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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Sunoco Pipeline L.P. Docket No. OR05-7-000

ORDER ON APPLICATION FOR MARKET POWER DETERMINATION AND ESTABLISHING HEARING PROCEDURES

(Issued January 19, 2006)

1. On April 12, 2005, Sunoco Pipeline L.P. (SPLP) filed an application seeking authority to charge market-based rates for the transportation of refined petroleum products from origin points in the Detroit, Philadelphia, Pittsburgh, Rochester, and Toledo BEAs[1] to destination points in the Cleveland, Detroit, Harrisburg, New York, Philadelphia, Pittsburgh, Scranton, and Toledo BEAs.

2. ConocoPhillips Company (ConocoPhillips) filed a Motion to Intervene, Protest, and Request for Discovery and Hearing. ConocoPhillips maintains that SPLP fails to justify its request for market-based rate authority for origin and destination points on the Twin Oaks line, which includes points in the Philadelphia and New York BEAs. Valero Marketing and Supply Company (Valero) filed a Motion to Intervene and Comments. Valero questions the validity of SPLP's use of BEAs to define its geographic destination markets.

3. As discussed below, the Commission grants SPLP authority to implement market-based rates in the unchallenged origin markets of Detroit, Pittsburgh, Rochester, and Toledo, as well as the challenged destination markets of Detroit, Philadelphia, and New York. The Commission will establish a hearing to determine whether SPLP has the ability to exercise market power in the challenged Philadelphia origin market and the challenged Cleveland, Harrisburg, Pittsburgh, Scranton, and Toledo destination markets.

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[1] A BEA is an "Economic Area" defined by the Bureau of Economic Analysis of the U.S. Department of Commerce. The Bureau redefined these areas in 2004 to reflect more current commuting and trading patterns, which resulted in an increase in the number of BEAs from 172 to 179.

I. Background

4. SPLP states that it is a subsidiary of a newly-formed master limited partnership, Sunoco Logistics Partners L.P (Logistics). According to SPLP, Logistics acquired from Sunoco, Inc. most of the assets related to this application. SPLP explains that the pipeline system consists of two areas, although only the Eastern-area portion of the system is involved in the instant application. SPLP states that this portion of the system, which transports refined petroleum products, including gasoline, jet fuel, and distillates, is located primarily in the midwestern and northeastern regions of the United States.

II. Markets Addressed in SPLP'S Filing

5. SPLP states that it seeks market-based ratemaking authority for pipeline movements that are delivered to the following markets:

a. Cleveland-Akron, Ohio-Pennsylvania – BEA No. 35 (Cleveland or BEA No. 35)

b. Detroit-Ann Arbor-Flint, Michigan – BEA No. 47 (Detroit or BEA No. 47)

c. Harrisburg-Lebanon-Carlisle, Pennsylvania – BEA No. 70 (Harrisburg or BEA No. 70)

d. New York-North New Jersey-Long Island, New York-New Jersey-Connecticut-Pennsylvania-Massachusetts-Vermont – BEA No. 118 (New York or BEA No. 118)

e. Philadelphia-Camden-Vineland, Pennsylvania-New Jersey-Delaware-Maryland – BEA No. 127 (Philadelphia or BEA No. 127)

f. Pittsburgh, Pennsylvania-West Virginia – BEA No.129 (Pittsburgh or BEA No. 129)

g. Scranton, Pennsylvania – BEA No. 151 (Scranton or BEA No. 151)

h. Toledo, Ohio – BEA No. 166 (Toledo or BEA No. 166).

6. SPLP also seeks market-based ratemaking authority for pipeline movements that originate in the following markets:

a. Detroit-Ann Arbor-Flint, Michigan – BEA No. 47 (Detroit or BEA No. 47)

b. Philadelphia-Wilmington-Atlantic City, Pennsylvania-New Jersey-Delaware-Maryland – BEA No. 127 (Philadelphia or BEA No. 127)

c. Pittsburgh, Pennsylvania-West Virginia – BEA No. 129 (Pittsburgh or BEA No. 129)

d. Rochester, New York-Pennsylvania – BEA No. 139 (Rochester or BEA No. 139)

e. Toledo, Ohio – BEA No. 166 (Toledo or BEA No. 166)[2]

III. Interventions, Protest, Comments, and Answers

7. ConocoPhillips protests the application. ConocoPhillips states that it is a shipper on the Twin Oaks line from origin markets in the Philadelphia BEA to destination markets in the New York BEA and thus has a substantial economic interest in this proceeding. In general, ConocoPhillips alleges that SPLP employs overly broad and arbitrary market definitions and fails to provide specific facts pertinent to the issue of market power along the Twin Oaks line. ConocoPhillips asks the Commission to establish hearing and discovery procedures.

8. Valero filed a motion to intervene and adverse comments. Valero states that its affiliated refinery is a competitor of SPLP's in the Harrisburg, New York, and Philadelphia destination markets. Valero contends that it also has a substantial economic interest as a potential shipper because of its acquisition of Premcor Inc. (Premcor), which Valero believes is a past, current, and/or future shipper on SPLP's pipelines.[3] Valero further points out that Premcor owns refineries in Delaware City, Delaware, and Lima, Ohio, which SPLP also has identified as potential competitors in the Cleveland, Detroit, Harrisburg, New York, Philadelphia, Pittsburgh, Scranton, and Toledo destination markets.

9. Valero questions the validity of SPLP's use of BEAs to define the geographic markets with respect to all the destination markets named in this application. Valero

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[2] SPLP explains that its refined products pipeline system also delivers product to Syracuse, New York-Pennsylvania – BEA No. 162; Rochester, New York-Pennsylvania – BEA No. 139; Buffalo-Niagara Falls, New York-Pennsylvania – BEA No. 23; and State College, Pennsylvania – BEA No. 163. However, SPLP states that this application does not seek authority to charge market-based rates in these markets.

[3] In a press release issued September 1, 2005, Valero announced the completion of its merger with Premcor.

contends that SPLP's use of such broad destination markets calls into question the validity and reliability of SPLP's claimed good alternatives in the market, its market share claims, and its related market power statistics.

