C. Explorer Pipeline Company Proceeding Addresses Corridor Geographic Markets

In this proceeding, the Commission began its practice of citing the *Williams* case in particular for the market power statistics that would cause it to find market power. Further, corridor markets, which define the geographic market by origin and destination pairs, were considered in detail by the Commission. While the Commission has generally not applied a corridor market analysis in these proceedings, discussion of this analysis is instructive when dealing with a pipeline with only one origin and destination market, as was the case in the *Mobil* proceeding discussed in detail below. In this case, similar to the holdings in the *Williams* proceeding, the Commission found the applicant pipeline's ability to raise prices between its origin and destination pairs was not necessarily indicative of market power. Rather, the Commission determined that may mean simply that the pipeline's current rates are below competitive levels. Instead, the Commission focused on the actual physical alternatives available to shippers to transport product from the relevant origin and destination pairs to assess the competitiveness of the market. Later in the *Enterprise/Enbridge* proceeding, the Commission determined that actual used alternatives are necessarily competitive in terms of price from their use by shippers.

In Explorer Pipeline Company, the intervenors alleged that the geographic markets should be assessed on a corridor basis because Explorer had market power during peak demand periods in the origin and destination markets, and other routes were more inefficient, costly, and provided lower quality service. The Commission stated that such general allegations would not suffice to warrant consideration of a corridor approach in the future, but it would consider them in this case. The Commission determined that even if Explorer's market power was determined on a corridor basis, it did not have market power over transportation of refined petroleum products from the Gulf Coast to the Midwest.

Explorer operated a 1,400 mile petroleum products pipeline system from the Gulf Coast to the Midwest United States.[420] Explorer requested permission to charge market-based rates for the transportation of refined petroleum products in its origin markets of Houston (which consisted of a conglomerate of 7 BEAs), the Tulsa BEA, and the St. Louis BEA to its destination markets of the Houston, Dallas, Tulsa, St. Louis and Chicago BEAs.[421] The origin markets were uncontested and approved by the Commission.[422] The St. Louis and Chicago destination BEAs were contested and analyzed in detail by the Commission.[423]

Market Power Statistics. In its St. Louis and Chicago destination markets, Explorer included certain alternative supply sources that were within 100 miles of the BEA as reasonable alternatives.[424] The impact of the external sources was weighted based on the counties in the

[420] *Explorer*, 87 FERC ¶ 61,374 at 62,385.
[421] *Id*.
[422] *Id.* at 62,389.
[423] *See id.* at 62,390.
[424] *Id.* at 62,385-86.

BEA that the source could actually serve from the transportation assumptions involved.[425] Explorer calculated delivery based market shares in these markets at 30.2 percent.[426]

Indicative of the approach in later proceedings, Explorer provided the Commission with multiple methodologies for calculating HHI: "the Commission's Delivery Based Method, the Commission's Effective Capacity Method, and the Department of Justice (DOJ) Adjusted Capacity Method."[427] The delivery based method represented the applicant's estimated percentage of actual deliveries into the market.[428] The Effective Capacity Method provided for the lesser of a pipeline's capacity and the consumption in the market.[429] In this case, the effective capacity was also adjusted to remove "pipeline, refinery, truck, and barge capacity that may be committed to serving other markets and is therefore not available to serve the market at issue."[430] The last methodology used was the DOJ Adjusted Capacity Method, which assumes equal market share among competitors to calculate HHI.[431]

The resulting HHI numbers ranged from 558 to 1936, and the Commission found that those numbers compared favorably with those in the *Williams* proceeding. "None of these figures rise to the level of combination of a 2500 HHI and a 46 percent market share that the Commission found unacceptable in *Williams*."[432] Further, the amount of excess capacity in these markets was over 3.4 times consumption even in peak demand periods.[433]

Geographic Market (Corridor Market). The Commission found that the traditional analysis yielded a finding of no market power.[434] The protesters contended that these low market power statistics were not relevant because they were based on annualized numbers and did not reflect Explorer's market power during the summer peak period.[435] They further contended that the proper analysis was a corridor geographic market because of the constrained

