167 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MPLX Ozark Pipe Line LLC Docket No. OR19-14-000

ORDER ON MARKET-BASED RATE APPLICATION ESTABLISHING HEARING PROCEDURES

(Issued June 25, 2019)

1. MPLX Ozark Pipe Line LLC (MPLX Ozark), pursuant to Part 348[1] 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 Wood River, Illinois (Application). Husky Marketing & Supply Company (Husky) and Phillips 66 Company (Phillips 66) protested the Application. As discussed below, the Commission grants MPLX Ozark market-based rate authority in the origin market. The Commission will establish a hearing to determine whether MPLX Ozark has the ability to exercise market power in the challenged destination market.

I. Background

2. MPLX Ozark is a subsidiary of MPLX LP, a master limited partnership formed in 2012 by Marathon Petroleum Corporation.[2] MPLX Ozark owns the Ozark Pipeline, a 433-mile, 22-inch diameter common carrier oil pipeline engaged in the transportation of crude oil in interstate commerce that is subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA).[3] The Ozark Pipeline receives crude oil in Cushing, Oklahoma, and makes deliveries to Wood River, Illinois.[4]

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[1] *See* 18 C.F.R. pt. 348 (2018).

[2] Application at 3.

[3] 49 U.S.C. app. § 1 *et seq.* (1988).

[4] Application at 3.

II. Description of Filing

3. MPLX Ozark requests authority to charge market-based rates for the transportation of all crude oil originating in a single origin market and delivered to a single destination market. The proposed origin market consists of the entire State of Oklahoma. The proposed destination market consists of the counties located in BEA No. 160 (the St. Louis Destination Market).[5] MPLX Ozark argues that the relevant product market for the origin market is the supply of all types of crude oil, and the relevant product market for the destination market is the absorption, either through transportation receipts or local consumption, of all types of crude oil.[6]

4. MPLX Ozark asserts that it does not possess market power in either the origin or destination markets and that both markets are workably competitive. MPLX Ozark provides market concentration calculations using the Herfindahl-Hirschman Index (HHI),[7] market share percentages, and excess capacity ratios to support its position that it lacks market power. MPLX Ozark states that it is seeking market-based rate authority to enable it to respond more quickly to changing market conditions and to compete more effectively in the proposed markets.[8]

A. Product Market

5. MPLX Ozark states that the Ozark Pipeline has the ability to ship a wide range of crude oil grades and currently transports primarily mid-continent crude oil produced in the West Texas Permian Basin and the Delaware Basin.[9] Additionally, the Ozark Pipeline also transports smaller volumes of crude oil produced in Oklahoma, Colorado,

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[5] The term BEA refers to United States Department of Commerce, Bureau of Economic Analysis Economic Areas. BEA No. 160 is the St. Louis – St. Charles – Farmington, Missouri-Illinois Economic Area.

[6] Application at 9-10.

[7] 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.

[8] Application at 3-4.

[9] *Id.* at 9.

and neighboring states and occasionally transports heavier Canadian crude oils.[10] MPLX Ozark contends that the relevant product market in the origin market is the absorption of all crude oil, and the relevant product market in the destination market is the supply of all crude oil.[11] MPLX Ozark maintains that these product market definitions are consistent with Commission precedent.[12]

B. Geographic Markets

6. MPLX Ozark asserts that, in the context of a crude oil pipeline seeking market-based rate authority, there are two separate geographic markets to be defined: (1) the origin market(s) from which the pipeline makes outbound movements; and (2) the destination market(s) into which the pipeline makes inbound movements.[13] MPLX Ozark claims that the proposed origin market of the State of Oklahoma is appropriate because it includes the competing alternatives to which MPLX Ozark's customers could reasonably turn in order to avoid a price increase.[14] MPLX Ozark further asserts that defining the origin market as the State of Oklahoma is appropriate because it is consistent with Commission precedent and reflects the reality of the market in which competition for MPLX Ozark's transportation service occurs.[15]

7. MPLX Ozark claims that the St. Louis Destination Market (BEA No. 160) is the appropriate geographic destination market because it includes the direct and indirect alternatives to which MPLX Ozark's customers could reasonably turn to avoid a price increase.[16] MPLX Ozark also states that this market is appropriate because it is a recognized area of economic activity that encompasses the market in which competition

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[10] *Id.*; *see also id.* at Statement A at A-14.

