146 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Enterprise TE Products Pipeline Company LLC Docket No. OR11-6-000

OPINION NO. 529

ORDER ON INITIAL DECISION

(Issued March 5, 2014)

1. This order affirms the Presiding Administrative Law Judge's (ALJ) December 18, 2012 initial decision finding that Enterprise TE Products Pipeline Company LLC (Enterprise TEPPCO) failed to meet its burden of showing that it lacks market power in the Little Rock, Arcadia, and Jonesboro destination markets.

Background

2. On March 1, 2011, Enterprise TEPPCO filed an application seeking authority to charge market-based rates for the transportation of refined petroleum products to three delivery locations: Little Rock, Arkansas (Little Rock); Arcadia, Louisiana (Arcadia); and Jonesboro, Arkansas (Jonesboro).

3. On October 7, 2011, the Commission issued an order setting all issues raised in the proceeding for hearing and establishing a two-step process for the proceeding: first, the hearing would address whether a prior settlement involving TEPPCO, Enterprise TEPPCO's predecessor, precluded the pipeline from seeking market-based rate authority at Little Rock and Arcadia. Second, the hearing would determine whether Enterprise TEPPCO lacked market power.

4. On November 30, 2011, the ALJ ruled that Enterprise TEPPCO was not barred by the prior settlement from applying for market-based rates for the Little Rock and Arcadia destination markets.

5. On December 18, 2012, the ALJ issued an initial decision.[1] The ALJ found that the market power statistics provided by Enterprise TEPPCO, Chevron Products Company

[1] *Enterprise TE Products Pipeline Company, LLC*, 141 FERC ¶ 63,020 (2012) (Initial Decision).

(Chevron) and Commission Trial Staff (Trial Staff) contained fundamental flaws, were inherently unreliable, and fail to definitively establish whether or not Enterprise TEPPCO possessed market power in the three destination markets at issue in the proceeding. The ALJ found that the evidence of record in the proceeding was only sufficient to support a determination that Enterprise TEPPCO failed to meet its burden of showing that it lacks market power in the Little Rock, Arcadia and Jonesboro destination markets.

6. Briefs on exceptions were filed on January 25, 2013, and briefs opposing exceptions were filed on February 14, 2013. Briefs were filed by Enterprise TEPPCO, Chevron, Murphy Oil USA, Inc. (Murphy), and Trial Staff.

Discussion

Introduction

7. Order No. 572 established the general principles for the Commission's analysis of market-based rate applications, setting forth the basic filing requirements and procedures with respect to an oil pipeline seeking a determination that it lacks significant market power.[2] Pursuant to Order No. 572, as set forth in Part 348 of the Commission's Rules of Practice and Procedure, oil pipelines must first define the relevant markets for which a market power determination is sought.[3] The pipeline must also identify competitive transportation alternatives, including potential competition and other competition that could constrain its rates.[4] Finally, the pipeline must compute market concentration and market share information for the relevant market(s).[5] The Commission in Order No. 572 declined to adopt specific standards on how to conduct a market power analysis, ruling that each application would be reviewed on a case-by-case basis.

8. On February 20, 2014, the Commission issued an Order on Rehearing in Docket No. OR12-4-000.[6] The Order on Rehearing addressed the impact of the D.C. Circuit's

[2] *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007 (1994), *aff'd sub nom. Assoc. of Oil Pipelines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[3] 18 C.F.R. § 348.1(c) (2013).

[4] *Id.*

[5] *Id.*

[6] *Enterprise Product Partners L.P. and Enbridge Inc.*, 146 FERC ¶ 61,115 (2014) (Order on Rehearing).

decision in *Mobil Pipeline Co. v. FERC*[7] on the Commission's policies and procedures for reviewing an application for market-based rates for oil pipelines. While *Mobil* involved an origin market analysis for a crude pipeline, several rulings in that order apply generally to all oil pipeline market power analyses, including destination market analyses for refined products pipelines. As discussed below, while the Order on Rehearing affirms that *Mobil* did not fundamentally alter the Commission's approach to market-based rates set forth in Order No. 572, several findings in that order directly impact the propriety of rulings of the Initial Decision in the present proceeding.

Methodology for Determining Market Power

9. All of the parties in this proceeding agreed that Order No. 572 established the general framework for determining whether an oil pipeline lacks significant market power.[8] The parties did not agree in their interpretation of Order No. 572.

