132 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Magellan Pipeline Company, L.P. Docket No. OR10-6-000

ORDER ON APPLICATION FOR
MARKET POWER DETERMINATION AND ESTABLISHING HEARING PROCEDURES

(Issued July 7, 2010)

1. On January 15, 2010, Magellan Pipeline Company, L.P. (Magellan) filed an application for authority to charge market-based rates for the transportation of refined petroleum products from its origins at McPherson and El Dorado, Kansas[1] (McPherson-El Dorado) to its destination at Aurora, Colorado (Denver).[2] As discussed below, the Commission finds that Magellan lacks significant market power in the Aurora, Colorado destination market and permits Magellan to charge market-based rates on this segment of its system. There are, however, material issues of fact regarding the composition of the origin market and quality of alternative options for shippers. Accordingly, we set these issues for hearing.

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[1] Comprised of the combined area contained within a 75-mile radius around the National Cooperative Refinery Association (NCRA) refinery at McPherson and a 75-mile radius around the Frontier Oil Corporation refinery at El Dorado.

[2] Defined on the basis of the area contained with a 100-mile radius circle around the Denver Area, which includes the City of Denver and the surrounding suburbs of Aurora, Commerce City, Dupont, and Henderson.

I. Background

2. Magellan, a subsidiary of Magellan Midstream Partners, L.P. and Magellan GP, LLC, is a common carrier petroleum products pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA). Magellan receives refined petroleum products at McPherson and El Dorado, Kansas for transport to Aurora, Colorado on its Mountain System. Magellan's system consists of a 10-inch diameter pipeline originating in McPherson, Kansas at the NCRA refinery. From McPherson the pipeline travels 38 miles south to El Dorado, Kansas, where it receives product from the Frontier refinery and connections with other pipelines. From El Dorado, a 10-inch line extends approximately 44 miles to Pretty Prairie, Kansas. From Pretty Prairie, the line expands to a 12-inch line that continues about 414 miles westward to Magellan's terminal facilities at Aurora, Colorado. From Aurora, which is both a destination and origin point, a 10-inch line travels 17 miles to Denver International Airport (DIA). Magellan is not seeking market-based rate authority for the movements from Aurora to DIA.

II. Description of the Filing

3. Magellan states it seeks market-based rate authority to have the flexibility of market-based rates to enhance its ability to respond to competitive pressures and better meet the needs of its shippers. Magellan asserts market-based rates are more efficient than cost-based rates because cost-based rates set an artificial price ceiling. As a result, Magellan claims it is limited in its ability to compete with other modes of transportation or similar modes of transportation with different cost characteristics. For instance, Magellan notes it competes with two refineries that are not regulated and pipelines that have been granted market-based rates in the Denver destination market and with pipelines that have been granted market-based rates in its McPherson-El Dorado origin market.[3] Magellan claims the inability to respond effectively to market conditions has resulted in reduced volumes of petroleum products transported on its Mountain System in recent years.

4. Magellan defines the relevant product market as the transportation and delivery of all pipeline-able refined petroleum products,[4] which include motor gasoline, distillates (diesel fuel and No. 2 home heating oil), aviation gasoline, and jet fuel.

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[3] *Kaneb Pipe Line Operating Partnership, L.P*. 83 FERC ¶ 61,183 (1998).

[4] *Buckeye Pipe Line Co.,* 53 FERC ¶ 61,473, at 62,663-64 (1990) (*Buckeye*).

A. <u>Origin Market</u>

5. Magellan’s witness, Dr. George R. Schink, a Director of LECG, LLC, an international economic consulting firm, determined that the usual BEA[5] approach to defining a market area was ill-suited for the Magellan’s origin market. Dr. Schink testifies the relevant BEA – Wichita-Winfield, Kansas BEA (Wichita BEA) – is too large and McPherson and El Dorado are located at the eastern edge of the Wichita BEA. Instead, Dr. Schink states the primary criterion to use to define the origin market is the identification of refineries that could or do use the outbound pipeline seeking market-based rate authority…. Magellan proposes an origin market comprised of the area within 75-mile radii around the NCRA refinery in McPherson, Kansas and around the Frontier refinery in El Dorado, Kansas.

