169 FERC ¶ 61,194
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Marketlink, LLC Docket No. OR19-30-000

ORDER ON MARKET-BASED RATE APPLICATION

(Issued December 9, 2019)

1. On July 24, 2019, Marketlink, LLC (Marketlink), pursuant to Part 348 of the Commission's regulations, filed an application for authorization to charge market-based rates for the transportation of crude oil on its pipeline system from Cushing, Oklahoma, to Houston, Texas, and Port Arthur, Texas (Application). We grant the unopposed Application, as discussed below.

I. Background

2. Marketlink is a common carrier pipeline that transports crude oil from Cushing to delivery points in Houston and Port Arthur (Marketlink Pipeline) subject to the Commission's jurisdiction under the Interstate Commerce Act.[1] Marketlink leases a portion of pipeline capacity on the Gulf Coast leg of TransCanada Keystone Pipeline, LP's pipeline system. The Gulf Coast leg is an approximately 485-mile, 36-inch diameter pipeline from Cushing to Houston and Port Arthur. Marketlink states that it began providing transportation services on the Gulf Coast leg to Port Arthur in January 2014 and to Houston in July 2016.[2] Marketlink states that the Gulf Coast leg currently operates at a capacity of approximately 800,000 barrels per day (bpd). However, in its application Marketlink is using a total capacity of 990,000 bpd, as it anticipates expanding the Gulf Coast leg's capacity within the next year.[3]

II. Description of Filing

3. Marketlink requests authority to charge market-based rates for the transportation of all crude oil originating in its proposed origin market and delivered to its proposed

---

[1] 49 U.S.C. app. § 1 *et seq.* (1988).

[2] Application at 2.

[3] *Id.*

destination market. The proposed origin market consists of the entire State of Oklahoma. Marketlink defines its proposed destination market as either the entire U.S. Gulf Coast refinery area (Gulf Coast Destination Market) or, more narrowly, as the Houston-to-Lake Charles refinery area of the Gulf Coast (Houston-to-Lake Charles Destination Market). Marketlink argues that the relevant product market is the transportation of all grades and types of crude oil.

4. Marketlink states that it does not possess market power in either the origin or destination markets. Marketlink supports its position that it lacks market power by providing market concentration calculations using the Herfindahl-Hirschman Index (HHI), market share percentages, and excess capacity ratios. Marketlink states that it is a "rate taker" and not a "rate maker," as evidenced by its filings to adjust its already discounted uncommitted rates to react to the market place.[4] Marketlink submits that its request for market-based rate authority is consistent with Commission policy and with the Commission's decision in Docket No. OR15-6-000 granting market-based rate authority to Seaway Crude Pipeline Company, LLC, a competitor of Marketlink that also transports crude oil from Cushing to the U.S. Gulf Coast.[5]

III. Discussion

5. Pursuant to section 348.2(g) of the Commission's regulations,[6] interventions or protests to the Application were required to be filed by September 23, 2019. Marketlink's Application is unopposed, as no interventions or protests were filed.

6. In Order No. 572,[7] as codified in Part 348 of the Commission's regulations,[8] the Commission established filing requirements and procedures with respect to an application by an oil pipeline for a determination that a pipeline lacks significant market power in the markets in which it proposes to charge market-based rates. Commission policy requires

---

[4] *Id.* at 3.

[5] *Id.* at 3-4 (citing *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007, at 59,149 (cross-referenced at 69 FERC ¶ 61,103) (1994), *order on reh'g*, Order No. 572-A, 69 FERC ¶ 61,412 (1994), *aff'd sub nom. Ass'n. of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996); *Seaway Crude Pipeline Co. LLC*, Opinion No. 563, 163 FERC ¶ 61,127 (2018) (Opinion No. 563)).

[6] 18 C.F.R. § 348.2(g) (2019).

[7] Order No. 572, FERC Stats. & Regs. ¶ 31,007.