10. Enterprise TEPPCO argued that Order No. 572 mandated that market power determinations be made on a case-by-case basis, and that the Commission did not adopt any particular HHI[9] or market-share screens or presumptions.[10] Enterprise TEPPCO further argued that a market power analysis that relies on a presumptive competitive rate is inherently circular and unreliable, in that the competitive rate cannot be known in the absence of market-based rates.[11] Enterprise TEPPCO states that an oil pipeline's tariff rate does not serve as an appropriate proxy for the competitive rate.[12] Enterprise TEPPCO also maintains that the SSNIP[13] test is not the proper test for market power, for it requires calculating the competitive rate.[14]

---

[7] 676 F.3d 1098 (D.C. Cir. 2012) (*Mobil*).

[8] Initial Decision, 141 FERC ¶ 63,020 at P 13.

[9] The Herfindahl-Hirschman Index, or HHI, is a measure of market concentration, calculated by summing the squares of the individual market shares of all firms in the market. Initial Decision, 141 FERC ¶ 63,020 at P 15, n21.

[10] Initial Decision, 141 FERC ¶ 63,020 at P 15.

[11] *Id*. P 17.

[12] *Id*. P 21.

[13] The SSNIP test is defined as whether a pipeline can profitably sustain a small but significant increase above competitive levels for a significant period of time.

[14] Initial Decision, 141 FERC ¶ 63,020 at P 24.

11. Chevron argues in favor of the SSNIP test, and acknowledges that the test requires a determination of the competitive rate.[15] Chevron argues that the competitive rate will be the prevailing rate as found in the applicant's tariff.[16] Chevron states that the *Mobil* decision's rejection of the tariff rate as an appropriate proxy for the competitive rate was based solely on the facts in that proceeding, and that those facts are distinguishable from the present case.[17]

12. Murphy also argues that the *Mobil* decision involved the unique facts of that case, and is not a blanket holding that filed rates are never, or even presumptively, not a good proxy for competitive rates.[18] Murphy argues that Enterprise TEPPCO's tariff rates constitute a fair proxy for competitive rates in the destination markets.[19]

13. Trial Staff argues that a SSNIP is the proper test for determining whether an oil pipeline has significant market power. Trial Staff further argues that it is appropriate to use Enterprise TEPPCO's tariff rate as a proxy for the competitive rate.[20]

14. The ALJ found that Order No. 572 is the Commission's established framework for determining whether an oil pipeline lacks market power, and that the SSNIP test is properly used for determining whether to grant market-based rate authority.[21] The ALJ determined that the SSNIP test requires the identification of a competitive price proxy, and that Enterprise TEPPCO's refusal to develop such a proxy was a fundamental flaw in its analysis.[22]

15. In determining a proxy for the competitive price, the ALJ found that typically the prevailing tariff rate of the applicant is used.[23] The ALJ ruled that the *Mobil* decision did not make a blanket holding that filed rates are never, or even presumptively, a good

---

[15] Initial Decision, 141 FERC ¶ 63,020 at P 36.

[16] *Id*.

[17] *Id*. P 38.

[18] *Id*. P 44.

[19] *Id*. P 47.

[20] *Id*. P 53.

[21] *Id*. P 55.

[22] *Id*. P 56.

[23] *Id*. P 57.

proxy for competitive rates.[24] The ALJ found that the *Mobil* decision relied on specific and unique facts of that proceeding, specifically the presence of excess demand, not present on Enterprise TEPPCO.[25]

16. While ruling that it is appropriate to use Enterprise TEPPCO's tariff rate as a proxy for the competitive rate, the ALJ ruled that because Enterprise TEPPCO was under-earning with their current rates, the appropriate proxy was the proposed rate filing made concurrently by the pipeline.[26]

Commission Decision

17. Market power is the ability profitably to maintain prices above competitive levels for a significant period of time.[27] The procedure for determining the existence or lack of market power remains that set forth in Order No. 572. In seeking to determine the appropriate methodology for measuring market power, the ALJ first determined that the "competitive level" was the tariff rate of the applicant.

18. There are many factors, including the existence or absence of excess demand, which could influence the determination of whether a pipeline's tariff rate would be an appropriate proxy for the competitive price in a market power analysis. As demonstrated in *Mobil*, a pipeline's regulated tariff rate can be below, even far below, the competitive rate for a particular market.[28] An applicant's tariff may also be a perfect proxy for the competitive rate. It is both improper and unnecessary to make any presumptions concerning whether a tariff rate is or is not an appropriate proxy without examining the specific market statistics at issue.[29]

19. As discussed in detail in the Order on Rehearing, the competitive price in a market is set by the marginal supplier in that market. In a destination market, where the delivered commodity price is the relevant price, the marginal supplier will be the alternative in the market (i.e., a used alternative) whose delivered commodity price is

---

[24] Initial Decision, 141 FERC ¶ 63,020 at P 58.