6. According to Magellan, competing outbound pipelines with receipt points at McPherson are NCRA, Heartland, and NuStar. Competing outbound pipelines with receipt points in the vicinity of El Dorado (including Wichita) are NuStar and ConocoPhillips. A shipper could possibly deliver refined products from McPherson and El Dorado to Wichita via Magellan and NuStar Pipelines.

[5] Each BEA is an “Economic Area” defined by the Bureau of Economic Analysis of the U.S. Department of Commerce. BEA's economic areas define the relevant regional markets surrounding metropolitan or micropolitan statistical areas. They consist of one or more economic nodes--metropolitan or micropolitan statistical areas that serve as regional centers of economic activity--and the surrounding counties that are economically related to the nodes. 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.

7. To determine Magellan's market power in the origin market, Dr. Schink calculates market shares and Herfindahl-Hirschman Indexes (HHI)[6] of market concentration. The data compiled to calculate market power include the level of local consumption and the capacity of Magellan and other pipelines to move refined petroleum products out of the market. Magellan states local consumption amounts to a substantial percentage, 29.8 percent, of the local refineries' production capacity. Several competitors supply the local markets; therefore, the market share of each distributor is very low, making the HHI contribution from local consumption extremely low. Magellan argues this indicates a strong, pro-competitive effect within the origin market.

8. Magellan describes the HHI and market share for the movement of petroleum products out of the market using two different methodologies: (1) effective capacity; and (2) adjusted capacity. The effective capacity market share is the percentage of capacity based on the total capacity of all of the pipelines. Magellan estimates its 2008 effective capacity to be 137.5 MBD (Thousand Barrels per Day), which gives it an effective capacity market-share of 28.6 percent and an effective capacity-based HHI of 2,117.

9. Magellan's second methodology is the Department of Justice's (DOJ) *Oil Pipeline Deregulation Study* method, or adjusted capacity, which assumes each supplier has an equal probability of making a delivery into the market, regardless of the size of its pipeline or refinery. Theoretically, each supplier captures an equal share of demand. If each supplier has the capability of supplying an equal share, then one can assign each supplier a capability to supply this amount. However, if a supplier does not have the capacity to supply an equal share, then one assigns each of the remaining pipelines, an equal amount of product above the subject supplier's maximum capacity. Accordingly,

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[6] HHI measures the likelihood of a pipeline exerting market power in concert with other sources of supply. One derives an HHI 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 a very large number of competitors in the market, to 10,000, where a monopolist only serves the market…. A high HHI indicates significant concentration. This means that a pipeline is more likely to exercise market power either unilaterally or through collusion with rival firms in the market. The HHI figures of 1,800 and 2,500 or lower are indicators typically used by pipelines applying for market-based rate authority to reflect what they consider is an accurate depiction of tolerable levels of concentration based on the Department of Justice and Federal Trade Commission *1992 Horizontal Merger Guidelines*. A threshold of 1,800 would be met if a market were served by between five and six equally sized competitors. The 2,500 threshold would indicate a market served by four equally sized competitors.

Magellan calculated an adjusted capacity market-share of 15.3 percent, which yields an HHI of 1,015.

10. In addition, Magellan calculates the excess capacity ratio, or the total effective capacity divided by the refinery capacity, to be 2.46. This means pipelines in the origin market have the ability to absorb 2.46 times the production capability of the local refineries.

B. Destination Market

11. Magellan proposes a 100-mile radius around the Denver area as the destination market. Magellan determined that the Denver-Aurora-Boulder BEA (Denver BEA) with a radius of approximately 153 miles is too large and contains areas not supplied with refined products from the terminals and refineries in the Denver area. The large size of the Denver BEA comes into focus when contrasted with BEAs in the lower 48 states (average radius of 72 miles) and the Western region of the United States (average radius of 121 miles). For this reason, Magellan asserts it is taking a more conservative approach and limiting the size of the destination market to a 100-mile radius (Denver-Colorado Springs-Cheyenne area), which leaves only a small geographic area not served by the surrounding refineries and terminals. Magellan claims this is consistent with the fact that in the Western United States there are substantial distances between cities and between the locations of refineries and terminals, making tank truck hauls of 100-miles or more relatively common.