[11] *Id.* at 10.

[12] *Id.* (citing *SFPP, L.P.*, 84 FERC ¶ 61,338, at 62,494 (1998); *Seaway Crude Pipeline Co. LLC*, 157 FERC ¶ 63,024, at P 46 (2016)).

[13] *Id.* at 10-11.

[14] *Id.* at 11.

[15] *Id.* at 11-12 (citing *Seaway Crude Pipeline Co. LLC*, Opinion No. 563, 163 FERC ¶ 61,127, at PP 15-24 (2018)).

[16] *Id.* at 12.

for MPLX Ozark's transportation service occurs.[17] Furthermore, MPLX Ozark asserts that defining the destination market as BEA No. 160 is appropriate because it is consistent with Commission precedent upholding the use of a BEA to define a market.[18]

C. Competitive Alternatives

8. MPLX Ozark claims that it faces significant competition in both the origin and destination markets.[19] MPLX Ozark states that the competitive alternatives in the origin market are local refineries that consume crude oil in the origin market and outbound pipelines capable of transporting crude oil from the origin market.[20] MPLX Ozark states that the competitive alternatives in the destination market are local crude oil production that can supply the destination market locally and other inbound pipelines capable of transporting crude oil into the destination market.[21]

9. Regarding the proposed origin market, MPLX Ozark states that the estimated supply of crude oil into the origin market is 2,026,774 barrels per day (bpd), consisting of 521,348 bpd of local crude oil production and 1,505,426 bpd of estimated pipeline imports.[22] MPLX Ozark contends that the competitive alternatives in the origin market include four local refineries that consume crude oil in the market and thirteen outbound pipelines owned by nine companies, including the Ozark Pipeline, that transport crude oil out of the market.[23] MPLX Ozark states that the local refineries can consume 521,800 bpd of crude oil[24] and the outbound pipelines have an aggregate available capacity to transport 2,916,900 bpd of crude oil.[25]

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[17] *Id.*

[18] *Id.* (citing *Williams Pipe Line Co.*, Opinion No. 391, 68 FERC ¶ 61,136, at 61,661 (1994), *order on reh'g*, Opinion No. 391-A, 71 FERC ¶ 61,291 (1995)).

[19] *Id.*

[20] *Id.* at 13.

[21] *Id.*

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

[23] *Id.* at 14, Statement D at D-5.

[24] *Id.* at Statement D at D-5.

[25] *Id.* at Statement D at D-6 - D-7.

10. Regarding the proposed destination market, MPLX Ozark asserts that it competes with local crude oil production and inbound pipelines that transport crude oil into the destination market.[26] MPLX Ozark states that the Ozark Pipeline delivers crude oil to a refinery located in the Wood River, Illinois area (Wood River Refinery), which is able to consume approximately 288,880 bpd of crude oil.[27] MPLX Ozark states that local crude oil production wells and six inbound pipelines, including the Ozark Pipeline, have a combined capacity available to supply 2,021,852 bpd of crude oil to the destination market.[28]

D. Market Metrics

MPLX Ozark claims that market power statistics demonstrate that the origin and destination markets are workably competitive. MPLX Ozark provides the following HHI calculations, market share statistics, and excess capacity ratios for its proposed markets.

Table 1: MPLX Ozark's Proposed Origin Market[29]

Oklahoma - Origin Market	
Market Statistics	
Department of Justice HHI[30]	869
FERC HHI[31]	1,490
Capacity-Based Market Share	10.5%
Receipt-Based Market Share	12.8%
Excess Capacity Ratio	1.7

[26] *Id.* at 14.

[27] *Id.*

[28] *Id.*

[29] *Id.* at 6.

[30] 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/indus-act/handbooks/volume-I/doj-report.pdf. *Id.* at Statement G at G-12.

[31] The Commission Trial Staff's method for calculating HHI based on effective capacity. *Id.* at Statement G at G-13 (citing Opinion No. 391, 68 FERC at 61,665).

