.

MR. ADDUCCI: What he was also talking about was say for a specific example.

Let's say SFPP is West Line that goes from California down to Phoenix, Arizona, they have a particular tariff on that, but we also know that because SFPP has been in for a number of various rate filings on its West Line, its East Line, its North Line, and its Oregon Line, right, we know that those are segmented, those are rates that are designed based on that segment's costs and revenues.

Take pipeline XYZ who may have different tariffs, but it may have tariffs that are geographically based in different rates, we do not know exactly how that pipeline has generated or constructed its rates.

So we don't know if those rates should be segmented or not. That's why we would rely on the pipeline.

The pipeline would come in and say, "We do. We construct our rates on a segmented basis." If it does not it says, "No, we have total cost of service," but there is no way, unless the pipeline has actually made an affirmative statement for us to know that that is what the pipeline is doing.

MS. COOK: Mr. Adducci, are you assuming, is it reasonable for us to initiate this rulemaking, targeting essentially we are assuming to be a very small number of pipelines, but you are basically extrapolating based on a handful of pipelines that have been in litigation, so is that extrapolation relevant or necessary or fair in your opinion?

MR. ADDUCCI: I do not believe we are extrapolating at all. We are asking simply: "Does the pipeline have a system or segmented basis?"

We already know that it's our position. I will put it that way. It is our position. You have pipelines that have crude and petroleum products operations. They are completely separate. That should have two separate page 700s.

That is one class.

Now you have another class of pipelines that may have systems or segments within those systems.

We are just asking that if you design your rate on a segmented basis you should provide a page 700 that is consistent with that.

And, yes, we know that there are pipelines out there that do this currently and the Commission agrees.

We have got an example where the pipeline has actually, we know that SFPP has segmented costs of service, right, but we know that the complaints that have been holding in abeyance for the past four or five years cannot go forward without segmented data and there is a process that goes through that.

We know that we have various pipelines that do this. Simply asking the pipeline to declare whether they have segmented rates or not is not that much of a burden.

MS. COOK: I am not sure that SFPP is the best example. It is the only fully litigated pipe that I know of.

You are basing a lot of this on the fact that you can do an SFPP, so is it reasonable to assume that you can do it with others?

MR. ADDUCCI: Right, but you have also got Mid-America. You have also got Buckeye. You have also got Enterprise TEPPCO. You have also got a pipeline Osage had a complaint where it is clear, it should be done on a total system basis.

You have Colonial Pipeline in which was a complaint has been filed, but they said, "It is a total system basis."

We know that.

It is not one pipeline system. It is all of the pipeline systems. They all can make that declaration. We know that the pipelines are looking at it.

If the pipelines says, "We don't look at it on a segmented basis," they file their page 700 accordingly.

MR. VAN HOECKE: First off, I am not sure every crude and refined product pipelines are completely separate.

Some of them may be, but when I worked at Williams, DuPlessis, Magellan we ran crude inside the same pipe that we ran refined products, so you may have shared facilities even though you have two different types of commodities running through those facilities, so I disagree with some of that characterization, someone would have to look at each carrier to make that determination.

Second, most of the rates out there were grandfathered under the Energy Policy Act and have been indexed going forward.

No one has come through and segmented this information for ratemaking purposes.

Yes, there have been some carriers coming in and filing costs of service rate changes which they would have given you total company information based on the Commission's regulation.

Some of them may have drilled down a little bit more for rate design and you have a helpful of cases like SFPP where that information was provided in discovery to shippers.

But for the most part that's not the case where you have companies that have done this.

Their rates are set by taking the index and applying it against the ceiling on a company-wide basis.

The undisputed cases that Mr. Adducci talked about, Mid-America, Buckeye, and TEPPCO, there was not any agreement between the shippers and the pipeline on what the segment should be.

And this case is settled.

Now he is suggesting that the pipeline would come back in and say, "This is how I am going to segment," even though could not agree with the shippers during a litigated proceeding somehow this is not going to be contentious if they come in and do this for their paGe 700 now.

This is trying to make this sound like it is noncontroversial, it is not a burden, but in fact you are biting off an awful lot more here than what they are playing it out to be.

MR. FAERBERG: I am sure the shippers are going to be upset. You get the last word for now.

Let's talk about further procedure. Obviously we have a comment period set up for September 25 for initial and October 30 for reply.

I have learned a lot. This is very valuable to get this kind of discussion.

A lot of the details are going to have to be worked out in the comments.

The staff has their things, but what I would like to see and what has been talked about, certainly, I would like to address the statutory issue that the Chairman brought up about whether this is allowed under the Energy Policy Act or not.

Obviously that is something that we would want to see in comments.

As far as the shippers are concerned, I would like to see what is this page 700 going to look like? How many versions are we going to potentially have, if there are segmentation disputes? We will go by what Mr. Adducci said, they will make a declaration and were segmented or not, but then if it comes up at some point in time how do we resolve those things?

Would there be some sort of update if somehow the systems change?

If we get to the workpapers, what procedures would we have for discovery disputes on confidentiality or the scope of what workpapers mean?

I mentioned earlier some sort of an ALJ doing this. Another option is similar to interlocutory appeals where perhaps we could have some sort of Commissioner designated?

These are all things you all should be thinking about.

Also any kind of proposed Reg text changes to the regulations, changes to instructions, and then some of the things that Mr. Arthur and Mr. Sosnick talked about with the workpapers sort of these technical details of how they would be constructed, talking about putting in certain types of formats and things like that.

We would definitely like to hear things about the burden, the regulatory course, the hours, things that Mr. Van Hoecke and some of these other panelists have talked about so everybody can sort of get an idea.

That's all I have. Then that's it. In the afternoon there is the Conference on the Index at 2 o'clock and we will break it up here. Thank you.