10. In its answer, SPLP points out that ConocoPhillips' protest addressed only one origin point within the Philadelphia market and one destination market -- New York. Therefore, SPLP requests summary disposition of the other unchallenged origin and destination markets. Further, SPLP contends that there is no basis for establishing an investigation and hearing, even with respect to the challenged markets. SPLP maintains that the Commission previously found the Philadelphia origin and New York destination markets to be sufficiently competitive to warrant market-based ratemaking authority for Colonial Pipeline Company (Colonial), which has a larger market share than SPLP in both markets.[4] SFPP further asserts that ConocoPhillips' protest is legally flawed in that it uses the discredited corridor approach to define the geographic market, improperly focuses on only one product, rejects potential competition and other competitive alternatives, and fails to account for a common carrier's obligation to provide non-discriminatory service.

11. ConocoPhillips responds that SPLP's answer should be rejected as unauthorized and that, in any event, this proceeding involves material factual issues, so SPLP's request for summary disposition should be denied.

12. While the Commission's market power regulations do not provide for answers to protests, in this case the Commission will accept SPLP's answer and ConocoPhillips' response to that answer. These pleadings provide additional information relevant to the issues raised by SPLP's application; accordingly, the Commission finds that good cause exists to accept these pleadings.

IV. <u>Discussion</u>

13. No party challenges the Detroit, Pittsburgh, Rochester, and Toledo origin markets. The Commission has examined the portion of SPLP's filing that addresses these markets and concludes that the definitions of the markets and SPLP's market shares are not material issues in this proceeding. Accordingly, the Commission concludes that SPLP

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[4] SPLP cites *Colonial Pipeline Co.*, 95 FERC ¶ 61,377 (2001). SPLP also contends that the Commission stated in Order No. 572, "If a record about a market has been established in an oil pipeline proceeding, another oil pipeline may make use of all or part of that record in satisfying its burden to present information to the extent the other record contains relevant public information which is not out-of-date." *Market Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,007 at 31,187 (1994).

can be authorized to utilize market-based rates for shipments originating in these markets. For the same reasons, the Commission also grants SPLP the authority to charge market-based rates in the challenged Detroit, Philadelphia, and New York destination markets.

14. However, as discussed below, the Commission sets the challenged Philadelphia origin market and the challenged Cleveland, Harrisburg, Pittsburgh, Scranton, and Toledo destination markets for hearing.

A. Applicable Standards

15. Section 348.1 of the Commission's regulations requires an oil pipeline seeking a market power determination and authority to charge market-based rates to: (1) define the relevant product and geographic markets, including both destination and origin markets; (2) identify the competitive alternatives for shippers, including potential competition and other competition constraining the pipeline's ability to exercise market power; and (3) compute the market concentration and other market power measures based on the information provided about competitive alternatives.[5]

1. Market Definitions

a. Product Market

16. SPLP states that the relevant product market is the service of receiving (origin markets), and delivering (destination markets) refined pipelineable petroleum products including motor gasoline, jet fuel, kerosene, distillate fuel, and aviation gasoline. SPLP maintains that its shippers determine the exact mix of products transported at any particular time based on market conditions. SPLP also asserts that the Commission does not require pipelines to segment their markets by product.[6]

17. ConocoPhillips argues that SPLP relies on a broad definition of the relevant product as pipelineable refined petroleum products in the aggregate, without distinction between the types of products. However, ConocoPhillips points out that there are physical and legal constraints that affect the ability of refineries to shift production among products and to shift shipments among transportation alternatives.

18. SPLP responds that ConocoPhillips' criticism is inconsistent with Commission precedent, which defines the applicable product market as the transportation of refined

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[5] 18 C.F.R. § 348.1(c) (2005).

[6] SPLP cites *Buckeye Pipe Line Company, L.P.*, Opinion No. 360, 53 FERC ¶ 61,473 at 62,663-64 (1990) (*Buckeye*).

petroleum products in general, rather than the transportation of any individual product.[7] SPLP contends that ConocoPhillips' argument ignores the fact that pipeline service is not segmented by product.

19. ConocoPhillips' challenge to the applicable product market focuses primarily on the types of products shipped to the New York/New Jersey metropolitan area. That challenge is discussed in greater detail below. However, the Commission finds that, with respect to other markets addressed by SPLP's application, the pipeline's definition of the relevant product market as refined petroleum products is appropriate for this proceeding.

b. Geographic Markets

20. SPLP proposes the use of BEAs as the relevant geographic markets, emphasizing that the Commission previously has accepted the use of BEAs in this manner. However, SPLP acknowledges that, in Order No. 572, the Commission stated that the pipeline retains the burden of justifying its geographic market definition.[8]

21. SPLP asserts that the geographic market definition is used to identify an area in which the price of the relevant product is largely determined by the buyers and sellers within that area. According to SPLP, the relevant geographic market for evaluating the degree of competition faced by an oil products pipeline should be defined as the supply of refined petroleum products from all sources available for delivery to a buyer at a given destination.[9] SPLP explains that it has evaluated the competition it faces for the receipt of product (the origin market analysis), as well as for the delivery of product (the destination market analysis), consistent with the Commission's previous decisions, which establish a preference for separate origin and destination market analyses rather than corridor analyses.[10]

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[7] *Id*.

[8] *Market Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,007 at 31,188, *order on reh'g*, Order No. 572-A, 69 FERC ¶ 61,412 (1994).

[9] SPLP cites *Williams Pipe Line Co*., Opinion No. 391, 68 FERC ¶ 61,136 at 61,600-61 (1994), *order on reh'g*, Opinion No. 391-A, 71 FERC ¶ 61,291 at 61,131-32 (1995); *Buckeye Pipe Line Company, L.P*., Opinion No. 360, 53 FERC ¶ 61,473 at 62,665 (1988), *order on reh'g*, Opinion No. 360-A, 55 FERC ¶ 61,084 at 61,260 (1991).

[10] SPLP cites *Buckeye Pipe Line Company, L.P*., Opinion No. 360, 53 FERC ¶ 61,473 (1990); *Williams Pipe Line Co.*, Opinion No. 391, 68 FERC ¶ 61,136 (1994); *Kaneb Pipeline Co*., 83 FERC ¶ 61,183 (1998); *Longhorn Partners Pipeline, L.P.*, 83 FERC ¶ 61,345 (1998); *Explorer Pipeline Co*., 87 FERC ¶ 61,374 (1999).

22. SPLP states that a BEA represents a group of counties that have an economic inter-linkage, normally a major city that is the hub of economic activities, along with the surrounding counties, which may be part of an adjoining state. According to SPLP, the logical definition of a geographic market includes all companies that could provide a similar service or product economically. SPLP maintains that, in this proceeding, BEAs conservatively represent geographic markets large enough to include the closest alternatives to which SPLP's shippers could reasonably turn to avoid any price increases by SPLP.