Table 2: MPLX Ozark's Proposed Destination Market[32]

St. Louis (BEA No. 160) - Destination Market	
Market Statistics	
Department of Justice HHI	1,920
FERC HHI	2,156
Capacity-Based Market Share	22.9%
Delivery-Based Market Share	24.1%
Excess Capacity Ratio	4.3

E. Potential Competition and Other Factors

11. MPLX Ozark states that there are potential competitive alternatives to the Ozark Pipeline in both the origin and destination markets that factor into the market power evaluation.[33] The potential competitive alternatives include the construction of new pipelines, the expansion, conversion, reversal, or utilization of existing pipelines, and the use of waterborne and rail facilities.[34] MPLX Ozark claims that potential competition from these alternatives further ensures that MPLX Ozark will not be able to raise its rates above competitive levels in the origin and destination markets.[35]

12. Additionally, MPLX Ozark asserts that other factors demonstrate that it lacks significant market power. It provides an additional HHI calculation for the destination market that it derived using an alternative approach to calculating effective capacity under the FERC Staff method, pursuant to Opinion No. 558.[36] MPLX Ozark claims that this HHI figure demonstrates that implementing the alternative method of calculating effective capacity would have an immaterial effect on the market power statistics for the destination market.[37]

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[32] *Id.* at 6.

[33] *Id.* at 19.

[34] *Id.*

[35] *Id.*

[36] *Id.* at 20 (citing *Guttman Energy, Inc. v. Buckeye Pipe Line Co., L.P.*, Opinion No. 558, 161 FERC ¶ 61,180, at P 256 (2017)).

[37] *Id.* n.45.

III. <u>Protest</u>

13. Pursuant to section 348.2(g) of the Commission's regulations,[38] interventions or protests to the Application were required to be filed by February 25, 2019. Husky and Phillips 66 (collectively, Protesters) filed a timely motion to intervene and protest (Protest). According to the Protest, both Husky and Phillips 66 are current and future shippers of substantial amounts of light and medium crude oil on the MPLX Ozark system and pay the applicable rates for transportation on that system.[39] Protesters state that Husky ships crude oil on the Ozark Pipeline exclusively for the purpose of further transportation on other MPLX-owned pipelines to supply a refinery located in Lima, Ohio, that is owned by an affiliate of Husky (Lima Refinery).[40] Phillips 66 ships crude oil on the Ozark Pipeline to supply the Wood River Refinery, which Phillips 66 co-owns with Cenovus Energy Inc. through a 50/50 joint venture, WRB Refining LP.[41]

14. Protesters request that the Commission either summarily reject the Application or set it for hearing because it uses an overly broad product market and an overly broad destination market.[42]

15. Protesters claim that the proposed product market of all crude oil is overly broad. Protesters state that the Commission examines the relevant product market in applications for market-based rate authority by focusing on cross-elasticity of demand.[43] Protesters contend that MPLX Ozark has not demonstrated cross-elasticity of demand between the transportation of light and medium crude oil and the transportation of heavy crude oil because the Application contains no evidence that shippers would substitute the transportation of heavy crude in response to a price increase in the transportation of light and medium crude.[44]

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[38] 18 C.F.R. § 348.2(g) (2018).

[39] Protest at 4-5.

[40] *Id.* at 6.

[41] *Id.*

[42] *Id.* at 6-8.

[43] *Id.* at 10.

[44] *Id.* at 10-11.

16. Protesters also contend that MPLX Ozark's proposed destination market (BEA No. 160, the St. Louis Destination Market) is overly broad and assert that the Wood River Refinery and the Lima Refinery are appropriate destination markets.[45] Protesters state that the Commission requires applicants for market-based rate authority to begin with a narrowly defined destination market and expand outward gradually to encompass only those geographic areas where customers would shift their purchases in response to a small but significant non-transitory increase in price (SSNIP).[46] Protesters claim that, under the hypothetical monopolist test, a proposed geographic market definition is appropriate if a hypothetical monopolist could impose a SSNIP in that market; however, if shippers would respond to the SSNIP by purchasing product from outside of the proposed market, then the proposed market definition is too narrow.[47] Protesters claim that, if a hypothetical monopolist that controlled all means of transporting crude oil to the Wood River Refinery increased its transportation rate by fifteen percent, Phillips 66 would have no reasonable alternative but to pay the increased rate.[48] Protesters further claim that if the same situation applied to the Lima Refinery and a hypothetical monopolist increased its transportation rate by fifteen percent, Husky would likewise have no reasonable alternative but to pay the increased rate.[49] Thus, Protesters contend that there is no need to expand the destination market analysis beyond those two refineries.[50]

17. Protesters also challenge the competitive alternatives that MPLX Ozark identifies for the destination market. According to Protesters, the Application fails to demonstrate that the proposed alternatives are competitive in terms of availability, quality, and price.[51] In particular, Protesters claim that certain pipelines that deliver crude oil to the Wood River Refinery and the Lima Refinery are currently in prorationing and would therefore be unavailable to receive volumes diverted from the Ozark Pipeline in response to a

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[45] *Id.* at 11-13.