[8] 18 C.F.R. pt. 348 (2019).

an oil pipeline seeking a market power determination to define the relevant product market, define the relevant geographic markets, identify the competitive transportation alternatives, compute the market concentration and other market power measures, and identify potential competition and other factors that bear on the issue of whether the pipeline lacks market power in the relevant markets.[9]

7. As discussed below, we have examined Marketlink's Application and find adequate support for a finding that Marketlink lacks significant market power in the proposed origin and destination markets. Accordingly, we grant Marketlink's uncontested Application for authorization to charge market-based rates for the transportation of crude oil in these markets.

A. Product Market

8. The appropriate product market for an oil pipeline seeking market-based rate authority includes: (1) the services for which the pipeline seeks to charge market-based rates; and (2) any product that could discipline the exercise of market power over those services.[10] In the context of crude oil pipelines, the relevant inquiry concerns whether the transportation of different grades of crude oil exhibit cross-elasticity of demand such that a price increase above competitive levels for one product would potentially cause shippers to shift their demand to another product.[11] The applicant bears the burden of justifying its proposed product market, and the definition of a product market is a fact-specific analysis that must be determined on a case-by-case basis.[12]

1. Application

9. Marketlink argues that the appropriate product market is the transportation of all crude oil because the Marketlink Pipeline is capable of moving most types of crude oil and transports light, sweet crude oil (e.g., West Texas Intermediate), heavy, sour

---

[9] Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,187-93.

[10] *Enterprise Prods. Partners L.P.*, 146 FERC ¶ 61,115, at P 44 (2014) (*Seaway I*), *order on reh'g*, 152 FERC ¶ 61,203 (2015) (*Seaway II*).

[11] *Seaway I*, 146 FERC ¶ 61,115 at P 43. For example, if an increase for the transportation of heavy crude would cause shippers to shift their demand to light crude, light crude is appropriately included in the same product market as heavy crude because it would discipline the exercise of market power over the transportation of heavy crude. *Id.*

[12] *Id.*

Canadian crude oil (e.g., Western Canadian Select), and light, sour crude oil (e.g., West Texas Sour).[13] Marketlink asserts that there is both supply-side and demand-side substitution because its competitors can transport all types of crude oil. Additionally, Marketlink states that the different types of crude oil are substitutes for each other within refineries.[14]

2. Commission Determination

10. We find that Marketlink has adequately justified its proposed product market of the transportation of all crude oil. As described in the Application, Marketlink seeks to charge market-based rates for all movements of crude oil and the Marketlink Pipeline is capable of transporting most types of crude oil.[15] Moreover, Marketlink states that its competitors can transport all types of crude oil and that different types of crude oil are substitutes for one another in the refineries in Marketlink's proposed destination market.[16] Based upon these representations, we conclude that Marketlink has adequately demonstrated cross-elasticity of demand among the different types of crude oil such that consumers would potentially shift from one type to another in response to an attempted exercise of market power.[17]

B. Geographic Markets

11. The Commission requires an oil pipeline seeking market-based rate authority to describe the geographic origin and destination markets in which it seeks to show that it lacks significant market power.[18] The relevant geographic market is the area in which a shipper may rationally look for transportation service.[19] A geographic origin market includes all of the alternatives available to shippers to transport or otherwise dispose of

---

[13] Application at 9.

[14] *Id.*

[15] *Id.*; *see also id.*, Statement C at C-8.

[16] *Id.* at 9, Statement B at B-4 - B-9.

[17] *Id.* at Statement B at B-9.

[18] *Buckeye Linden Pipe Line Co. LLC*, 160 FERC ¶ 61,021, at P 15 (2017) (citing *Seaway I*, 146 FERC ¶ 61,115 at P 35).