23. Additionally, SPLP maintains that the Commission has defined a destination market as the area that can be served by trucks from a supply point, such as a refinery, pipeline, or barge terminal within the BEA. Typically, continues SPLP, these supply points are located near the central city of the BEA, and trucks emanating from these supply points normally deliver refined products to retail outlets throughout the BEA and to locations beyond the BEA boundary. SPLP asserts that its analysis of actual trucking distribution patterns supports the use of BEAs as a conservative approximation of the geographic markets.

24. SPLP also contends that trucking is an essential distribution aspect of refined petroleum product competition. While SPLP acknowledges that the Commission has not endorsed a specific mileage limit, SPLP emphasizes that the Commission has indicated that truck hauls of approximately 100 miles from the BEAs may constitute viable competition in certain instances.[11]

25. SPLP also explains that it has analyzed actual movements of trucks from its affiliate's terminals within both 75-mile and 100-mile maximum economic trucking distances. SPLP states that it factored into its calculations external sources located adjacent to the BEAs because they represent viable competitors. Further, continues SPLP, in calculating the market power statistics, it has adjusted the capacities of these external sources downward based on the portions of a destination market that the external sources can serve economically.

26. Valero challenges the use of BEAs as relevant geographic markets, contending that, when questions are raised concerning the appropriateness of geographic market definitions, the Commission requires the applicant to justify its proposed geographic markets and alleged alternatives based on a detailed cost analysis.[12] ConocoPhillips agrees. Valero argues that SPLP has failed to present any such analyses demonstrating

[11] SPLP cites *Williams Pipe Line Co.*, 68 FERC ¶ 61,136 at 61,676 (1994).

[12] Valero cites *TE Products Pipeline Company, L.P.*, 92 FERC ¶ 61,121 at 61,467 (2000); *Shell Pipeline Company, L.P.*, 103 FERC ¶ 61,236 at P 33-35 (2003).

that the BEAs reflect the relevant markets or that all of its claimed alternatives associated with the BEAs are good alternatives in terms of price. Moreover, Valero asserts that the Commission recently rejected use of BEAs in S*hell Pipeline Company, L.P*. as insufficient evidence of geographic markets to permit a market power determination.[13]

27. Valero further argues that the issue of determining appropriate geographic boundaries for the relevant destination markets is highlighted by the high Herfindahl-Hirschman Index (HHI)[14] results (in excess of the 2500 HHI threshold) in several BEA/geographic markets at issue in this case. Indeed, states Valero, SPLP had to include alleged competitors within 75 and 100 miles of the already broadly-defined BEAs so that it could reduce the claimed HHIs to something near or below the 2500 level.

28. Valero contends that SPLP's reliance on Order No. 572 ignores more recent precedent, which establishes a preference for detailed cost and price analyses.[15] Valero also claims that SPLP does not identify the "Commission findings" that SPLP contends support its claim that BEAs are appropriate based on distances over which trucking can compete effectively.

29. Valero questions the relevancy of SPLP's bills-of-lading study as support for the use of BEAs as geographic markets. Valero suggests that an additional problem with the study is its apparent reliance on the transportation of branded product. In contrast, contends Valero, the focus must be on the market for unbranded petroleum products, which are fungible commodities when the fundamental basis for choice among alternative sources is cost. As such, argues Valero, the market for unbranded petroleum products is the market that would be most affected by a change in SPLP's transportation rates.

30. Additionally, Valero asserts that, although cost can play a factor in transportation decisions, it is not the only factor in the transportation of branded products, which are not fungible commodities. Rather, argues Valero, petroleum companies are obligated to serve their branded stations, and that often requires trucking product supply from inefficient sources based on the location of available branded supply. Thus, Valero

[13] Valero cites *Shell Pipeline Company, L.P.*, 103 FERC ¶ 61,236 at P 36 (2003).

[14] The HHI is a measure of market concentration in a market. The application of the index in this proceeding is discussed in greater detail below.

[15] Valero cites *TE Products Pipeline Company, L.P.*, 92 FERC ¶ 61,121 at 61,467 (2000); *Shell Pipeline Company, L.P.*, 103 FERC ¶ 61,236 at P 31-36 (2003).

maintains that geographic area in which branded product is delivered from a terminal cannot be considered as a reliable proxy or indicator of the area in which a terminal can compete successfully on the basis of price.

31. The Commission has reviewed SPLP's supporting information regarding BEAs, including maps that reflect the geographic size of each BEA, the counties constituting each BEA, and the major population center(s) in each BEA. In addition, the maps show the general location of competing pipelines, refineries, and waterborne carriers. The Commission also has reviewed SPLP's documentation relating to the capacity/production capabilities of SPLP's supply alternatives in each BEA. The BEAs addressed in SPLP's application are relatively small or medium in size, and most of the BEA suppliers are within close proximity of each other and the population centers of the BEAs. After reviewing SPLP's application, the Commission finds that the BEAs appropriately define SPLP's geographic markets.

32. However, the Commission shares the intervenors' concern regarding SPLP's use of alternatives that are as much as 100 miles outside a BEA to justify its claimed lack of market power in the BEAs. The Commission requires an applicant to provide a detailed justification for its use of a BEA if a protest raises a reasonable doubt about the use of that BEA as an appropriate geographic market. In this case, the Commission finds that SPLP's bills-of-lading study is not sufficient justification for including alleged good alternatives that are from 75 to 100 miles outside a BEA. This study only proves that external supply was delivered into a BEA from an SPLP-affiliated terminal outside the BEA. It does not demonstrate that all of the alternatives within the BEA are good alternatives in terms of price.[16]

33. As part of its application, SPLP provided the estimated amount of product delivered into each BEA during 2004 by pipelines, refiners, and waterborne carriers. In addition, SPLP estimated the amount of product trucked into each BEA. In four of the destination markets (including Philadelphia, Scranton, Toledo, and one other), SPLP estimated that zero product (as a percentage of the market's consumption) was trucked into these BEAs during 2004. While SPLP states that its bills-of-lading study supports supply alternatives up to 100 miles from each BEA, in fact, for Pittsburgh, Scranton, and Toledo, it is necessary to include alternatives within either 75 to 100 miles before the HHI levels fall below 2500. This apparently conflicting information regarding external supplies trucked into the BEAs calls into question the value of the bills-of-lading study. Accordingly, the Commission has reviewed the market statistics supporting each challenged destination market solely on a BEA basis.