[46] *Id.* at 6-7.

[47] *Id.* at 11 (quoting Opinion No. 558, 161 FERC ¶ 61,180 at P 183).

[48] *Id.* at 12-13.

[49] *Id.* at 13.

[50] *Id.*

[51] *See id.* at 13-16.

transportation rate increase.[52] As a result, Protesters claim that such pipelines are not competitive alternatives to the Ozark Pipeline.[53] Protesters state that removing pipelines that are not good alternatives in terms of quality, availability, and price from the market power analysis will result in HHIs of 5,368 for the Wood River Refinery and 5,386 for the Lima Refinery, which Protesters claim indicate the presence of undue market power.[54]

IV. <u>Answers</u>

18. On March 27, 2019, MPLX Ozark filed an answer to the Protest. MPLX Ozark states that the Protest does not challenge the Application's showing that the origin market is workably competitive and that MPLX Ozark cannot exercise market power in the origin market.[55] MPLX Ozark thus requests that the Commission summarily grant MPLX Ozark market-based ratemaking authority with respect to the origin market.[56] MPLX Ozark also responds to Protesters' product market[57] and destination market[58] arguments. MPLX Ozark contends that, even if the Commission accepted Protesters' proposed product market and destination market definitions, Protesters' market power analysis is flawed and should be rejected.[59] MPLX Ozark argues, moreover, that the Commission should ignore the alternative FERC Staff method HHI that Protesters present.[60]

19. Protesters filed a motion for leave to respond and response to MPLX Ozark's answer on April 11, 2019. Protesters state that the Commission should reject MPLX

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

[53] *Id.*

[54] *Id.*

[55] MPLX Ozark Answer at 3-6.

[56] *Id.* at 5-6.

[57] *Id.* at 6-10.

[58] *Id.* at 10-22.

[59] *Id.* at 22-25.

[60] *Id.* at 26-28.

Ozark's answer because it serves as an unauthorized supplement to the Application.[61] Protesters also reiterate and elaborate upon their contentions regarding the Application's proposed product market,[62] destination market,[63] and competitive alternatives in the destination market.[64]

20. On April 18, 2019, MPLX Ozark filed a motion for leave to respond and limited response to Protesters' April 11, 2019 answer, in which MPLX Ozark responds to Protesters' assertion that MPLX Ozark's answer served as an unauthorized supplement to the Application.[65]

V. Discussion

21. The Commission grants Protesters' unopposed motion to intervene. Rule 213 of the Commission's Rules of Practice and Procedure[66] prohibits answers to answers and answers to protests unless otherwise ordered by the decisional authority. Here, the Commission will accept the answers filed on March 27, 2019, April 11, 2019, and April 18, 2019, as they assisted the Commission in its determination.

22. In Order No. 572,[67] as codified in Part 348 of the Commission's regulations,[68] the Commission established filing requirements and procedures with respect to an application by an oil pipeline for a determination that it lacks significant market power in the markets in which it proposes to charge market-based rates. Section 348.1(c)[69] of the

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[61] Protesters Response at 1-2.

[62] *Id.* at 3-6.

[63] *Id.* at 6-12, 15-16.

[64] *Id.* at 13-16.

[65] MPLX Ozark Response at 2-5.

[66] 18 C.F.R. § 385.213(a)(2) (2018).

[67] *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007 (cross-referenced at 69 FERC ¶ 61,103), *order on reh'g*, Order No. 572-A, 69 FERC ¶ 61,412 (1994), *aff'd sub nom. Assoc. of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

[68] 18 C.F.R. pt. 348 (2018).

[69] *Id.* § 348.1(c).