[25] *Id*. P 61.

[26] *Id*. P 63.

[27] Order on Rehearing, 146 FERC ¶ 61,115 at P 32.

[28] *Id*. P 51.

[29] *Id*. P 52.

highest.[30] Thus, the question in a market power analysis for destination markets is whether the applicant, if granted market-based rate authority, could increase its rates such that its delivered price would be significantly above that of the marginal alternative for a significant period of time. Preferably, this question is answered through the use of the SSNIP test, although it is at the discretion of the applicant how to meet its burden under Order No. 572.

20. Enterprise TEPPCO's argument that the court in *Mobil* ruled the SSNIP test was inherently flawed is not accurate. As with any methodology, the court found that if the data employed in the SSNIP is unreliable, the results will be flawed. The court did not strike down the use of the methodology in cases where the data is reliable.

Product Market

21. In seeking market-based rate authority, an oil pipeline must identify the product market or markets for which it seeks to establish that it lacks significant market power.[31] The Commission does not require a specific product market definition, however a pipeline's market-based rate authority, if granted, is limited to that product which was examined in that pipeline's market-power analysis. The grant of market-based rate authority is not a blanket authorization to charge market-based rates for all products in all markets.

22. Enterprise TEPPCO defined the relevant product market as the transportation of pipelineable refined petroleum products (RPPs). Enterprise TEPPCO stated that the Commission has used this product market definition in every previous case involving a refined petroleum product pipeline, and that the Commission has previously acknowledged pipelines can easily substitute the transportation of one product for another.[32] Enterprise TEPPCO argues that in analyzing substitution, it the shippers' ability to substitute refined petroleum products that they nominate on the pipeline that is relevant.[33]

23. Chevron defined the relevant product market as three distinct markets: gasoline, diesel fuel, and jet fuel.[34] Chevron noted that Enterprise TEPPCO has three distinct tariff

[30] The delivered commodity price is the relevant product price plus transportation charges. Order No. 572, FERC Stats. & Regs. ¶ 31,007 at ¶ 31,189.

[31] *Id*.

[32] Initial Decision, 141 FERC ¶ 63,020 at P 65.

[33] *Id*. P 74.

[34] Initial Decision, 141 FERC ¶ 63,020 at P 78.

rates for each product, and that shippers will not substitute different products in response to price increases in the transport of other RPPs.[35] Chevron acknowledges that past cases did not differentiate RPPs into distinct products, but states that the issue was not raised in prior cases and that different tariff rates were not present in prior cases.[36]

24. Murphy agreed with Chevron's definition of the relevant product markets. Murphy states that defining the relevant product market requires an analysis of how shippers would respond to a small but significant price increase by the pipeline.[37] Murphy states that since it does not ship all RPPs, an increase in the price of shipping a RPP it does not actually ship would have no economic impact on its demand.[38]

25. Trial Staff states that the determination of the appropriate product market should be determined in each proceeding based on the relevant facts and that the burden is on the applicant to justify its choice of product market(s).[39] Trial Staff argues that there are separate product markets in this proceeding: motor fuel, jet fuel, and diesel. Trial Staff noted that Enterprise TEPPCO maintains separate rates for each product, and that there is a limited opportunity for substitution by shippers between the two products.[40] Finally, Trial Staff notes that unlike origin markets, in a destination market analysis a shipper's ability to switch between RPPs is limited by the ultimate consumers' inability to switch between those RPPs.[41]

26. The ALJ found that the evidence in the record in this proceeding, as well as Commission precedent, supported a finding that the relevant product market should be defined as the transportation of pipelineable RPPs.[42] The ALJ found persuasive that in every previous case, the Commission adopted this definition.[43] The ALJ found that while end users may not be able to substitute different RPPs, the transportation of the different

[35] *Id*. P 80.

[36] *Id*. P 83.

[37] *Id*. P 96.

[38] *Id*. P 100.

[39] *Id*. P 103.

[40] *Id*. PP 105-06.

[41] *Id*. P 110.

[42] Initial Decision, 141 FERC ¶ 63,020 P 118.