[16] *TE Products Pipeline Company, L.P.*, 92 FERC ¶ 61,121 at 61,466 (2000)**;** *Shell Pipeline Company, L.P.*, 103 FERC ¶ 61,236 at P 33 (2003).

34. In *Colonial Pipeline Company, L.P.*, the Commission rejected the inclusion of external sources of supply for two destination markets and analyzed those markets based on market power statistics computed only for the BEAs. In that order, the Commission stated as follows: "[A]dopting some standard radius (*e.g.*, 75 miles) for accepting external sources as good alternatives completely disregards the importance of the price of the product (*e.g.*, price of gasoline) in determining whether an external source is good alternative."[17]

35. Additionally, in discussing destination markets in that order, the Commission stated as follows:

> As with origin markets, the Commission requires applicants to justify alternatives outside the boundary of the BEA containing a delivery terminal by comparative delivered price studies showing that these external alternatives are good alternatives in terms of price:
>
> > In a market power analysis, the Commission must determine the oil pipeline's ability to exercise market power over this transportation service. However, a market power analysis in general cannot be made solely in the context of transportation rates. Where competitive alternatives constrain the applicant's ability to raise transport prices, the effect of such constraints are ultimately reflected in the price of the commodity transported. Hence, the delivered commodity price (relevant product price plus transportation charges) generally will be the relevant price to be analyzed for making a comparison of the alternatives to a pipelines' [sic] service.[18]

c. <u>Measure of Market Concentration</u>

36. SPLP proposes to use the HHI as a measure of market concentration in its application. The HHI measures the likelihood that a pipeline will exert market power in concert with other sources of supply. An HHI is derived by squaring the market shares of all the firms competing in a particular geographic market and adding them together. The HHI can range from just above zero, where there are many small competitors in the market, to 10000, where the market is served by a single monopolist. A high HHI

[17] *Colonial Pipeline Company, L.P.*, 92 FERC ¶ 61,144 at 61,537 (2000).

[18] *Id*. at 61,534, *citing Market-Based Ratemaking for Oil Pipelines*, Order No. 572, 59 FR 59148 (Nov. 16, 1994), FERC Stats. & Regs. [Regs. Preambles, 1991-1996] ¶ 31,007 at 31,189 (1994).

indicates significant concentration, which means that a pipeline is more likely to be able to exercise market power either unilaterally or through collusion with rival firms in the market.

37. The HHI for a market can be computed in several ways. For destination markets, the Commission's capacity-based method measures the effective capacity available after allowing for pipeline, refinery, truck, and barge capacity that may be committed to serving other markets and, therefore, not available to serve the market at issue. This measure also specifically allows for the additional capacity to which shippers could turn if the pipeline were to attempt to raise its rates above competitive levels. Under this methodology, each company is allocated a share of capacity based upon the lesser of its capacity or the total market's consumption. This number is then divided by the aggregate of these effective capacity measures to yield each company's calculated capacity share. Next, these numbers are squared and aggregated to derive a capacity-based HHI. This method causes pipelines or refineries with larger capacities to be allocated larger shares of the market.

38. The HHI also may be calculated in accordance with the U.S. Department of Justice (DOJ) methodology, under which the total consumption for a market is divided by the number of participants in the market, and the result is allocated to each competitor (*i.e.*, initially equal market shares). If a company does not have the capacity to transport its allocation, it is assumed to be able to supply its capacity while its remaining market share is allocated equally among the other companies with unmet capacity. Once all consumption has been allocated, the result is each company's calculated capacity share, then these numbers are squared and aggregated to derive the DOJ adjusted capacity HHI.

39. SPLP also provides delivery-based information for 2004. It is based on SPLP's estimate of actual deliveries made to a destination market by pipelines, waterborne sources, and truck from external BEA sources. SPLP also includes the market share applicable to each of these sources. Unlike the capacity-based information, this information does not address whether there is additional capacity to serve the market in the event of a price increase by the applicant, but instead measures deliveries by supply sources at a specific moment in time.

40. For each of its proposed origin markets, SPLP computed a capacity-based HHI and a DOJ adjusted capacity-based HHI. A capacity-based HHI is based upon the estimated effective capacity a pipeline has to move products from an origin market; thus, it addresses whether there is additional capacity to move products from a market in the event of a price increase by the applicant. SPLP also provides receipt-based information estimated for 2004. This includes an estimate of the amount of product actually consumed in the origin market, the actual amount of product estimated to have been transported from the origin market by pipelines, truck and waterborne carriers, and the market share of each of the transportation alternatives during 2004.

41. Within each BEA, the Commission began its review with its traditional analysis based on HHIs and other market power measures. Specifically, the Commission reviewed SPLP's application of the Commission's effective capacity HHI method and the DOJ adjusted capacity HHI method, as well as SPLP's effective capacity market shares and the excess capacity ratios for the destination markets. While the Commission has not imposed stringent screening guidelines regarding HHI figures or market shares,[19] they are nonetheless often utilized as competitive market indicators.

42. No party challenges use of the HHIs, and the Commission accepts the use of HHIs as the initial screen for determining whether SPLP has the ability to exercise market power in the contested origin and destination markets in this proceeding.

2. Contested Origin Market - Philadelphia

43. SPLP states that all refined product that it ships from the East Coast originates in the Philadelphia BEA. According to SPLP, the BEA contains six refineries that produce approximately 955.0 MBD, approximately three times the BEA's local consumption of 329.4 MBD. Thus, SPLP contends that these refineries must export a large portion of their production. SPLP further states that there are 11 pipelines owned by five different companies that have the ability to ship 1,199.9 MBD out of this market.[20] Additionally, SPLP explains that approximately 73.6 MBD of product is shipped out of the market from 49 docks on the Delaware River, which have an aggregate shipping capacity of 2,264.0 MBD.