12. In the proposed Denver destination market, Magellan states that it competes with several internal supply sources, including two local refineries—Suncor and Frontier—and four inbound pipelines—ConocoPhillips, NuStar, Plains All American, and Sinclair (serving six terminals with truck racks). Magellan estimates there are two additional refineries and two additional pipeline terminals with truck racks within effective trucking distance of the destination market that are potential competitors. Magellan also includes HHI calculations for a smaller, 75-mile radius (Denver-Colorado Springs-Ft. Collins area) destination market. This market has all of the same internal suppliers, except for the Frontier refinery.

13. As in the analysis of the origin market, Magellan computes HHIs using effective and adjusted capacity measures for the destination market. For each of these capacity measures, Magellan performs analyses with competing suppliers located only within the Denver area and with external competitors included for both of the possible destination market sizes. When considering external suppliers, Magellan posits several possible situations. First, Magellan includes external suppliers as competitors if they fall within either a (1) 75-mile or (2) 100-mile radius outside the Denver area. For the larger

Denver-Colorado Springs-Cheyenne area destination market, Magellan does not compute the HHI data for the 75-mile radius on the assumption that the range is too short for the Western United States. Second, Magellan includes external suppliers where the delivered price for gasoline is cost effective. For this analysis, Magellan uses the following two criteria: (1) the potential competitor's delivered price is no more than 1 percent above the highest delivered price; and (2) the potential delivered price is no more than 2 percent above the highest delivered price.[7] The highest HHI calculated by Magellan from the above scenarios in the destination market is 1,961 with a 19.8 percent market share, which is within the 1,800 to 2,500 range for limited market power. Magellan estimates its delivery-based market share at 22.9 percent and the excess capacity ratio at 1.6 or higher in the Denver area. Below are tables summarizing the HHI and market share analyses.

Internal Sources Only

Table 1.

	Effective Capacity		Adjusted Capacity	
	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area
HHI	1,961	1,664	1,728	1,465
Market Share	19.8%	17.5%	18.1%	15.2%

Including External Sources:
75- and 100-Mile Radius

Table 2.

	Effective Capacity				Adjusted Capacity			
	75-Mile Radius		100-Mile Radius		75-Mile Radius		100-Mile Radius	
	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area
HHI	1,758	-	1,661	1,643	1,670	-	1,502	1,461
Market Share	18.5%	-	17.3%	17.0%	17.8%	-	16.3%	15.2%

[7] This replicates the analysis presented by Dr. Jonathan D. Ogur in *Buckeye Pipe Line Co*. 53 FERC ¶ 61,473 (1990), to establish the competitiveness of external suppliers.

Including External Sources:
1% and 2% Delivered Gasoline Price Criteria

Table 3.

	Effective Capacity				Adjusted Capacity			
	1% Criteria		2% Criteria		1% Criteria		2% Criteria	
	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area	Denver-Colorado Springs-Ft. Collins Area	Denver-Colorado Springs-Cheyenne Area
HHI	1,667	1,667	1,650	1,649	1,456	1,465	1,455	1,465
Market Share	17.5%	17.5%	17.0%	16.9%	15.3%	15.3%	15.1%	15.2%

III. Interventions and Protests

14. Pursuant to section 348.2(g) of the Commission's regulations, interventions or protests to Magellan's application were required to be filed by March 16, 2010. On March 16, 2010, Sinclair Oil Corporation (Sinclair) and Frontier Oil and Refining Company (Frontier) (collectively, "protesters") submitted motions to intervene and protests. On March 22, 2010, Magellan filed a notice of intent to file a motion for summary disposition. Sinclair and Frontier filed responses to Magellan's notice of intent on March 24, 2010. On April 15, 2010, Magellan filed a motion for summary disposition. Sinclair and Frontier filed a response to Magellan's motion for summary disposition on April 16, 2010. Magellan filed an answer to the response on April 23, 2010 and Sinclair and Frontier submitted reply comments on April 30, 2010.

