A. Kaneb Pipe Line Proceeding Outlines When to Deviate from BEA Geographic Areas for Refined Petroleum Pipelines

In the first market-based rate application after Order No. 572, the Commission concluded for the first time that the use of a BEA as the geographic market was inappropriate. This finding lays the basis in later proceedings for how participants can rebut a BEA as the appropriate geographic market. In addition, for that same geographic market, the market power statistics found indicative of a lack of market power are noteworthy and have been cited by the Commission in subsequent proceedings.

Kaneb Pipe Line Operating Partnership requested market-based rates from the Commission for refined petroleum products in six destination markets.[385] Kaneb defined the geographic destination markets as the relevant BEAs, and its origin markets as 75 mile radiuses around certain refineries.[386] In what would become a pattern in later applications by other pipelines, Kaneb provided HHI and market share numbers based on various delivery and capacity based formulations. Kaneb provided HHI numbers based on total capacity and "effective capacity," which was the lesser of total capacity or consumption, recognizing the "common situation where any one pipeline's available capacity exceeds the total usage of the relevant market."[387] Kaneb also provided market share numbers based on actual deliveries (as required by Order No. 572 since its HHI numbers were capacity based) and effective capacity.[388] Kaneb's application was initially protested, but subsequently unopposed. The Commission went on to grant Kaneb's application, but modified one of the relevant destination markets.

Geographic Market. The Commission found that Kaneb's use of BEAs as the relevant destination markets was "generally appropriate and consistent with the methods used by the Commission in the *Buckeye* and *Williams* cases."[389] However, the Commission found that the particular characteristics of the "Casper BEA and the location of Kaneb's terminal in that BEA," made it inappropriate for designation as the relevant market:[390]

> Kaneb's Cheyenne terminal is located in the far southeastern corner of the Casper BEA. The Casper BEA is extremely large, and covers all but six counties of Wyoming and includes small parts of Utah and Idaho. Using the Casper BEA as the relevant market places Kaneb's Cheyenne terminal in the same market as the Wyoming counties of Lincoln and Unita whose nearest border is over 248 straight line miles from Cheyenne. Further, use of the Casper BEA would also include in the relevant external market four refineries in Salt Lake City, Utah and one refinery in Pocatello, Idaho. Lincoln and Unita counties are served by these Salt Lake and Pocatello refineries. However, Kaneb has not explained how these refineries exert a significant effect on the market power of its Cheyenne terminal that is such a great distance from the destinations served by these refineries.[391]

[385] *Kaneb*, 83 FERC ¶ 61,183 at 61,759.
[386] *Id.* at 61,760.
[387] *Id.*
[388] *Id.*
[389] *Id.* at 61,761.
[390] *Kaneb*, 83 FERC ¶ 61,183 at 61,761.
[391] *Id.*

Therefore, the Commission concluded the use of the Casper BEA was inappropriate because of the abnormally large size of the BEA and because sources of transportation or competition, including the applicant pipeline's terminal and certain refineries, were in separate areas of that BEA.[392] Instead, the Commission found that the relevant destination market was the discrete cities around Kaneb's terminal.[393]

Particular Markets Analyzed. The Commission approximated the characteristics of the redrawn geographic market and determined that it resulted in an effective capacity HHI of 2742.9.[394] "However, this data also shows that the excess capacity in this market is over three times the market size…" and "Kaneb's effective share is less than 30%."[395] These factors led the Commission to find Kaneb did not have significant market power in the redrawn destination market, even with an HHI above 2500.[396]

In summary, the Commission redrew the geographic market from the relevant BEA where it was abnormally large, the applicant pipeline's terminal and alternative sources were in distant corners of the BEA, and no justification that alternate sources of supply within the larger BEA could serve as effective competition to the pipeline's terminal was provided. After the Commission adopted a presumption in favor of BEAs as the appropriate geographic market for refined petroleum pipelines, the circumstances identified in *Kaneb* served as a basis to rebut the presumption in favor of BEAs. Further, the Commission found that an HHI of 2742.9 did not result in a finding of market power where market share was less than 30 percent and significant excess capacity existed in the market.

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[392] *Id.*
[393] *Id.*
[394] *Id.*
[395] *Kaneb*, 83 FERC ¶ 61,183 at 61,761.
[396] *Id.*