[19] *Guttman Energy, Inc. v. Buckeye Pipe Line Co., L.P.*, Opinion No. 558, 161 FERC ¶ 61,180, at P 183 (2017).

their particular products,[20] whereas a geographic destination market is a geographic area within which buyers are able to purchase a pipeline's product.[21] The Commission has found that the production field where the crude oil shipped on the applicant pipeline derives is the proper geographic origin market for crude oil pipelines.[22] However, applicants may present evidence that the proper geographic market is a Bureau of Economic Analysis Area (BEA) or a hub.[23] The Commission does not require pipelines to file pursuant to any particular geographic market definition and the appropriate geographic markets are determined in each proceeding based on its specific facts.[24]

1. Application

12. Marketlink asserts that its proposed origin market of the entire State of Oklahoma is appropriate because its origin point is located in Cushing, a major crude oil pipeline hub located in a crude oil production area.[25] In addition, Marketlink states that the Commission recently accepted in Docket No. OR15-6-000 Seaway's use of the entire State of Oklahoma as a geographic origin market.[26]

13. According to Marketlink, the proper destination market for crude oil pipelines is the refining area to which the pipeline supplies crude oil.[27] Marketlink states that it delivers crude oil to Houston and Port Arthur on the U.S. Gulf Coast. Marketlink claims that from these destination points, the crude oil shipped by Marketlink can be used to supply refineries located in the Houston and Port Arthur areas. Additionally, Marketlink states that the oil at these destination points can be transported by pipeline to refineries

---

[20] *Buckeye Linden*, 160 FERC ¶ 61,021 at P 15 (citing *West Shore Pipe Line Co.*, 100 FERC ¶ 61,001, at P 6 n.8 (2002)).

[21] *Id.* (citing *West Shore*, 100 FERC ¶ 61,001 at P 5 n.7).

[22] *Seaway I*, 146 FERC ¶ 61,115 at P 39.

[23] Opinion No. 563, 163 FERC ¶ 61,127 at P 25.

[24] *Seaway I*, 146 FERC ¶ 61,115 at P 35 (citing Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,188).

[25] Application at 10.

[26] *Id.* (citing *Seaway Crude Pipeline Co. LLC*, 157 FERC ¶ 63,024, at P 72 (2016) (*Seaway ID*), *aff'd*, Opinion No. 563, 163 FERC ¶ 61,127 at P 24).

[27] *Id.* at 11.

located in Louisiana, or transported by barge and tanker to refineries from Corpus Christi, Texas, to Mobile, Alabama.[28] As such, Marketlink maintains that its geographic destination market is appropriately defined as the Gulf Coast Destination Market,[29] which includes all of the refineries located on the Gulf Coast in Texas, Louisiana, Mississippi, and Alabama in Petroleum Administration for Defense District (PADD) 3.[30] Alternatively, Marketlink defines its destination market more narrowly as the Houston-to-Lake Charles Destination Market, which includes 21 counties in Texas and two parishes at the western edge of Louisiana.[31]

2. <u>Commission Determination</u>

14. We find that Marketlink has adequately shown that its proposed geographic markets are appropriate. Marketlink has demonstrated that its geographic origin market of the entire State of Oklahoma is consistent with Commission precedent[32] and includes transportation alternatives available to shippers to transport crude oil out of the market in the event that Marketlink attempts to charge supra competitive rates. Moreover, Marketlink has shown that its proposed Gulf Coast Destination Market contains transportation alternatives that would be available to customers to obtain crude oil if Marketlink attempted to exercise market power and that the Commission has previously accepted this market definition.[33]

C. <u>Competitive Alternatives</u>

15. The Commission requires oil pipelines seeking a determination that they lack market power to describe available transportation alternatives that compete with the

---

[28] *Id.*

[29] *Id.*

[30] *Id.* at Statement A at A-22. PADDs are collections of states defined by the United States Department of Energy's Energy Information Administration. PADD 3 includes the states of New Mexico, Texas, Arkansas, Louisiana, Mississippi, and Alabama. *See Mobil Pipe Line Co.*, 121 FERC ¶ 61,268, at P 4 n.2 (2007).

[31] *Id.* at 11-12, Statement A at A-24.

[32] Opinion No. 563, 163 FERC ¶ 61,127 at PP 15, 24-29; *MPLX Ozark Pipe Line LLC*, 167 FERC ¶ 61,264, at P 23 (2019).