A. Sinclair's Protest

15. In its protest, Sinclair argues against giving Magellan market based rate authority on its Mountain System, because it is the only route a shipper can use to transport refined petroleum products from the Midwest to Denver. Moreover, Sinclair claims a shipper at El Dorado does not have viable alternatives that would restrain rate increases on the Magellan line. For instance, other than Magellan's Mountain System, there are only two other outbound pipelines from El Dorado. NuStar Pipeline Operating Partnership L.P. (NuStar) and Magellan's Central System. Sinclair asserts neither of these pipelines provides shippers with a reasonable economic alternative in the origin market.

16. To bolster its assertion, Sinclair provides a netback analysis to illustrate the differentials between selling diesel fuel in Denver and other destinations available to shipper from El Dorado. Sinclair calculates that in 2009 the average monthly differential between Denver and Des Moines, IA for 11 months of the year was 4.25 cents per gallon higher in Denver. Sinclair states that a netback price differential of two cents per gallon would be regarded as competitively significant. Sinclair's analysis revealed similar

results for Omaha, NE, Columbus, NE, and North Platte, NE. Accordingly, Sinclair requests the Commission to reject Magellan's application or, in the alternative, set for hearing.

B. Frontier's Protest

17. Frontier asserts Magellan fails to demonstrate it lacks significant market power in its origin market. Frontier contends: (1) Magellan defines the market too broadly by combining the El Dorado and McPherson markets; and (2) Magellan did not illustrate good alternatives for products originating at the Frontier El Dorado Refinery. Accordingly, the Commission should reject Magellan's application.

18. Frontier states Magellan did not sufficiently support its definition of the origin market as the combination of two markets. Frontier claims the McPherson and El Dorado markets can act independently because even if Magellan were constrained from raising prices for shipments from McPherson, it could still raise the rate for shipments originating in El Dorado. Frontier argues that the ability to charge different rates at the two origin points requires a separate market power analysis for each point, which Magellan did not provide in its application.

19. Frontier also asserts Magellan indicates options for shippers in one market are available to shippers in the other market by using overlapping circles. Frontier argues this is not the case. Frontier states the Commission must determine the geographic market the alternative options economically and physically available to shippers originating at the McPherson and El Dorado receipt points. The Frontier El Dorado refinery is physically connected to three pipeline systems, two of which Magellan owns. NuStar owns the other pipeline. Frontier contends Magellan did not provide enough evidence showing that the other pipelines – Heartland, ConocoPhillips and NCRA – are viable alternatives to the Magellan Mountain system.

20. Frontier states the other pipelines are exceedingly difficult for it to access. Frontier concedes that products could reach the Heartland and ConocoPhillips pipelines via the NuStar pipeline. However, the practicalities of these options are limited due to storage constraints. To deliver products, Frontier states it would need access to storage facilities near the receipt point of the particular line. Frontier points to the fact that it has not used these options since it acquired the refinery in November 1999 as evidence that they are not realistic alternatives.

21. In addition, Frontier asserts Magellan failed to produce any evidence that the alternatives, including the local market, are "good alternatives" in terms of price and service for each shipper. Frontier explains that a netback analysis would indicate the

competiveness of the origin market, but Magellan fails to provide one in its application. Frontier also states it has already maximized sales and any increase in local consumption would depress prices, resulting in a financial penalty. Thus, Frontier claims the only potentially viable outlets available to Frontier are the Magellan Mountain and Central systems and the NuStar pipeline.

22. Using just the Magellan and NuStar systems, Frontier re-calculates the HHI figures for only the El Dorado origin market. The estimated capacity-based HHIs would be 5,000 with 50 percent market share, or 4,459 with 48 percent market share when local consumption is included.