44. SPLP asserts that its effective capacity-based market share is only 24.4 percent of this market's production. SPLP states that the DOJ approach results in an HHI of 783,

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[19] In previous cases, the Commission employed an HHI range of 1800 to 2500 as an initial screen, and then reviewed the pipelines' market shares and other factors to determine whether the pipelines possessed significant market power. *Buckeye Pipe Line Company, L.P.*, 53 FERC ¶ 61,473 at 62,666-68 (1990), *order on reh'g*, 55 FERC ¶ 61,084 at 61,254 (1991); *Williams Pipe Line Co.*, 68 FERC ¶ 61,136 at 61,670-72 (1994), *order on reh'g*, 71 FERC ¶ 61,291 at 62,127 (1995); *Kaneb Pipeline Co.*, 83 FERC ¶ 61,183 at 61,761 (1998); and *Longhorn Partners Pipeline, L.P.*, 83 FERC ¶ 61,345 at 62,381 (1998). The HHI figures of 1800 and 2500 are indicators typically used by pipelines applying for market-based rates to reflect what they feel is an accurate depiction of tolerable levels of concentration based on DOJ's *Oil Pipeline Deregulation* study and DOJ's/Federal Trade Commission's (FTC) *1992 Merger Guidelines.*

[20] SPLP states that it operates two additional pipelines that receive product in BEA 127; however, they also terminate within that market and are not included here.

while the Commission's approach produces an HHI of 1791, both of which are below the most conservative threshold of 1800, indicating that SPLP cannot exercise market power in this origin market.

45. ConocoPhillips challenges SPLP's product market definition for the Philadelphia origin market, contending that its definition is too broad and should distinguish between the types of refined petroleum products and consider the physical and legal constraints affecting the ability of refineries to shift production among products and to shift shipments among transportation alternatives.

46. Additionally, ConocoPhillips points out that there are legal constraints affecting the ability of purchasers at product terminals to switch to other terminals. In particular, ConocoPhillips cites the restrictions on the types of gasoline that can be sold in the New York/New Jersey metropolitan area and states that these restrictions would limit the alternatives available to obtain an equivalent substitute product in the event of a price increase by SPLP. Further, ConocoPhillips states that a portion of the Trainer refinery is designed to produce reformulated gasoline (RFG) and that it is economically unattractive to switch to the production of other refined products, which limits the alternatives for moving gasoline from that refinery.

47. ConocoPhillips asserts that SPLP has failed to address the recent standards articulated by the Commission for defining contested origin markets and identifying competitive alternatives.[21] ConocoPhillips further submits that the proper method for determining good alternatives in terms of price for origin markets is to compare the netback price to the shippers (the price after all costs of delivery). ConocoPhillips emphasizes that SPLP has provided no netback information or analysis in determining good alternatives to the Twin Oaks line. Specifically, continues ConocoPhillips, SPLP has not shown that the Trainer refinery would have any actual competitive alternatives in the event SPLP sought to charge monopolistic prices on the Twin Oaks line.

48. ConocoPhillips explains that the Trainer refinery is the only shipper that delivers product into the Twin Oaks line at the Chelsea origin point and that the Premcor refinery and SPLP's affiliated refineries connect to the Twin Oaks line at the Twin Oaks origin point, which is downstream from Chelsea. Further, states ConocoPhillips, Premcor is not a regular shipper on the Twin Oaks line and has not used that line this year.

49. ConocoPhillips observes that the Chelsea and Twin Oaks origin points currently have equal tariff rates, but ConocoPhillips contends that SPLP could charge different rates without a cost justification if it is granted market-based rate authority. According to ConocoPhillips, if SPLP increases the Chelsea rate, that increase would not be disciplined

[21] ConocoPhillips cites *Shell Pipeline Company, L.P.*, 103 FERC ¶ 61,236 (2003).

by a possible shift of volumes from Premcor because Premcor would not be charged the Chelsea rate. Thus, ConocoPhillips contends that the Trainer refinery, the sole shipper from Chelsea, is the proper focus for determining competitive alternatives. ConocoPhillips also maintains that Trainer is the only shipper that might discipline a rate increase by shifting volume away from the Twin Oaks line.

50. While it claims that SPLP uses 12 alternatives in its analysis of competition in the Philadelphia origin market, ConocoPhillips submits that only three pipelines, including Twin Oaks, and barge transportation provide viable physical outlets for refined products from Trainer. Assuming that all four of the alternatives are good alternatives on a netback basis, ConocoPhillips asserts that the HHI is 3696. However, ConocoPhillips emphasizes that its own Eastline is currently used at full capacity, so that Trainer could not shift volumes to that line in response to a rate increase on the Twin Oaks line. Thus, reasons ConocoPhillips, the only unconstrained alternatives to the Twin Oaks line are the Buckeye Laurel line and barge shipments. Using these alternatives, ConocoPhillips calculates an HHI of 4957.

51. Moreover, continues ConocoPhillips, the Buckeye Laurel line does not serve destinations where RFG is required, so Trainer would face an economic penalty of up to $4.62 per barrel if it shifted RFG to the Laurel line and received conventional gasoline prices for the RFG, so the Laurel line would not provide a good netback price for RFG from Trainer. Additionally, ConocoPhillips states that the Laurel line provides an attractive outlet for conventional gasoline only during certain periods, primarily the summer. In light of these facts, ConocoPhillips states that marine shipment represents Trainer's only remaining alternative to the Twin Oaks line. However, ConocoPhillips states that barge rates from Trainer to the New York harbor range up to 35 cents per barrel more than the Twin Oaks tariff rate, so this does not represent a good alternative to the Twin Oaks line.

52. Finally, ConocoPhillips explains that the local Philadelphia market does not offer a viable alternative outlet for products that currently are moved from Trainer to the New York/New Jersey area. According to ConocoPhillips, the local market includes six refineries, three pipelines, and barges, so its opportunities to expand sales from Trainer into this market are limited. In particular, ConocoPhillips states that it cannot shift jet fuel to the local market because it does not have a pipeline connection to the Philadelphia airport.

53. SPLP responds that its bills-of-lading study supports its definition of the Philadelphia origin market, which actually may be too narrow considering the Commission's approval of market-based rates for Colonial in the combined Northeast Market Area.[22] SPLP also claims that ConocoPhillips is attempting to revive the long-

[22] SPLP cites *Colonial Pipeline Co.*, 95 FERC ¶ 61,377 (2001).

discredited corridor approach to defining geographic markets by claiming that the Commission should restrict its analysis to movements on the Twin Oaks line between the Chelsea origin point near the Trainer refinery to three destination points in the New Jersey suburbs of New York. According to SPLP, ConocoPhillips fails to provide sufficient information concerning the amount of RFG produced at the Trainer facility or what constitutes a good alternative source or route.