[33] *See Seaway ID*, 157 FERC ¶ 63,024 at P 30, *aff'd*, Opinion No. 563, 163 FERC ¶ 61,127 at P 96.

applicant pipeline in the relevant markets, as well as other competition that restrains the pipeline's rates in those markets.[34] Competitive alternatives may include other pipelines, rail, barges, trucks, refiners, and local consumption.[35] Although the Commission does not exclude any alternative form of competition, the applicant must justify an alternative's inclusion in the market power analysis by showing that it is a "good" alternative in terms of quality, availability, and price.[36] The applicant must show that the alternative is of the same quality as the applicant, available to receive product diverted from the applicant in response to a price increase, and possesses the ability to discipline or prevent a potential increase in price above the competitive level by the applicant.[37]

1. Application

16. Marketlink maintains that it faces significant competition in both the origin and destination markets.[38] Marketlink states that it identified competitive alternatives in these markets using the Commission's "used alternative test," which provides that a used alternative is presumed to be a competitive alternative in terms of price to the applicant.[39]

17. Marketlink represents that within the origin market, it competes with five local refineries that process local crude oil production and with 11 outbound pipelines, in addition to the Marketlink Pipeline, that transport crude oil out of the origin market.[40] Marketlink states that the supply of crude oil into the origin market in 2018 was 2,593.7 thousand barrels per day (MBD), consisting of 543.0 MBD of local production and

---

[34] *Buckeye Linden*, 160 FERC ¶ 61,021 at P 18.

[35] *Seaway I*, 146 FERC ¶ 61,115 at P 45 (citing Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,191).

[36] *Seaway II*, 152 FERC ¶ 61,203 at P 35.

[37] *Seaway I*, 146 FERC ¶ 61,115 at P 45 (citing *Koch Gateway Pipeline Co.*, 66 FERC ¶ 61,385 (1994)).

[38] Application at 13.

[39] *Id.* at Statement D at D-1 - D-2; *see also* Opinion No. 563, 163 FERC ¶ 61,127 at P 30 ("The Commission's used alternative test posits that a used alternative (a) provides a positive netback (i.e. is profitable to the shipper) and (b) provides a higher netback than available but unused alternatives that provide a lower profit to shippers, and therefore is a competitive alternative in terms of price to the applicant.").

[40] *Id.* at 13; *see also id.* at Statement D at D-11 - D-14.

2,050.7 MBD of pipeline deliveries into the market.[41] Marketlink states that the local refineries can consume 621.8 MBD of crude oil and the outbound pipelines, including Marketlink, have an aggregate available capacity to transport 3,204.2 MBD of crude oil.[42]

18. Marketlink states that it competes in the Gulf Coast Destination Market and Houston-to-Lake Charles Destination Market with local crude oil production, inbound pipelines, rail unloading facilities, and waterborne deliveries into the market.[43] Within the Gulf Coast Destination Market, Marketlink asserts that local refineries are capable of consuming 8,499.9 MBD of crude oil.[44] Marketlink claims that 29 inbound pipelines owned by 16 companies have a combined available capacity to supply 6,738 MBD of crude oil to the Gulf Coast Destination Market.[45] Additionally, Marketlink states that local production wells and 17 rail unloading facilities have combined capacities to supply 1,931.4 MBD[46] and 1,418.9 MBD[47] of crude oil, respectively. Marketlink also states that waterborne deliveries of crude oil into the Gulf Coast Destination Market in 2017 totaled 3,082.5 MBD,[48] which represents nearly 24 percent of crude oil deliveries into the market.[49]

19. Marketlink states that local refineries in the Houston-to-Lake Charles Destination Market are capable of consuming 4,794.6 MBD of crude oil.[50] Marketlink claims that 20 inbound pipelines, including the Marketlink Pipeline, have a combined available capacity to supply 5,898 MBD of crude oil to the Houston-to-Lake Charles Destination

---

[41] *Id.* at 13, Statement D at D-10 - D-11, D-13.

[42] *Id.* at Statement D at D-25 - D-26.

[43] *Id.* at 13-14.

[44] *Id.* at Statement D at D-19.

[45] *Id.* at Statement D at D-15 - D-18, D-27.

[46] *Id.* at Statement D at D-27.

[47] *Id.* at Statement D at D-18, D-37.