C. Magellan's Notice of Intent to File and Sinclair's and Frontier's Responses

23. As mentioned above, Magellan filed a notice of intent to file a motion for summary disposition on or before April 15, 2010. Sinclair and Frontier filed separate responses requesting the Commission to deny the notice of intent or instruct Magellan that any responsive pleading it files will be rejected. Both protesters argue Magellan's notice of intent is a way to subvert the Commission's regulations. Frontier states the Commission has other regulatory avenues to obtain more information, such as setting the application for hearing. Frontier also asserts Commission precedent supports rejecting responses that circumvent Commission regulations.[8]

D. Magellan's Motion for Summary Disposition

24. Magellan raises several points of contention it has with the protests lodged by Sinclair and Frontier, including improper analysis and lack issues of material fact. For instance, Magellan asserts the proper analysis for an origin market is whether there are alternatives available to *all* shippers to constrain price increases as opposed to alternatives for serving protesters' specific needs. Magellan claims its significant excess capacity and declining throughput disprove any claim by the protesters that there are insufficient viable alternatives to Magellan's system. Magellan also refers to the fact that only two out of twenty shippers protested the application as further evidence of viable alternatives.

25. Magellan states Sinclair uses an improper analysis to illustrate Magellan's market power. Magellan contends Sinclair's argument that Magellan's Mountain System is the only pipeline that can be used to transport petroleum products from the Midwest to

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[8] *See Mobil Pipeline Company*, 121 FERC ¶ 61,268 (2007).

Denver is a corridor argument. Magellan explains it is well-established that market power analyses in oil pipeline market-based rate matters should be performed using the origin-destination market approach and not the corridor market approach. As such, the Commission has repeatedly rejected corridor arguments.

26. In its answer, Magellan also asserts Sinclair and Frontier failed to raise any issues of material fact that would preclude the Commission from approving Magellan's application. Magellan claims Sinclair's netback calculations are so incomplete, biased, and methodologically unsound that they are wholly unreliable and, as such, are insufficient to create a material issue of fact. Magellan states Sinclair's netback calculations contain errors and incorrect assumptions, including timeframe, prices of petroleum products, and tariff rates. Furthermore, Magellan explains Sinclair's netback analysis is biased because it only evaluates five alternative locations and is limited to diesel fuel. Magellan states that if the errors, assumptions, and biases are corrected the netback analysis reveals several other competitive destination markets.

27. Magellan asserts Frontier's contention that the origin market is "overly broad" is false because Magellan defined the origin market consistent with the minimum trucking distance generally accepted by the Commission. Magellan argues that if its origin market is defined as consisting of separate origin markets at McPherson and El Dorado, the HHI and market power statistics are lower than they are under the McPherson-El Dorado origin market definition. If the origin market is separated into two markets the effective capacity-based HHI figures are 1,007 for McPherson and 1,858 for El Dorado with market shares of 15 percent and 24.1 percent, respectively. The lower HHI number results from counting the local Wichita market twice, once in each origin market.

28. Magellan also contends Frontier did not offer any evidence to support its claim that that the Heartland, ConocoPhillips, and NCRA pipelines and local consumption are not good alternatives to Magellan's system. Magellan states Heartland and ConocoPhillips pipelines have common carrier tariffs and Heartland has a joint rate with NuStar for transportation from El Dorado on file with the Commission, indicating these pipelines are available for transportation. In addition, Magellan claims that while the NCRA pipeline is private, the Commission should consider it a competitive alternative consistent with *Williams Pipe Line Co*., 68 FERC ¶ 61,136 (1994) (*Williams*). Magellan also asserts the Commission should reject Frontier's argument that Heartland is not a viable alternative because it may not have common carrier storage facilities for the same reasons. Finally, Magellan states Frontier does not support the allegation that it could not sell more to the local market. Magellan estimates Frontier supplies 20.5 percent of the local market and concludes incremental sale opportunities for Frontier exist.

29. In their response to Magellan's answer, Sinclair and Frontier reiterated the same procedural complaints expressed in their responses to Magellan's motion of intent-to-file.

IV. Discussion

30. Section 348.1(c) 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.[9]

31. The Commission reviewed the information filed by Magellan and concludes that Magellan does not have significant market power over the designated destination market. Under the various scenarios submitted by Magellan, the market share is always less than 20 percent and the HHI for the destination market is always less than 2,000. The results from all of the Denver scenarios compare favorably with HHI initial screening figures and market share percentages found to be acceptable in the *Buckeye*[10] and *Williams*[11] cases. The significant excess capacity in the destination market suggests that Magellan's competitors can capture business from Magellan quickly if it raised rates above competitive levels. These factors are further supported by the absence of any protest about Magellan's ability to manipulate the destination market.