54. SPLP argues that, where there are multiple shippers on a line, the proper analysis includes the competitive alternatives available to all of the shippers. SPLP states that the Commission has held that the ability of even one large refiner to avoid a monopoly price may be sufficient to protect other refiners in that origin market. However, SPLP contends that ConocoPhillips disregards this by urging the Commission to ignore alternatives available to the two other refiners on the Twin Oaks Line, Premcor and Sunoco's Marcus Hook refinery. Thus, continues SPLP, by ignoring potential competitive alternatives, ConocoPhillips fails to show that SPLP has the ability to exercise market power over movements from the Trainer refinery.

55. SPLP also claims that ConocoPhillips fails to account properly for waterborne movements by including only waterborne shipments from the Trainer refinery to New York rather than recognizing all waterborne destinations available from the Philadelphia market. Further, SPLP states that ConocoPhillips' representation that the Trainer refinery moved 15.5 percent of its production via barge undercuts its argument that waterborne shipments are not an attractive alternative.

56. SPLP states that ConocoPhillips completely ignores the ability of the Trainer refinery to sell product in the local market, as well as potential capacity, in calculating HHI. SPLP claims that the primary omission is ignoring the potential capacity of the Colonial line that appears to be only about a mile away from the refinery. Further, states SPLP, ConocoPhillips could deliver product at Philadelphia in exchange for deliveries elsewhere on the Colonial system. SPLP contends that ConocoPhillips attempts to inflate the HHI by reducing the four viable physical outlets to two by eliminating the Eastline, which connects to the Harbor line, and the Buckeye Laurel line. SPLP maintains that, even if the Eastline is constrained, ConocoPhillips could still be able to use a portion of the capacity under the applicable Eastline prorationing rules. SPLP asserts that it is improper to exclude the Buckeye Laurel pipeline because it does not serve destinations where RFG is required when less than a quarter of ConocoPhillips' Twin Oaks movements are RFG.

57. ConocoPhillips replies that it did not use a "corridor" approach and that it considered all potential outbound alternatives from the origin market, regardless of the destination. ConocoPhillips further claims that it did not limit the relevant product

market to RFG. ConocoPhillips asserts that it examined all alternatives that are physically available to the Trainer refinery for the transportation of product out of the local market, regardless of the type of refined petroleum product.

58. ConocoPhillips maintains that the origin market capacities it employs are consistent with the method by used by the Commission Staff in *Shell Pipeline Company, L.P.*[23] ConocoPhillips states that, in that case, Staff used the total amount of refining production connected at the origin market to measure origin market demand and to adjust the capacities of origin market pipelines. Further, contends ConocoPhillips, the Staff did not use local consumption to adjust the capacities of origin market pipelines. Reiterating that opportunities for increasing sales into the local Philadelphia market are limited, ConocoPhillips asserts that it properly excluded the local market from its analysis of alternatives in the origin market.

59. Finally, ConocoPhillips states that it is not currently making significant waterborne deliveries to markets other than Philadelphia or New York, and there is no evidence that waterborne deliveries to other markets would represent "good alternatives." ConocoPhillips also claims that exchanges using the Colonial pipeline are not possible and that any pipeline deliveries from Trainer to supply terminals where an exchange partner could lift by truck in the Philadelphia area would have to move via the Eastline, which is already at full capacity.

60. In an *SFPP* proceeding, the Commission found that the test for determining whether a shipper can exercise significant market power over customers at the origin market is whether the customers have sufficient competitive alternatives so that the pipeline will not be able to raise its price above the competitive level without losing substantial business.[24] In examining the issue of market power, the Commission has focused on whether there are sufficient competitive alternatives available to which the customers can turn to prevent the undue exercise of market power.

61. This BEA presents the Commission with a dispute relating to issues of material fact regarding the appropriate geographic and product definitions for the contested Philadelphia origin market and the resulting HHI statistics for that market. ConocoPhllips' protest and alternate market power statistics challenge the appropriateness of SPLP's geographic and product market definitions and the resulting market statistics calculated for this origin market. ConocoPhillips has supplied additional information, including alternate HHI calculations based on what it considers good

[23] 103 FERC ¶ 61,236 (2003).

[24] *SFPP, L.P.*, 102 FERC ¶ 61,240 at P 23 (2003), *citing SFPP, L.P.*, 84 FERC ¶ 61,338, at 62,497 (1998), and *Elizabethtown Gas Company v. FERC*, 10 F.3d 866, 871 (D.C. Cir. 1993).

alternatives to shipping its Trainer refinery production on SPLP. The delivered cost HHI level of 4957 that ConocoPhillips computes is well above HHI levels that the Commission has accepted in other cases. Thus, the Commission finds that the conflicting evidence presented by SPLP and ConocoPhillips should be examined at a hearing before the Commission makes a determination as to whether SPLP lacks market power in this contested origin market. Accordingly, the Commission will set the Philadelphia origin market for hearing.

3. <u>Contested Destination Markets</u>

a. <u>New York</u>

62. SPLP asserts that this market has a consumption of 1,028.5 MBD and is able to receive product from two refineries and six pipelines owned by four competing companies. In addition, SPLP explains that refined product can be transported by ocean-going tankers to 117 docks located in the Port of New York. According to SPLP, the latest records indicate that actual waterborne receipts average 395.3 MBD. SPLP also states that five external refineries and three pipelines are within a reasonable trucking distance and have the ability to supply product to this market.

63. SPLP points out that ConocoPhillips has a refinery in Linden, New Jersey, with an estimated capacity of 196.4 MBD, and Amerada Hess has a refinery in Port Reading, New Jersey, with an estimated capacity of 62.0 MBD. Together, states SPLP, these two refineries have a capacity of 258.4 MBD, which is about 25 percent of the estimated local consumption of 1,028.5 MBD.

64. SPLP calculates that the inbound pipeline capacity for this market is 1,180.4 MBD. SPLP states that it operates three pipelines in the New York destination market with a combined operating capacity of 274.4 MBD. Tosco Pipeline, an affiliate of ConocoPhillips, owns a one-third undivided interest (60 MBD) in the SPLP-operated Harbor Pipeline. In addition, SPLP explains that Colonial operates a 30-inch pipeline from Houston, Texas, to Linden, New Jersey, with a capacity of 828.0 MBD. Further, SPLP states that ExxonMobil operates an eight-inch pipeline that runs from Malvern, Pennsylvania, to Binghamton, New York, with an estimated capacity of 18.0 MBD.