[48] *Id.* at Statement D at D-39.

[49] *Id.* at Statement D at D-14.

[50] *Id.* at Statement D at D-19.

Market.[51] Marketlink asserts that local production wells in that market have a combined capacity to supply 249.9 MBD of crude oil[52] and 8 rail unloading facilities have a combined capacity to supply 781.5 MBD of crude oil.[53] Finally, Marketlink represents that waterborne crude oil deliveries into the Houston-to-Lake Charles Destination Market totaled 1,931.6 MBD in 2017, which represents 22 percent of crude oil deliveries into the market.[54]

2. Commission Determination

20. We find that Marketlink has demonstrated that the transportation alternatives described in the Application are properly included in the market power analysis. Marketlink has adequately shown that these alternatives, which it represents are all utilized, are good alternatives in terms of quality, availability, and price. Accordingly, based on the representations in the Application, we conclude that Marketlink competes with numerous competitive alternatives in the relevant markets.

D. Market Metrics

21. In evaluating market-based rate applications, the Commission has used three statistics to assess the applicant pipeline's market power: (1) the HHI, which measures market concentration;[55] (2) delivery-based and capacity-based market share, which assesses the applicant's share of the origin and destination markets based on actual deliveries or actual capacity; and (3) the market's excess capacity ratio, which is the ratio of local consumption and receipt transportation capacity to local refinery production in

---

[51] *Id.* at Statement D at D-28.

[52] *Id.* at Statement D at D-27.

[53] *Id.* at Statement D at D-19, D-37.

[54] *Id.* at Statement D at D-14, D-41.

[55] HHI measures the likelihood of a pipeline exerting market power in concert with other sources of supply. HHI equals the sum of the squared market shares of all competitors in the market. The HHI can range from just above zero, where there are a very large number of competitors in the market, to 10,000, where the market is served by a monopolist.

the origin market, and the ratio of local production and delivery transportation capacity to local consumption in the destination market.[56]

1. Application

22. Marketlink provides the HHI calculations, market share statistics, and excess capacity ratios shown below for its proposed markets. Marketlink computes two sets of statistics for its origin market, one using all current transportation alternatives and the other using only the transportation alternatives considered in the market power analysis of the same market in Opinion No. 563 in Docket No. OR15-6-000.[57]

Table 1: Marketlink's Proposed Origin Market Using All Current Alternatives[58]

Summary of Competitiveness Statistics for Marketlink's Origin Market Using All Current Alternatives	
Effective Capacity-Based HHI[59]	1,627
Adjusted Capacity-Based HHI[60]	1,044
Average HHI	1,335
Marketlink Effective Capacity-Based Market Share	26.6%
Excess Capacity Ratio	1.44
Excess Capacity Held by Others Ratio	1.3

---

[56] *Buckeye Linden*, 160 FERC ¶ 61,021 at P 22.

[57] *See* Application, Statement G at G-16 - G-18.

[58] *Id.* at 7.

[59] The Commission Trial Staff's method for calculating HHI based on effective capacity. *See Williams Pipe Line Co.*, Opinion No. 391, 68 FERC ¶ 61,136, at 61,665 (1994), *order on reh'g*, 71 FERC ¶ 61,291 (1995).

[60] The adjusted capacity method for calculating HHI advocated by the United States Department of Justice in *Report on Oil Pipeline Deregulation*, Report of the U.S. Department of Justice (May 1986), https://www.ferc.gov/industries/oil/gen-info/handbooks/volume-I/doj-report.pdf. Application, Statement G at G-13 - G-14.