Commission's regulations requires an oil pipeline seeking a market power determination and authority to charge market-based rates to: (1) define the relevant geographic and product markets, including both origin and destination markets; (2) identify the competitive alternatives for shippers, including potential competition and other competition constraining the pipeline's ability to exercise market power; and (3) compute the market concentration and other market power measures.

23. The Commission has examined the portion of MPLX Ozark's Application that addresses the proposed origin market and finds adequate support for an absence of market power in that market. MPLX Ozark has met its burden under Order No. 572 to show that the origin market is workably competitive. MPLX Ozark explains that defining the geographic origin market as the State of Oklahoma is appropriate because this definition: (1) reflects the reality of the market in which competition for MPLX Ozark's transportation service occurs; (2) captures both direct and indirect alternatives to MPLX Ozark and allows for an appropriately dynamic analysis; and (3) is consistent with Opinion No. 563, in which the Commission affirmed an initial decision finding that the entirety of the State of Oklahoma was an appropriate geographic origin market for a crude oil pipeline with an origin point in Cushing.[70] MPLX Ozark states that the Ozark Pipeline is directly connected to three tank farms at Cushing, which in turn can receive crude oil from eight pipelines transporting crude oil into Cushing from production areas outside of Oklahoma.[71] MPLX Ozark states that the estimated supply of crude oil into the origin market is 2,026,774 bpd.[72] MPLX Ozark identifies the following competitive alternatives for the origin market, which it states are available to producers in the market to clear their production: (a) four refineries with a combined capacity of 521,800 bpd;[73] and (b) thirteen pipelines, owned by nine companies, that transport crude oil out of the origin market with a combined capacity of 2,916,900 bpd.[74] MPLX Ozark provides HHI calculations that are well below the Commission's 2,500 threshold that typically indicates

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[70] Application at 11-12, Statement A at A-16; *see also* Opinion No. 563, 163 FERC ¶ 61,127 at PP 15, 24-29.

[71] Application at Statement A at A-13.

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

[73] *Id.* at Statement D at D-5.

[74] *Id.* at Statement D at D-5 - D-7. The Ozark Pipeline is included in the thirteen pipelines that MPLX Ozark identifies. *See id.* at 14; *see also id.* at Statement D at D-5, Ex. D.2.

market competitiveness.[75] In addition, MPLX Ozark presents calculations showing that its capacity-based and receipt-based market shares in the origin market do not exceed 12.8 percent and that excess capacity exists in the origin market.[76] Accordingly, the Commission grants MPLX Ozark market-based rate authority for its origin market of the State of Oklahoma.

24. Protesters do not challenge the proposed origin market or the Application's market power statistics for the origin market. Nothing in the Protest alters the Commission's conclusion that the Application makes a sufficient showing that MPLX Ozark lacks market power in the origin market. An applicant for market-based rates is, however, required to demonstrate that it lacks market power in both the relevant origin and destination markets.[77] Therefore, the Commission's determination that MPLX Ozark lacks market power in its origin market does not authorize MPLX Ozark to charge market-based rates, unless and until the destination market is also shown to be sufficiently competitive.

25. The Commission finds that the evidence presented in MPLX Ozark's Application is insufficient to permit a determination at this time that MPLX Ozark lacks market power in the proposed destination market. Protesters challenge the appropriateness of MPLX Ozark's product market and geographic destination market definitions, identification of competitive alternatives, and market concentration statistics. The Commission's preliminary analysis indicates that the Protest raises numerous issues of material fact concerning whether MPLX Ozark lacks market power in the destination market which cannot be resolved on the basis of the record at this point. Accordingly, the Commission will set the issue of whether MPLX Ozark lacks market power in the contested destination market for hearing.

<u>The Commission orders</u>:

(A) As discussed in the body of this order, the Commission grants MPLX Ozark's request for a determination that it lacks market power in the State of Oklahoma origin market.

(B) Pursuant to the authority conferred on the Commission by the ICA, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under

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[75] *See supra* P 11; *see also* Application at Statement G.

[76] *See supra* P 11.

[77] Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,188-31,189.

the ICA, a public hearing shall be held concerning whether MPLX Ozark lacks market power in the proposed destination market, BEA No. 160.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief ALJ, shall within 15 days of the date of the Presiding ALJ's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The Presiding ALJ is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.