65. SPLP maintains that there are also significant waterborne deliveries to this BEA. SPLP states that such receipts total 395.3 MBD, or roughly 38.4 percent of the local consumption of 1,208.5 MBD. SPLP also points to the 117 berths in the New York market capable of receiving product via barge. Combined, SPLP calculates that these facilities have the ability to receive 5,154.7 MBD.

66. Under the DOJ approach, SPLP calculates that the HHI for this market is 1004, which is below the most conservative threshold. Under the Commission's approach,

SPLP calculates that the HHI is 2032, also below the threshold of 2500. SPLP maintains that its capacity-based market share under Staff's approach is 16.7 percent and that its delivery-based market share is well below the 50-percent level that may cause concern.

67. Finally, SPLP asserts that the largest pipeline in the market, Colonial, received authority to charge market-based rates in a combined destination market that included the New York BEA. SPLP contends that Colonial's capacity-based market share is 38.6 percent, more than double SPLP's market share of 16.7 percent. In SPLP's view, this provides additional support for its position that it cannot exercise market power in the New York BEA.

68. In its protest, ConocoPhillips argues that SPLP fails to provide the detailed cost analyses necessary to justify its proposed New York BEA destination market. ConocoPhillips submits that a meaningful analysis of competitive alternatives in the destination market must take into account both physical restrictions and legal restrictions on the type of gasoline that can be sold in a particular area.

69. ConocoPhillips again asserts that SPLP relies on a broad definition of the relevant product market without distinguishing between the types of refined petroleum products. ConocoPhillips contends that there are legal constraints affecting the ability of purchasers at product terminals to switch to other terminals. For example, ConocoPhillips cites restrictions imposed by the U.S. Environmental Protection Agency (EPA) on the types of gasoline that can be sold in the New York/New Jersey metropolitan area.

70. ConocoPhillips states that it has performed a preliminary analysis of the delivered cost of gasoline in Mercer County, New Jersey, to test the validity of sources that SPLP considers competitive. ConocoPhillips asserts that the preliminary analysis shows that two sources cannot be considered competitive alternatives because they do not offer RFG, which is required in Mercer County. Further, states ConocoPhillips, the analysis shows that a third source has a delivered cost that is $0.29 per barrel greater than the delivered cost at SPLP's terminal. ConocoPhillips emphasizes that the difference in delivered cost represents more than 50 percent of SPLP's permanent tariff rate.

71. In addition, ConocoPhillips states that other sources outside the New York BEA included by SPLP cannot be considered competitive alternatives. ConocoPhillips explains that one source is a pipeline that does not offer RFG and thus cannot compete with the RFG supplied by SPLP's Twin Oaks line. Moreover, continues ConocoPhillips, the other source is a pipeline in Massachusetts with an average posted price that is $0.09 per gallon greater than the posted price at Newark, New Jersey. ConocoPhillips points out that this price difference is greater than the 150-mile trucking cost of $0.06 per

gallon, which means that the Massachusetts source could not compete anywhere in the New York BEA with a product delivered from the Newark terminal connected to SPLP's Twin Oaks line.

72. Finally, ConocoPhillips states that it calculates a destination market HHI for gasoline of 2094 based on the results of its preliminary delivered cost analysis. ConocoPhillips asserts that this exceeds the threshold HHI of 1800 for "highly concentrated" markets under the DOJ methodology and is near the range of 2100 to 2200, which was sufficient for the FTC to require the divestiture of a refinery in connection with the recent merger between Conoco Inc. and Phillips Petroleum Company.

73. SPLP responds that it analyzed actual motor carrier deliveries to assess the validity of using the New York BEA to define the geographic market. Further, explains SPLP, it determined that the BEA could reasonably be extended to account for motor carrier deliveries of up to 100 miles outside the BEA, but in any event, claims SPLP, the market is competitive even if the boundaries of the BEA are used. SPLP points to the consumption and capacity figures it previously provided, and also emphasizes that its market share is only 16.7 percent, less than half of that of Colonial, which is authorized to charge market-based rates. SPLP also points to the excess capacity in the market.

74. SPLP maintains that ConocoPhillips appears to be using RFG as the product market, but that it describes its own HHI calculation as an "RFG based HHI." SPLP contends that even using this overly-narrow product market, ConocoPhillips is unable to generate an HHI higher than 2094. SPLP also contends that ConocoPhillips' recalculated HHI number is inflated for a variety of reasons. First, states SPLP, the analysis includes only the capacity of pipelines currently delivering RFG, but applies that limited capacity to the total consumption in the New York BEA, rather than to the counties in the New York BEA that require the use of RFG. Second, SPLP claims that the analysis includes only capacity from pipelines that currently deliver RFG, thus improperly excluding two terminals within the New York destination market that do not currently deliver RFG but could easily do so. Third, continues SPLP, the analysis improperly discounts the ability of motor carriers to supply RFG to the New York market. Lastly, SPLP maintains that ConocoPhillips' analysis ignores the fact that almost 40 percent of the petroleum products delivered to New York arrive by waterborne shipments.

75. SPLP contends Colonial Pipeline Company - the pipeline with the largest market share in the New York market (38.6 percent) – is the main contributor to the HHI statistic in this market. SPLP claims that, because the Commission has found that Colonial does not have market power in this destination market, it would make no sense for SPLP, with a market share of less than half of Colonial's, to be found to have market power in this market.

76. ConocoPhillips reiterates that it did not use a corridor approach in defining the geographic markets. ConocoPhillips states that it considered all potential inbound alternatives to the destination market, including local refinery production and waterborne deliveries, regardless of origin.

77. ConocoPhillips states that it did not limit the relevant product market to RFG; rather it considered the regulatory restrictions and costs of the EPA RFG gasoline regulations in evaluating competitive alternatives. ConocoPhillips contends that because the only gasoline product offered at the destination terminals served by the Twin Oaks line is RFG, it used price data for that product to identify good alternatives.

78. ConocoPhillips argues that, in defending its proposed BEA geographic markets, SPLP fails to recognize established Commission precedent governing the definition of contested geographic markets. ConocoPhillips states that for the New York destination market, SPLP's answer fails to provide delivered cost information that would satisfy the requirements for defining a contested geographic market set forth in accordance with Commission precedent. Instead, ConocoPhillips claims that SPLP continues to rely on its bills-of-lading study. Finally, ConocoPhillips states that a prior finding that Colonial lacked market power in the uncontested Philadelphia/New York destination market does not justify the assumption that SPLP lacks market power or that the geographic area is the appropriate market for evaluating SPLP's market power.