[43] *Id*. P 114.

products could be substituted.[44] The ALJ did not find persuasive the argument that different tariff rates for each RPP supported a finding that transportation of each RPP was a separate product market.[45]

Commission Decision

27. The Commission affirms the ALJ. The appropriate product market for purposes of a market-power analysis includes those products which the pipeline seeks to charge market-based rates, as well as any product or product that could discipline an anti-competitive price increase by the pipeline.[46] In this proceeding, the ALJ found that transportation of each RPP exhibited a suitable cross-elasticity to be included in the product market. While the Commission has not adopted product markets for each separate RPP in this or in prior proceedings, cross-elasticity is a fact-based analysis which must be undertaken on a case-by-case basis.

28. It is not relevant for purposes of identifying the product market that the pipeline charges different rates for transporting different products. Products need not have identical prices in order to be substitutes. Cross-elasticity measures changes in the demand for one product upon a price increase in a separate product. It is inherent in this analysis that prices for substitutes may vary, and may change independent of one another.

29. In their joint brief on exceptions, Chevron, HWRT Oil Company, LLC and Phillips 66 Company (shippers) argue that demand for individual RPPs is determined by end users, and if end users cannot substitute RPPs (jet fuel for gasoline, for example) it is not appropriate to define the product market as the transportation of all pipelineable products. The product market, however, concerns substitutes for transportation of RPPs, not the RPPs themselves. Just as the geographic market and competitive alternative analysis must focus on the transportation of RPPs, so too must the product market analysis.

Geographic Market and Good Alternatives

30. The Commission requires an oil pipeline seeking market-based rate authority to describe the geographic markets in which it seeks to show that it lacks market power, and to describe the alternatives in competition with the pipeline in the relevant markets.[47]

---

[44] *Id*. P 115.

[45] *Id*. P 116.

[46] Order on Rehearing, 146 FERC ¶ 61,115 at P 44.

[47] Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,187-91.

31. Enterprise TEPPCO used a 1-2% delivered price test to determine the geographic market. Enterprise TEPPCO first limited its geographic market to a 125-mile wide radius around its terminal locations.[48] Next, Enterprise TEPPCO included a county in its geographic market only if the delivered price of gasoline from the Enterprise TEPPCO terminal was no more than 1 or 2 percent above the lowest delivered price to that county from all potential competitive pipelines, barge terminals or refinery locations to that county.[49]

32. After establishing the geographic market, Enterprise TEPPCO identifies the cost-effective competitors to Enterprise TEPPCO in each county. Enterprise TEPPCO defined cost-effective competitors as those competitors that had a delivered price that is no more than 1 or 2 percent above the lowest delivered price to that county from all terminal or refinery locations.[50]

33. Enterprise TEPPCO argues that the 1-2% test is supported by Commission precedent, including *Buckeye Pipe Line Co.* and two recent Commission orders approving market-based rate authority on the Magellan system.[51] Conversely, Enterprise TEPPCO criticizes the 15% test proposed by Chevron and Trial Staff for erroneously assuming that Enterprise TEPPCO's tariff rate is an appropriate proxy for the competitive rate.[52] Enterprise TEPPCO also states that the court in *Mobil* rejected the 15 percent test as proposed by Chevron and Trial Staff, and that the court criticized the reliance on transportation rates.[53]

34. Chevron conducted a 15 percent test, using Enterprise TEPPCO's proposed rates, to define the geographic market, including only those counties in which Enterprise TEPPCO would be a supplier based on demand and the lowest delivered price from all

[48] Initial Decision, 141 FERC ¶ 63,020 at P 121. Enterprise TEPPCO defines the delivered price for gasoline as the wholesale price for gasoline at the truck terminal plus the cost of truck transportation from the truck terminal location to the retail gasoline station location. Ex. ENT-2 at 71.

[49] Initial Decision, 141 FERC ¶ 63,020 at P 121.

[50] *Id*. P 122.

[51] *Buckeye Pipe Line Co.*, Opinion No. 360, 53 FERC ¶ 61,473 (1990); *Magellan Pipeline Co., L.P.*, 132 FERC ¶ 61,016 (2010); *Magellan Pipeline Co., L.P.*, 128 FERC ¶ 61,278 (2009).

[52] Initial Decision, 141 FERC ¶ 63,020 at P 127.