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[425] *Explorer*, 87 FERC ¶ 61,374 at 62,385 n.10. Therefore, the weight accorded external sources in the market share and HHI calculation varied depending on the portion of the BEA it could serve. *Id.* "The greater the area reached, the greater the weight will be accorded the external source in the calculation of the HHI." *Id.*
[426] *Id.* at 62,389.
[427] *Id.* at 62,390.
[428] *Explorer*, 87 FERC ¶ 61,374 at 62,389.
[429] *See Buckeye*, Opinion No. 360, 53 FERC ¶ 61,473 at 62,670.
[430] *Explorer*, 87 FERC ¶ 61,374 at 62,389.
[431] *Id.* at 62,390 n.28. The DOJ method is calculated as follows:

> [It] divides total consumption in a market by the number of competitors in the market, with each competitor initially allocated an equal share. Each company that has insufficient capacity to supply its allocation is assumed to supply its full capacity, and the remaining supply is allocated evenly among all remaining companies with excess capacity. The process is repeated until all consumption in the market has been allocated. The result is used as each company's market share in the HHI calculation.

Report of the Oil Pipeline Regulation Committee, 25 ENERGY L.J. 259, 266 (2004).
[432] *Explorer*, 87 FERC ¶ 61,374 at 62,390 (*citing Williams*, Opinion No. 391, 68 FERC ¶ 61,136 at 61,685-86).
[433] *Id.*
[434] *Id.* at 62,391.
[435] *Id.* at 62,388.

capacity during peak periods, and contended that alternative routes were inefficient, inconvenient, more costly, and provided lesser quality service.[436]

The Commission noted that it had consistently rejected the use of corridor markets for several reasons, including: (1) that the real economic concern of shippers is the delivered product and its price rather than whether the product travels between specific locations on a pipeline, and (2) it eliminates from consideration competitive suppliers who bring product to markets without utilizing the specific corridors.[437] The Commission found that the protesters' general assertions of peak demand market power did not compel further examination based on a corridor geographic market. However, in light of the importance of transportation of petroleum products between the Gulf Coast and the Midwest, the Commission considered them anyway.[438] It did state explicitly that since Order No. 572 placed the burden on the protesting parties to establish that a corridor approach was appropriate, "in future cases if the pipeline demonstrates that its origin and destination markets are within the limits of market evaluations previously accepted by the Commission, such general assertions may not be sufficient to warrant consideration of a corridor-based analysis."[439]

Between the Gulf Coast and St. Louis, the Commission found at least five competing pipelines linking the areas, that barges served as effective competition between these areas even if not as efficient as the pipeline in question, and excess capacity ratios existed even during peak demand periods.[440] The Commission found similar alternatives and excess capacity existed between the Gulf Coast and Chicago BEA.[441] The Commission also found unpersuasive the concern that Explorer could raise prices during the peak period as uncorrelated with market power:

> [T]he ability to raise prices does not mean that Explorer has significant market power; it may simply mean that the current rates for peak period service are below the competitive market price. Explorer publishes rates to the entire St. Louis BEA, not necessarily a point-to-point rate that serves only one customer. An attempt by Explorer to exercise significant market power by increasing rates above the competitive market price in a market where it lacks significant market power will result in reduced total volumes to that market and a consequent reduction in Explorer's revenues. This potential loss of revenue serves to constrain Explorer's rates to all of the shippers in the St. Louis destination market, not just the ones that may have direct access to transportation alternatives they deem comparable to Explorer's service.[442]

The Commission also noted that "at least some differential pricing, *i.e.* pricing based on demand, is lawful and appropriate in the oil pipeline industry."[443] "Differential pricing, when constrained

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[436] *Id.* at 62,388-89.
[437] *Explorer*, 87 FERC ¶ 61,374 at 62,388 (*citing Williams*, Opinion No. 391, 68 FERC ¶ 61,136 at 61,660-61).
[438] *Id.* at 62,391.
[439] *Id.* at 62,389.
[440] *Id.* at 62,391-93.
[441] *Id.* at 62,392-94.
[442] *Explorer*, 87 FERC ¶ 61,374 at 62,392.
[443] *Id.* at 62,394.

by effective competition, can materially improve the efficiency of transportation markets by allocating capacity to those shippers who value it the most, particularly in markets involving different degrees of geographic or seasonal variation."[444]

Therefore, the Commission permitted Explorer to charge market-based rates even if the geographic market was considered on a corridor basis given the significant actual alternatives in point to point service between the Gulf Coast and the Midwest, and the excess capacity available on these alternatives.[445] Further, the Commission found protests concerning potential price increases during peak demand periods unavailing and not necessarily indicative of market power.

[444] *Id.*
[445] *Id.* at 62,395.