32. However, the Commission is concerned Magellan may have market power in the origin market. The protesters have raised material issues of fact regarding the origin market, including but not limited to the following: (1) the construction of the origin market area as a single market, not two individual markets surrounding the NCRA and

[9] 18 C.F.R. § 348.1(c) (2010).

[10] The Commission accepted an HHI of 2561and market share of 43.7 percent and an HHI of 3051 and market share of 28.5 percent for the Pittsburgh, PA and Columbus, OH delivery markets, respectively.

[11] The Commission accepted an HHI of 2606 and a market share of 35 percent, an HHI of 2381 and market share of 39 percent, and an HHI of 2048 and a market share of 34 percent for Minneapolis/St. Paul, MN, Dubuque, IA, and Davenport, IA delivery markets, respectively.

Frontier refineries; (2) the appropriate netback analyses for ascertaining the level of competition in the origin market or markets; and (3) the viability of alternative options available to shippers and local refineries in the origin market for distribution of petroleum products.

33. Although the Commission does not require any particular geographic market definition, the Commission stated in Order No. 572 that the burden is on the proponent of any particular definition[12]. If protesters raise reasonable doubt about a particular geographic market, the applicant must provide a detailed justification of the relevant market, including a demonstration that all of the alternatives within the market are good alternatives.[13] While Magellan's effective capacity-based HHI of 2,117 and 28.6 percent market share calculations indicate a lack of market power in the origin market, the protestors assert that Magellan overstates the good alternatives. In fact, protestors argue that when only "good alternatives" are considered, the resulting HHI calculation is 4,459 with a 48 percent market share.

34. In Order No. 572, the Commission did not require that good alternatives be justified in any particular way. However, the Commission suggested that comparative costs could be an effective means of justifying good alternatives to the pipeline's service. Order No. 572 sets the stage by pointing out that, in general, it is delivered prices, not transportation rates, which must be compared. The Commission stated that:

> 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 alternative to the pipeline's services.[14]

35. In *Colonial*, the Commission clarified that the question to ask in defining origin markets is: "what are the 'good' economic alternatives to shippers that would be putting

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[12] *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007, at 31,188 (1994) (Order No. 572).

[13] *Shell Pipeline Co. L.P.*, 103 FERC ¶ 61,236, at 61,901 (2003).

[14] *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007, at 31,189 (1994).

products on the pipeline at each of Colonial's origin terminals for shipment to destination terminals by Colonial?"[15] There the Commission stated the focus is on good alternatives to the shipper for getting the product out of a particular location or disposing of the product elsewhere. Thus, for origin markets the Commission determined it is the netback to the shipper (price to shipper after all costs of delivery) that should be compared in determining whether proposed alternatives are good alternatives in terms of price.[16]

36. Thus, in order to justify its origin market, Magellan must show that each alternative outlet is an alternative in terms of price for each shipper in the market. Sinclair's netback analysis in its protest sets out to determine viability of the alternatives in terms of price. Although Sinclair's argument could be construed as a corridor argument as Magellan did, the Commission disagrees with this characterization, for the above stated reasons. Nevertheless, the Commission finds that the evidence presented by Magellan and the protesters is insufficient for the Commission to determine whether Magellan lacks market power in the defined origin market. Accordingly, all issues relating to whether Magellan lacks market power in the origin market or markets are set for hearing.

<u>The Commission orders:</u>

(A) Magellan's application for a determination that it lacks market power in the Denver destination market analyzed in this decision is granted.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly section 15(1) thereof, and the Commission's rules and regulations, a hearing is established to address whether Magellan lacks significant market power in its origin market(s).

(C) Pursuant to section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2009), 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

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[15] *Colonial Pipeline Co.*, 92 FERC ¶ 61,144, at 61,532 (2000) (Colonial).

[16] *Id.*

further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.