[53] Initial Decision, 141 FERC ¶ 63,020 at PP 133-134, 150.

suppliers.[54] Chevron then used the 15 percent test to identify competitive alternatives, deeming competitive those alternatives that offer delivered prices that are not greater than the delivered price offered by the pipeline after a fifteen percent price increase in Enterprise TEPPCO's rates.[55]

35. Murphy argues that Enterprise TEPPCO failed to meet its burden in explaining why its proposed geographic markets are appropriate. Murphy argues that the 1-2% test results in an overly broad geographic market, fails to incorporate transportation rates into the analysis, and would result in unreasonably high rates.[56]

36. Trial Staff also used a 15% test to identify the geographic market and competitive alternatives, using Enterprise TEPPCO's current tariff rate. Trial Staff disagreed that the 1-2% test was adopted in *Buckeye*, and noted that in the *Magellan* cases there were no protests and thus market-based rate authority was granted without approving the underlying methodologies in the application.[57]

37. The ALJ ruled that Enterprise TEPPCO's 1-2% methodology was fundamentally flawed because it failed to consider the only price that a pipeline ultimately controls - its transportation rate.[58] The ALJ found the fundamental problem of the 1-2% test was that it relies on the wholesale price of the product even though changes in that price do not necessarily correlate to changes in the price for transporting that product.[59]

38. The ALJ stated that the *Mobil* decision did not reject outright the use of a 15% test, only its use in that particular case.[60] However, the ALJ found Chevron's 15% test flawed because it did not consider non-price factors in its analysis.[61] The ALJ found that while reference to transportation rates was necessary, mechanical applications

---

[54] *Id*. P 156.

[55] *Id*. P 159.

[56] *Id*. P 181.

[57] *Id*. P 197.

[58] *Id*. P 200.

[59] *Id*. P 205.

[60] Initial Decision, 141 FERC ¶ 63,020 at P 202.

[61] *Id*. P 206.

of the 15% test may provide misleading answers to economic questions.[62] Thus, the ALJ failed to adopt either delivered price test for purposes of this proceeding.

Commission Decision

39. In a market-power analysis, the pipeline seeking market-based rate authority must define the relevant geographic market, and then identify the competitive or good alternatives in that market. These are separate and distinct processes, although similar methodologies may be utilized for both.

40. The Commission approves of the general methodology adopted by Enterprise TEPPCO for identifying the geographic market. Enterprise TEPPCO limited its analysis to a 125-mile radius, and then excluded counties where the delivered price from Enterprise TEPPCO was not competitive. This is an acceptable methodology for determining the geographic area in which Enterprise TEPPCO participates.

41. The Commission affirms the ALJ's ruling that no party provided an acceptable delivered price test for determining competitive alternatives in this proceeding. As stated in Order No. 572, the delivered commodity price generally will be the relevant price to be analyzed for making a comparison between the applicant pipeline and alternatives. The delivered commodity price is the relevant product price plus transportation charges.[63]

42. In examining market power, the Commission asks whether a pipeline could maintain its rates above a competitive level for a significant period of time. The determination of whether an alternative is competitive centers on whether shippers could switch to that alternative if the pipeline were to raise its rates above a competitive level. This entire analysis centers on a pipeline's transportation rates, even when utilizing delivered price. Enterprise TEPPCO's 1-2% test fails by focusing on a hypothetical increase in the lowest delivered price of gasoline, and not on an increase in transportation rates. It is the impact on the delivered price caused by an increase in transportation rates that is relevant, for the Commission's market-based rate authority relates only to transportation rates. The fundamental error in Enterprise TEPPCO's argument is the failure to address the fact that a competitive and just and reasonable delivered price could contain an unjust and unreasonable transportation rate that would violate the Interstate Commerce Act. By failing to properly analyze any potential increase in its actual transportation rates, Enterprise TEPPCO failed to meet its burden of demonstrating good alternatives.

---

[62] *Id*. P 206.

[63] Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,189.

43. The Commission also affirms the ALJ's finding that Chevron's 15% test is not an acceptable methodology for determining geographic markets and good alternatives in this proceeding. Chevron used the 15% test to identify alternatives that offer a delivered price that are not greater than the delivered price offered by Enterprise TEPPCO after a fifteen percent increase in Enterprise TEPPCO's proposed rates.[64] Yet Chevron merely assumed that Enterprise TEPPCO was the marginal supplier in the market. As discussed above, and in detail in the Order on Rehearing, it cannot be presumed that a pipeline's tariff rate is an appropriate proxy for the competitive rate. The appropriate proxy for the competitive rate is the marginal delivered price in the destination market. A good alternative is an alternative charging a delivered price at or below the marginal delivered price, as well as any alternative that could restrain a price increase by the applicant above the competitive level by being within an acceptable range of marginal delivered price.[65]

44. The ALJ faulted Chevron's analysis by stating that it would exclude Enterprise TEPPCO as a competitor in counties where its delivered price is only 1/100 of a cent higher than the lowest delivered price.[66] The ALJ is correct that this methodology improperly excludes competitive alternatives and unjustly narrows the appropriate geographic market.