79. The Commission has reviewed the application and protest, as well as Valero's comments generally challenging the use of BEAs to define the geographic markets. ConocoPhillips performed a delivered cost analysis for the New York BEA that resulted in an HHI for gasoline of 2094. ConocoPhillips states that its analysis considered all potential inbound alternatives to the destination market, including local refinery production and waterborne deliveries, regardless of origin, as well as considering the regulatory restrictions and costs of the EPA RFG regulations in evaluating competitive alternatives. The Commission finds that this HHI level, even when computed using a more sensitive delivered cost calculation based on alternatives that could only compete against higher priced RFG gasoline resulted in a HHI level that appears acceptable when compared to HHI levels the Commission has accepted in other proceedings.

80. In addition, the Commission reviewed the market power statistics in SPLP's application based solely on the New York BEA. SPLP computed a FERC effective capacity based HHI of 2032, with a capacity based market share of 16.7 percent. The New York BEA has available capacity of 1.6 times the markets consumption. SPLP

shows that its deliveries into the New York BEA during 2004 gave it an acceptable delivery-based market share. These market power statistics are all well within levels the Commission previously accepted.[25]

81. Consistent with market power statistics in destination markets in other cases where the Commission has found lack of market power, the Commission finds that ConocoPhillips' delivered cost HHI calculation (restricted to RFG gasoline) or SPLP's market statistics based on the New York BEA support a finding that SPLP lacks market power in the New York BEA.

b. <u>Cleveland, Harrisburg, Scranton, Pittsburgh, and Toledo Destination Markets</u>

82. As can be seen from the chart below, these destination markets have FERC effective capacity HHI numbers exceeding the 2500 level, indicating a high level of market concentration. In *Williams Pipe Line Co*., the Commission accepted HHI levels as high as 2600 and market shares as high as 39 percent and found unacceptable HHI levels at 2700 and a market share of 46 percent.[26] In comparison, SPLP's Toledo's market measures come closest to meeting an acceptable level, with a capacity HHI of 2678 and a market share of 29.1 percent. However, SPLP's delivery-based market share, coupled with a FERC effective capacity HHI of 2678 are comparable to the market power levels rejected in the *Williams* proceeding. In addition, only one of three pipelines makes significant deliveries into the BEA, and there are no refineries and negligible waterborne deliveries.

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[25] For example, in *Williams Pipe Line Co.*, the Commission accepted a capacity-based HHI of 2606 and a delivery-based market share of 35 percent for the Minneapolis/St. Paul market (68 FERC ¶ 61,136 at 61,682 (1994)), an HHI of 1801 and a market share of 37 percent for Wausau, Wisconsin (*Id*. at 61,677), an HHI of 2381 and a market share of 39 percent for Dubuque, Iowa (*Id*.), an HHI of 2048 and a market share of 34 percent for Davenport, Iowa (*Id*. at 61,678).

[26] For example, Topeka, KS (HHI 3333, market share 46 percent), Duluth, MN (HHI 2606, market share 60 percent), Rochester, WI (HHI 2509, market share 86 percent, Sioux City, IA (HHI 2837, market share 51 percent), Omaha, NE (HHI 2786, market share 46 percent), Grand Island (HHI 2514, market share 62 percent), Sioux Falls (HHI 2701, market share 49 percent), Aberdeen (HHI 3141 market share 49 percent. *Id*. at 61,682-85. *See also* Quincy (HHI 2026, but market share 70 percent), and Cedar Rapids, Waterloo, and Ft. Dodge (HHI between 1800 and 2500, but market shares 81 percent, 99 percent, and 98 percent respectively) *Id*., at 61,685-86.

83. The other four destination markets listed below contain HHI levels in excess of 3000. These levels are an indication of a highly concentrated market and exceed HHI levels the Commission previously has found unacceptable for granting the authority to charge market-based rates.

84. The Commission recognizes that the HHI numbers for each of these markets drop below the 1800 HHI level when external alternatives up to 100 miles from the BEAs are included in the study. However, SPLP failed to provide adequate support to demonstrate that such external supplies would be good alternatives in these BEAs. Therefore, the Commission will set these markets for hearing to develop a more complete and accurate record on which the Commission can make a conclusive market power determination.

Geographic Market Definition	DOJ HHI Capacity Method	FERC's Effective Capacity Methodology		
		HHI	Market Share	Excess Capacity
Cleveland BEA	3269	3751	18.2%	1.7
Harrisburg BEA	3333	3881	42.9%	2.3
Pittsburgh BEA	2132	3011	26.2%	2.0
Scranton BEA	3333	3768	19.4%	2.0
Toledo BEA	2365	2678	29.1%	3.3

c. <u>**Philadelphia and Detroit**</u>

85. The Philadelphia BEA has HHI numbers that are below the 1800 range. The Commission finds that this low HHI level coupled with a capacity share of only 21.3 percent and available capacity of four times the market's consumption demonstrates that SPLP lacks significant market power in this destination market.

86. Although Detroit's effective capacity-based HHI number is just under the 2500 level, its capacity market share is relatively low at only 16.4 percent, and the excess capacity ratio is 1.7. In addition, SPLP's delivery-based market share into the Detroit BEA during 2004 was substantially less than the capacity market share. The market power statistics for the Detroit BEA are well within market power levels that the Commission has previously accepted and support a finding that SPLP lacks significant market power in this destination market.

Geographic Market Definition	DOJ HHI Capacity Method	FERC's Effective Capacity Methodology		
		HHI	Market Share	Excess Capacity
Philadelphia BEA	1243	1722	21.3%	4.0
Detroit BEA	2003	2480	16.4%	1.7

The Commission orders:

(A) As discussed in the body of this order, the Commission grants SPLP's request to charge market-based rates in the Detroit, Pittsburgh, Rochester, and Toledo origin markets and the Detroit, Philadelphia, and New York destination markets.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly section 15(1) thereof, and the Commission's regulations, a hearing is established to determine whether SPLP has market power in the Philadelphia origin market and the Cleveland, Harrisburg, Pittsburgh, Scranton, and Toledo destination markets.

(C) Pursuant to section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2005), the Chief Administrative Law Judge (ALJ) shall designate a Presiding ALJ for the purpose of conducting a hearing. The Presiding ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure, including addressing ConocoPhillips' request for discovery as it relates to the Philadelphia origin market.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.