

B. SFPP, L.P. Proceeding Examines Geographic Origin Markets

In 1998 in SFPP, an origin market was contested and litigated for the first time. It provided the Commission with the opportunity to examine the origin market inquiry, and articulate what alternative transportation sources would be considered competitive in an origin market. The Commission defined an origin market as the geographic area around an applicant pipeline's receipt terminal where viable competition existed to transport the relevant product. Similar to a destination market, the goal was to identify the area that included viable competition to the applicant pipeline. The Commission provided that to be viable, a proposed alternative must be physically able to transport additional capacity or have the ability to add capacity at reasonable cost. The Commission order on SFPP's application provides guidance on the definition and basic goal in defining the geographic origin market, and what it means for an alternative source of transportation to be available.

1. Order on Application for Market-Based Rates Outlines Geographic Origin Market Inquiry

SFPP, LP requested market-based rates over its short 3.8 mile pipeline that transported refined petroleum products from Sepulveda, CA to Watson Station, CA.³⁹⁷ SFPP defined the destination market as Watson Station, CA.³⁹⁸ SFPP proposed the three California counties of Ventura, Los Angeles, and Orange as the origin market, but as an alternative, proposed the two refineries directly connected to its pipeline as the origin market.³⁹⁹ SFPP provided delivery based and capacity based (not effective or adjusted capacity) HHI and market share statistics for its destination market and for both proposed origins.⁴⁰⁰

The Commission found that SFPP did not have market power in its destination market as the HHI of 1,742 and market share of 27 percent "are well within the HHIs and market shares under which the Commission has previously found that pipelines lack market power" citing the *Williams, Buckeye, and Kaneb* proceedings.⁴⁰¹

Geographic Origin Market and Alternative Sources of Transportation. The Commission then turned to its first in-depth analysis of a contested origin market. The principal inquiries were the proper size of the origin market and what reasonable alternatives were available to SFPP's pipeline to transport product out of the origin market. First, the Commission provided that "the test for determining origin markets" is the "area which includes all means by which refiners whose products currently move through...[SFPP's pipeline] can dispose of their production elsewhere."⁴⁰² And "the focus of the analysis" is "on whether customers using...[SFPP's pipeline] have competitive alternatives that would enable them to avoid...[SFPP's pipeline] in the event SFPP charged monopolistic prices."⁴⁰³

³⁹⁷ SFPP, 84 FERC ¶ 61,338 at 62,490.

³⁹⁸ *Id.* at 62,491.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.* at 62,491-92.

⁴⁰¹ *Id.* at 62,494 & n.8.

⁴⁰² SFPP, 84 FERC ¶ 61,338 at 62,496.

⁴⁰³ *Id.*

SFPP had proposed that its current shippers were connected, or could be connected, to a series of pipelines which themselves were interconnected to yet others in its proposed three county origin.⁴⁰⁴ But, SFPP failed to provide any detail about how its current shippers could ship through this proposed alternative network, and therefore, the Commission found that SFPP did not present sufficient evidence to justify its three county origin market.⁴⁰⁵

The Commission found that the more narrowly defined origin market consisting of the refineries that use SFPP's pipeline was the proper origin market to analyze.⁴⁰⁶ But, whether other pipelines and trucking could serve as viable alternatives in that market was contested in connection with the calculation of HHI and market power. The protesters contended that proposed alternatives were not reasonable given their physical limitations.⁴⁰⁷ The Commission set the matter for hearing because SFPP had failed to completely address the protestors' issues in its application.⁴⁰⁸ The Commission envisioned evidence would be developed at the hearing as to whether there was current available capacity on proposed alternatives and whether capacity could be expanded at reasonable cost.⁴⁰⁹ In addition, the Commission directed consideration of how much alternative capacity was needed to limit SFPP's exercise of market power, and whether SFPP's inability to exercise market power over one shipper protected other shippers, "given the pipeline's inability to price discriminate among customers."⁴¹⁰

Therefore, the Commission found that a proper origin geographic market is the area that includes all means by which shippers of the applicant pipeline can dispose of their production elsewhere. The Commission directed an examination into the competitiveness of proposed alternatives in SFPP's more narrowly defined origin market. As reiterated later in the *Enterprise/Enbridge* proceeding, the Commission found that for proposed alternatives to be competitive they must be physically capable of serving as alternatives.

2. SFPP Failed to Justify Proposed Alternative Sources of Transportation in Origin Market

The judge denied SFPP's application for market-based rates finding that SFPP had not established that it lacked market power in the origin market.⁴¹¹ Interestingly, the Commission affirmed without citing any HHI, market share, or other market power statistics, which is anomalous and not repeated by the Commission to date. The Commission also found that even where the two refineries directly connected to SFPP's pipeline had viable physical alternatives for transportation based on actual deliveries through other sources, SFPP failed to satisfy its ultimate burden of establishing there were sufficient competitive alternatives for a terminal company or its upstream customers.⁴¹² The Commission's focus in subsequent cases has been on the market power statistics in the pipeline's markets as a whole, without focusing on market power over particular shippers or buyers.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 62,498.

⁴⁰⁸ *SFPP*, 84 FERC ¶ 61,338 at 62,498.

⁴⁰⁹ *Id.* at 62,498-99.

⁴¹⁰ *Id.*

⁴¹¹ *SFPP, L.P.*, 102 FERC ¶ 61,240, at 61,713 (2003), *reh'g denied*, 104 FERC ¶ 61,136 (2003).

⁴¹² *Id.* at 61,718.

Alternative Sources of Transportation. Regarding alternative pipelines for the terminal company, the Commission found that the terminal itself did not have sufficient alternatives because the use of alternative pipelines would require an additional terminal fee that would make its terminal uncompetitive in terms of price.⁴¹³ Further, there was insufficient evidence in the record on whether the terminal's upstream customers reasonably could have used alternative pipelines.⁴¹⁴ In addition, the Commission found there was insufficient evidence on the viability of trucking alternatives because even though trucking was cost competitive locally, there was insufficient evidence as to what volume of product the terminal shipped that was compliant with local environmental laws.⁴¹⁵ Without those volumes, it was unclear how much product could be diverted to local trucking.⁴¹⁶ Likewise, the Commission found that volumes to the Los Angeles International Airport and export shipments through the Los Angeles and Long Beach harbors were unsubstantiated.⁴¹⁷ While providing general claims those sources could serve as alternatives, there was no capacity or cost information provided.⁴¹⁸

The Commission found that the record failed to establish sufficient alternatives to SFPP for the terminal company, and therefore, concluded that SFPP was precluded from charging all companies market-based rates.⁴¹⁹

⁴¹³ *Id.* at 61,719-20.

⁴¹⁴ *Id.* at 61,720.

⁴¹⁵ *Id.* at 61,721.

⁴¹⁶ *SFPP*, 102 FERC ¶ 61,240 at 61,721.

⁴¹⁷ *Id.* at 61,722.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.* at 61,723.