45. The Commission further affirms the ALJs finding that non-price factors are relevant to the determination of good alternatives. As the ALJ noted, non-price factors can be taken into account by adjusting the threshold price increase (above or below 15%) or by using a higher or lower competitive proxy. While the proper price increase is to be determined on a case-by-case basis, by using the marginal price as the appropriate proxy for the competitive price allows for shipper behavior, including non-price factors, to be taken into consideration.

<u>Branded vs. Unbranded Gasoline</u>

46. Parties in this proceeding defined the delivered price for gasoline as the wholesale price for gasoline plus the cost of truck transportation from the terminal to the retail station.[67]

---

[64] Initial Decision, 141 FERC ¶ 63,020 at P 159.

[65] While the Commission has not adopted a threshold range, the 15% SSNIP is the preferred methodology in determining good alternatives.

[66] Initial Decision, 141 FERC ¶ 63,020 at P 206.

[67] Initial Decision, 141 FERC ¶ 63,020 at P 208.

47. Enterprise TEPPCO used branded gasoline, stating that data concerning branded gasoline was reliable while data on unbranded gasoline was not.[68] Enterprise TEPPCO further states that the majority of gasoline sold in its markets is branded gasoline.[69] Chevron, Murphy and Trial Staff all state that unlike branded gasoline, unbranded gasoline is homogenous and available to all purchasers, and therefore have a high degree of substitutability.[70]

48. The ALJ agreed with shippers and Trial Staff, finding that unbranded gasoline should be used in the market-power analysis due to its maximum amount of substitutability.[71]

Commission Decision

49. The Commission affirms the ALJ. The high degree of substitutability with unbranded gasoline makes it appropriate for use in market-power analyses.

Trucking Costs

50. Calculation of the delivered price requires an estimate for trucking costs associated with the transportation of gasoline from the wholesale terminal to the retail outlet.[72] Enterprise TEPPCO used a cost model based on information obtained in part from its affiliated trucking company.[73] Chevron used actual data on trucking costs as set forth in a contract between Chevron and Kenan Trucking Company.[74] Trial Staff used an average of the costs proposed by Enterprise TEPPCO and those proposed by Chevron.[75]

---

[68] *Id*. P 209.

[69] *Id*. P 212.

[70] *Id*. PP 221-22, 230, 235-36.

[71] *Id*. P 238.

[72] *Id*. P 240.

[73] *Id*. P 241.

[74] Initial Decision, 141 FERC ¶ 63,020 at P 257.

[75] *Id*. P 272.

51. The ALJ found that the use of a broader sample of market information by Enterprise TEPPCO was preferable to the use of a single trucking contract by Chevron.[76]

Commission Decision

52. The ALJ is affirmed. The use of a broader range of information, as proposed by Enterprise TEPPCO's cost model, provides a more accurate reflection of trucking costs than Chevron's use of a single contract, even though that contract contains actual costs.

Market Power Statistics

53. The ALJ found that because no party correctly defined the relevant markets in this proceeding, the market power statistics were unreliable and inadequate to support an appropriate market power analysis for Enterprise TEPPCO. The ALJ ruled that Enterprise TEPPCO failed to meet its burden of proof on this issue, and the Commission affirms.

Other Factors

54. While ruling that Enterprise TEPPCO failed to meet its burden concerning market definitions and the identification of competitive alternatives, the ALJ did rule on other elements of the pipeline's application, including excess capacity, potential competition, exchanges. The Commission affirms the ALJ on all matters not discussed above.

Market Power Determination

55. The ALJ ruled that the methodologies for determining market power submitted by the parties in this proceeding, and Trial Staff, were fundamentally flawed and contrary to established economic principles and Commission precedent. Thus, no participant definitively established whether or not Enterprise TEPPCO possesses market power in the three destination markets at issue in this proceeding.

Commission Decision

56. The Commission affirms the ALJ. Enterprise TEPPCO failed to meet its burden of showing that it lacks market power in the Little Rock, Arcadia, and Jonesboro destination markets.

---

[76] *Id*. at P 275.

<u>The Commission orders</u>:

Enterprise TEPPCO's application to charge market-based rates is DENIED.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.