Table 2: Marketlink's Proposed Origin Market Using Only the Alternatives Considered in the *Seaway* Decision[61]

Summary of Competitiveness Statistics for Marketlink's Origin Market Using Only the Alternatives Considered in the *Seaway* Decision	
Effective Capacity-Based HHI	1,927
Adjusted Capacity-Based HHI	1,462
Average HHI	1,694
Marketlink Effective Capacity-Based Market Share	29.3%
Excess Capacity Ratio	1.3
Excess Capacity Held by Others Ratio	0.6

Table 3: Marketlink's Proposed Destination Market[62]

Summary of Competitiveness Statistics for Marketlink's Destination Markets		
	Gulf Coast Area	**Houston-to-Lake Charles**
Unadjusted Capacity-Based HHI	323	596
Marketlink Unadjusted Capacity-Based Market Share	7.5%	11.2%
Excess Capacity Ratio	1.55	1.85
Excess Capacity Held by Others Ratio	8.35	7.14

23. Marketlink contends that these statistics demonstrate that its origin and destination markets are sufficiently competitive. Regarding the origin market, Marketlink states that its effective capacity-based HHI of 1,627 supports granting the Application because the Commission has always granted market-based ratemaking authority where the HHI is 1,800 or less.[63] Marketlink adds that this figure is consistent with the HHI calculated for the same market in Docket No. OR15-6-000, in which the Commission affirmed that the HHI calculations demonstrated that the market was "not so highly-concentrated that it is susceptible to the exercise of market power by Seaway or any other participant."[64] Marketlink claims that its market share and excess capacity calculations also indicate that

[61] *Id.* at Statement G at G-17.

[62] *Id.* at 7.

[63] *Id.* at 14-15 (citing *Seaway ID*, 157 FERC ¶ 63,024 at P 157).

[64] *Id.* at 15 (quoting Opinion No. 563, 163 FERC ¶ 61,127 at P 81).

Marketlink lacks market power in the origin market.[65] Marketlink states that because its competitors have sufficient excess capacity, they could respond immediately if Marketlink set its tariff rates above competitive levels.[66]

24. Marketlink states that the market power statistics for its destination market definitions are far below the statistical levels that could suggest the possibility of market power.[67] It claims that its competitors in the destination markets have more than sufficient excess capacity to fully replace Marketlink's movements into those markets if Marketlink set its tariff rates above competitive levels.[68]

2. Commission Determination

25. Based on the representations in the Application, we find that Marketlink's market power statistics support the conclusion that it lacks market power in the origin and destination markets. The statistics for the origin market—whether calculated using only the transportation alternatives used in Docket No. OR15-6-000 (as shown in Table 2) or using all current transportation alternatives in the market (as shown in Table 1)— and for the destination market are consistent with a finding that Marketlink lacks market power. Marketlink's calculations are close to or below levels the Commission has previously found are indicative of a competitive market[69] and its HHI calculations are well below the Commission's 2,500 threshold that typically indicates market competitiveness. In conjunction with Marketlink's HHI calculations, the market share statistics and excess

---

[65] *Id.* at 15-16.

[66] *Id.* at 16.

[67] *Id.*

[68] *Id.*

[69] *E.g.*, Opinion No. 563, 163 FERC ¶ 61,127 at PP 80-81 (affirming that HHI of 1,800 and 30.1 percent market share indicated that State of Oklahoma origin market was not so highly concentrated that it was susceptible to exercise of market power); *Buckeye Pipe Line Co., L.P.*, Opinion No. 360, 53 FERC ¶ 61,473, at 62,670-71 (1990), *order on reh'g*, Opinion No. 360-A, 55 FERC ¶ 61,084 (1991) (finding absence of market power in market with HHI of 3,051 and 28.5 percent market share and in market with HHI of 2,102 and 43.7 percent market share).

capacity ratios are generally consistent with a finding that Marketlink lacks market power.[70]

E. Potential Competition and Other Factors

26. The Commission requires an oil pipeline seeking a market power determination to describe potential competition that it may face and any other factors that bear on the issue of whether it lacks significant market power in the relevant markets.[71]

1. Application

27. Marketlink contends that evidence of potential competition in the origin and destination markets includes recent new entrants, proposed new pipeline construction and expansion projects, and the potential entry of new rail facilities.[72]

