

**F. Sunoco Pipeline L.P. Proceeding Outlines Reasonable Grounds to Challenge a BEA Geographic Market**

The Commission in the Sunoco Pipeline, L.P. (SPLP) proceeding detailed the types of evidence participants could provide to rebut a BEA geographic market. Sunoco requested approval to charge market-based rates for its refined petroleum products pipeline located in the Midwest and Northeast United States.<sup>487</sup> The Commission ruled on SPLP's application in 2006. The Commission found that BEAs of small to medium size without remote supply sources are appropriate geographic markets for refined petroleum pipelines. The Commission found in this case that general challenges will not shift the burden to the pipeline to provide detailed cost studies to justify the BEA as the geographic market and the inclusion of alternative sources within the BEA in those circumstances.

In addition, the Commission reiterated that bills-of-lading or other surveys that do not provide cost justification are not sufficient to satisfy a pipeline's burden to justify the cost viability of alternative sources when a detailed cost study is required.

Geographic Market and Alternative Sources of Transportation. SPLP proposed BEAs as the geographic market for each of its origin and destination locations, and included external sources within 75 to 100 miles of those BEAs.<sup>488</sup> SPLP provided a bills-of-lading survey that analyzed its affiliate's actual truck movements to support its geographic markets.<sup>489</sup> The intervenors challenged the BEAs as too broad, and unjustified by any detailed cost analyses.<sup>490</sup> The Commission found that in contrast to the BEA disregarded in *Kaneb*, "[t]he BEAs addressed in SPLP's application are relatively small or medium in size, and most of the BEA suppliers are within close proximity of each other and the population centers of the BEAs."<sup>491</sup> Therefore, the Commission concluded that the intervenors had failed to raise a reasonable doubt as to the appropriateness of the BEAs because they were not large and did not have discrete or remote suppliers.<sup>492</sup>

In addition, the intervenors challenged the use of bills-of-lading studies to justify the inclusion of external sources to the BEAs.<sup>493</sup> The Commission agreed in this case that detailed cost studies were required to justify alternative sources outside of a BEA:

In this case, the Commission finds that SPLP's bills-of-lading study is not sufficient justification for including alleged good alternatives that are from 75 to 100 miles outside a BEA. This study only proves that external supply was delivered into a BEA from an SPLP-affiliated terminal outside the BEA. It does

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<sup>487</sup> *Sunoco*, 114 FERC ¶ 61,036 at PP 1, 4.

<sup>488</sup> *Id.* PP 20, 25.

<sup>489</sup> *Id.* P 25.

<sup>490</sup> *Id.* P 26.

<sup>491</sup> *Id.* P 31.

<sup>492</sup> *Sunoco*, 114 FERC ¶ 61,036 at P 31; *See Shell*, 103 FERC ¶ 61,236 at PP 19, 35-36 (finding cost studies by intervenor, among other contentions, raised reasonable doubt in using BEA as the destination market).

<sup>493</sup> *Sunoco*, 114 FERC ¶ 61,036 at P 32.

not demonstrate that all of the alternatives...[outside] the BEA are good alternatives in terms of price.<sup>494</sup>

Later, in the *Enterprise/Enbridge* proceeding, the Commission found that evidence that alternatives are actually used is sufficient evidence of their cost competitiveness to justify their inclusion in the market power statistics.<sup>495</sup>

Regarding SPLP's application, the Commission in the Cleveland, Harrisburg, Scranton, Pittsburgh, and Toledo destination markets found that the market power statistics for the BEAs alone were unacceptable or borderline unacceptable based on the Commission precedent in *Williams*.<sup>496</sup> Further, SPLP failed to provide adequate support to justify external sources up to 100 miles from the BEA that would bring the market power statistics in line with Commission precedent.<sup>497</sup> The Commission set those markets for hearing to address these factual issues.<sup>498</sup>

During settlement negotiations the intervening parties withdrew their interventions and comments.<sup>499</sup> Trial Staff conducted its own market power analysis in the relevant markets and remained concerned regarding SPLP's market power in the Harrisburg destination market.<sup>500</sup> SPLP agreed to modify its application to request market-based rate authority for only a discrete portion of the Harrisburg BEA market.<sup>501</sup> Trial Staff agreed to support the renewed application after that modification was made, and the Commission granted the renewed application.<sup>502</sup>

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<sup>494</sup> *Id.*

<sup>495</sup> *Enterprise Products Partners*, 146 FERC ¶ 61,115 at PP 53-56, 70.

<sup>496</sup> *Sunoco*, 114 FERC ¶ 61,036 at PP 82-83 (*citing Williams*, Opinion No. 391, 68 FERC ¶ 61,136 at 61,677-78, 61,682-86).

<sup>497</sup> *Id.*

<sup>498</sup> *Id.* P 84.

<sup>499</sup> *See Sunoco Pipeline, L.P.*, 118 FERC ¶ 61,266, at P 3 (2007).

<sup>500</sup> *Id.* PP 5-6.

<sup>501</sup> *Id.* P 6.

<sup>502</sup> *Id.* PP 5-6, 9.