140 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mobil Pipe Line Company Docket No. OR07-21-001

ORDER ON REMAND

(Issued August 3, 2012)

1. On August 24, 2007, Mobil Pipe Line Company (Mobil) filed an application for a market power determination seeking authority to charge market-based rates on its existing Pegasus pipeline system (Pegasus) for the transportation of crude oil from Pegasus' origin at Patoka, Illinois, to its destination at Nederland, Texas. The application was protested by several parties. On December 7, 2007, the Commission issued an order establishing a hearing to determine whether Mobil has the ability to exercise market power in the challenged origin market of Patoka, Illinois.[1]

2. On August 5, 2009, the Presiding Administrative Law Judge (ALJ) issued an initial decision finding that Mobil had not established that there are currently any good economic alternatives to Pegasus' services in Pegasus' origin market that would check Pegasus' rates to reasonable levels.[2] The ALJ concluded that Mobil had not shown that it lacks significant market power in the defined origin market and further, had not shown that the origin market is sufficiently or workably competitive such that an authorization by this Commission to charge market based rates for its oil transportation services will result in rates that are just and reasonable. Accordingly, the ALJ recommended to the Commission that Mobil's application for market-based rates be denied.

3. On December 1, 2010, the Commission issued an order affirming the ALJ's August 5, 2009 Initial Decision recommending that Mobil's application for market-based rates be denied.[3] On January 28, 2011, Mobil filed a petition for review of the

[1] *Mobil Pipe Line Company*, 121 FERC ¶ 61,268 (2007).

[2] *Mobil Pipe Line Company*, 128 FERC ¶ 63,008 (2009).

[3] *Mobil Pipe Line Company*, 133 FERC ¶ 61,192 (2010).

Commission's order with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

4. On April 17, 2012, the D.C. Circuit issued an opinion in *Mobil Pipe Line Company v. Federal Energy Regulatory Commission (Mobil v. FERC)*.[4] The court granted Mobil's petition for review, vacated the Commission's order, and remanded to the Commission for further proceedings consistent with the opinion. On June 1, 2012, the Canadian Association of Petroleum Producers, and Canadian Natural Resources Limited and Suncor Energy Marketing Inc., who were parties to the Commission proceeding and intervenors in the appeal, filed petitions for rehearing *en banc* of the court's opinion. The petitions were denied by the court in a *per curiam* decision issued June 11, 2012.

5. In *Mobil v. FERC,* the court stated that "the answer is an emphatic no" to the question of "whether Mobil could profitably raise rates on Pegasus above competitive levels for a significant period of time because of a lack of competition" because "Pegasus transports only about 66,000 of the 2.2 million barrels - about three percent - of Western Canadian crude oil produced each day."[5] The court emphasized the fact that Pegasus was a new (and small) entrant to what was previously a competitive market and "basic economic logic dictates that the introduction of a new alternative into a highly competitive market further increases competition."[6] Given the "numerous competitive alternatives" available to Western Canadian crude oil producers and shippers, the court concluded that "[t]here is no plausible way, as we see it and as FERC's expert staff saw it, to say that Pegasus holds a hammer over Western Canadian crude oil producers and shippers."[7]

6. Based on these and numerous other determinations in the *Mobil v. FERC* opinion, the court "conclude[d] that the Commission's decision was unreasonable in light of the record evidence. The record shows that producers and shippers of Western Canadian crude oil have numerous competitive alternatives to Pegasus for transporting and selling their crude oil. *Pegasus does not possess market power*."[8] Given these findings of the

[4] 676 F.3d 1098 (2012).

[5] *Mobil v. FERC*, 676 F.3d at 1102.

[6] *Mobil v. FERC*, 676 F.3d at 1103.

[7] *Mobil v. FERC*, 676 F.3d at 1104.

[8] *Mobil v. FERC*, 676 F.3d at 1099 (Emphasis added).

court, on remand the Commission grants Mobil's application for market-based rates for its Pegasus pipeline system.

<u>The Commission orders</u>:

Consistent with the opinion of the court in *Mobil v. FERC*, Mobil's application for market-based rates for its Pegasus pipeline system is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.