28. First, Marketlink asserts that the origin and destination markets have experienced substantial new entry in recent years.[73] Marketlink describes several new inbound and outbound crude oil pipelines and pipeline expansions that have recently entered service in the origin market.[74] Moreover, Marketlink states that multiple new crude oil pipelines, expansions and reversals of existing crude oil pipelines, and rail unloading facilities have recently entered service in the Gulf Coast Destination Market.[75] Marketlink argues that these recent new entrants indicate that there are no serious barriers to entry in these markets and that new competitors would enter the markets in the future if Marketlink

---

[70] *See Sunoco Pipeline L.P.*, 114 FERC ¶ 61,036, at PP 80-81 (2006) (finding absence of market power in contested destination market based upon effective capacity-based HHI of 2,032, capacity-based market share of 16.7 percent, and excess capacity ratio of 1.6); *Williams Pipe Line Co.*, Opinion No. 391, 68 FERC ¶ 61,136, at 61,677-78, 61,681-82 (1994), *order on reh'g*, Opinion No. 391-A, 71 FERC ¶ 61,291 (1995) (finding lack of market power in markets with HHI of 2,048 and market share of 34 percent, HHI of 2,381 and market share of 39 percent, and HHI above 2,500 and market share of 35 percent).

[71] 18 C.F.R. § 348.1(c)(5), (8) (2019).

[72] Application, Statement E at E-1.

[73] *Id.* at Statement E at E-1, E-5.

[74] *Id.* at Statement E at E-1 - E-2.

[75] *Id.* at Statement E at E-2 - E-4.

attempted to charge supra competitive rates.[76] Marketlink adds that the significant excess capacity in its proposed markets indicates that existing competitors could also react immediately if Marketlink raised its rates above competitive levels.[77]

29. Second, Marketlink describes various new pipelines and pipeline expansions that have been planned or proposed or are currently under construction.[78] Marketlink states that new projects in the origin market include three proposed new outbound crude oil pipelines and two proposed expansions of existing outbound pipelines.[79] Marketlink states that new projects in the Gulf Coast Destination Market include nine proposed new inbound crude oil pipelines, one reversal of an existing pipeline, and multiple recently constructed rail unloading facilities capable of accepting shipments of crude oil.[80]

30. Third, Marketlink cites the potential entry of new rail facilities as evidence of potential competition in the origin and destination markets. According to Marketlink, rail facilities are flexible competitors to crude oil pipelines that can rapidly enter markets due to relatively low investment costs and short construction lead times.[81]

31. Marketlink also claims that other factors demonstrate that it lacks significant market power. Marketlink submits that the fact that Marketlink itself is a new market entrant supports granting the Application because the alternative means of transporting crude oil that its shippers used before the Marketlink Pipeline entered service in January 2014 are still available.[82] Additionally, Marketlink claims that its shippers are predominantly large crude oil producers, integrated oil companies, and crude oil marketers with the knowledge and financial capability to thwart any attempt by Marketlink to charge supra competitive rates.[83]

---

[76] *Id.* at 17, Statement E at E-1 - E-5.

[77] *Id.* at 17.

[78] *Id.* at Statement E at E-1.

[79] *Id.* at Statement E at E-5 - E-7.

[80] *Id.* at Statement E at E-4, E-7 - E-10. Marketlink states that three of the proposed new inbound pipelines would also transport crude oil out of the State of Oklahoma origin market. *Id.* at Statement E at E-7.

[81] *Id.* at Statement E at E-11.

[82] *Id.* at 17-18, Statement H at H-4.

[83] *Id.* at 18, Statement H at H-7 - H-8.

2. **Commission Determination**

32. We find that Marketlink has demonstrated that it faces significant potential competition in the origin and destination markets. As discussed in the Application, the recent new entrants and proposed pipeline construction and expansion projects in Marketlink's origin and destination markets suggest that new firms could enter these markets to discipline any attempt by Marketlink to increase its rates above the competitive level. In addition, the other factors discussed in the Application, including Marketlink's status as a new entrant into its markets and the sophistication of its shippers, may also serve to constrain Marketlink's ability to successfully charge supra competitive rates. As such, we conclude that the evidence of potential competition and other factors discussed in the Application support Marketlink's assertion that it does not possess significant market power in the relevant markets.

The Commission orders:

Marketlink's market-based rate Application is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.