

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners, L.P. § Docket No. OR12-4-000
and Enbridge Inc.**

**JOINT PROTEST AND REQUEST FOR DISCOVERY AND HEARING OF
SUNCOR ENERGY MARKETING INC., CANADIAN NATURAL RESOURCES
LIMITED, CONTINENTAL RESOURCES, INC., DENBURY ONSHORE LLC,
AND HUSKY MARKETING AND SUPPLY COMPANY**

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TABLE OF CONTENTS

COMMUNICATIONS AND SERVICE.....	2
PROTEST.....	3
A. The Application Fails to Comply with the Commission’s Regulations Governing Initial Rates for a New Service and Should Be Summarily Dismissed.....	4
B. The Application Fails to Justify its Overly-Broad Definition of the Product Market..	9
C. The Application Fails to Justify its Overly-Broad Definition of the Origin Market..	12
D. The Application Does Not Properly Identify Good Alternatives to Seaway.	13
E. The Application Fails to Provide the Required Netback Analysis.....	17
F. The Application Fails to Demonstrate a Lack of Market Power in the Destination Market.....	21
G. The Application Fails to Demonstrate Potential Competition which would Mitigate the Exercise of Market Power by Seaway.	23
H. Seaway’s Status as a New Entrant Does not Justify Market-Based Rate Authority..	25
REQUEST FOR DISCOVERY	25
REQUEST FOR HEARING	26
CONCLUSION	26

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1. By application dated December 2, 2011 (the “Application”), Enterprise Products Partners L.P. (“Enterprise”) and Enbridge Inc. (“Enbridge”) seek authority to charge market-based rates for pipeline transportation of crude oil on their Seaway Crude Pipeline Company system (“Seaway”) from an origin point at Cushing, Oklahoma to destination points on the Gulf Coast. The Application proposes to charge market-based rates as initial rates for a new reversed service on the Seaway pipeline, which previously transported crude oil from the Gulf Coast to Cushing.

2. For purposes of analyzing market power, the Application proposes an origin market consisting of 215 counties in the states of Kansas, Oklahoma, and Texas. The Application proposes a destination market consisting of 23 counties and parishes in the states of Texas and Louisiana. In the alternative, the Application proposes a wider destination market consisting of 30 counties in Texas, 18 parishes in Louisiana, six counties in Mississippi, and two counties in Alabama.

3. On January 31, 2012, Suncor Energy Marketing Inc. (“Suncor”), Canadian Natural Resources Limited (“CNRL”), Continental Resources, Inc. (“Continental”),

Denbury Onshore LLC (“Denbury”), and Husky Marketing and Supply Company (“Husky”) (collectively the “Joint Shippers”) filed a joint motion to intervene herein. The motion demonstrated that Joint Shippers are entitled to intervene in this proceeding under Rule 214 as potential customers of Seaway which may be directly affected by the outcome of this proceeding and that participation by Joint Shippers in this proceeding will serve the public interest.

4. Pursuant to the Commission’s Procedures for Market Power Determinations (18 C.F.R. § 343.2) and Rules 211, 217, 406 and 502, Joint Shippers hereby jointly protest the Application and request that the Commission summarily dismiss the Application on the grounds set out herein. If the Application is not summarily dismissed, the Joint Shippers request discovery and a hearing. This joint protest and request for discovery and hearing is supported by the attached Verified Statements of interest and the attached affidavits of Barry E. Sullivan (“Sullivan Affidavit”) and John Van Heyst (“Van Heyst Affidavit”).

COMMUNICATIONS AND SERVICE

5. Communications to the Joint Shippers should be served upon and addressed to the persons shown below:

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*Persons to be served in accordance with 18 C.F.R. § 385.2010. To the extent necessary, the Joint Shippers request waiver of 18 C.F.R. § 385.203(b)(3) in order to allow all six persons who have been identified to receive service in this proceeding.

PROTEST

6. All of the Joint Shippers have standing to protest the Application. Under the Commission’s rules, any person may file a protest objecting to an application. 18 C.F.R. § 385.211. In addition, the attached Verified Statements show that Suncor, CNRL, Continental, Denbury and Husky are active participants in crude oil markets which will be served by the reversed Seaway pipeline, and each Joint Shipper has a genuine commercial interest and the ability to become a future shipper on Seaway when the reversed service is implemented. As such, the Joint Shippers have “substantial

economic interest” which provides standing to protest the Application under 18 C.F.R.

§§ 343.2(b) and 348.2(g). *Enbridge Pipelines (Southern Lights) LLC*, 134 FERC

¶ 61,067 at P 10 (2011). Joint Shippers protest the Application on the following grounds:

- The Application fails to comply with the Commission’s regulations governing initial rates for a new service and should be summarily dismissed.
- The Application fails to justify its overly-broad definition of the product market.
- The Application fails to justify its overly-broad definition of the origin market.
- The Application does not properly identify good competitive alternatives to Seaway.
- The Application fails to provide the required netback analysis.
- The Application fails to demonstrate a lack of market power in the destination market.
- The Application fails to demonstrate potential competition which would mitigate Seaway’s exercise of market power.
- Seaway’s status as a new entrant does not justify market-based rate authority.

A. The Application Fails to Comply with the Commission’s Regulations Governing Initial Rates for a New Service and Should Be Summarily Dismissed.

7. The Commission’s regulations do not permit an oil pipeline to use market-based rate procedures to establish initial rates, and there is no basis for departing from the Commission's regulations by allowing Seaway to use market-based rates as initial rates for a new service. 18 C.F.R. §§ 342.1 and 342.2. The regulations properly limit new services to cost-based or negotiated rates. That assures that market-based rate applications will only be considered with the benefit of operating experience, shipper history, and an actual cost-based or negotiated rate to serve as a proxy or starting point

for the competitive rate. Without consideration of these factors, the market power of a pipeline cannot be measured.

8. In Order No. 561-A, the Commission considered and explicitly rejected the use of market-based rates to justify an initial rate. The Commission concluded that an initial rate should be established either on a cost-of-service basis or on a negotiated basis. The Commission was concerned that a pipeline might be able to exercise market power to establish an initial rate that was unjust and unreasonable. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000, 31,105 (1994). As such, the Commission's regulations make no provisions for establishing initial rates as market-based rates, as Applicants request.

9. Applicants' requested waiver of 18 C.F.R. § 342.2 is insufficient to allow the Commission to consider market-based rates for the initial service here. Application at 15. Applicants failed to seek waiver of the requirement to provide pertinent data in Statement C, as set forth in 18 C.F.R. § 348.1(c)(3). In Order No. 572, the Commission stated that a pipeline would have to provide data ". . . on its throughput, on its receipts in its origin markets, on its deliveries in its destination markets and to its major consuming markets Data should be supplied for each commodity carried," *Market Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007, 31,191 (1994). Here, Applicants acknowledge that their Application lacks this required information. *See* Statement C.

10. Because Seaway has no shipper history, Mr. Sullivan explains that it is not possible to determine shipper intent or to analyze shipper behavior, which in turn

determine the relevant product market. Since the Application admits that a netback analysis is not possible, it is therefore impossible to properly define the relevant origin market or to properly identify good alternatives in the origin market. Statement A at A-7, n.7. Nor does the Application provide a delivered price analysis to properly define the relevant destination market. Without properly defined product and geographic markets, there is no reliable basis for conducting market share or HHI analyses. Consequently, the market share and HHI statistics submitted in the Application are meaningless and provide no useful information on the market power of Seaway. Sullivan Affidavit at PP 4-7.

11. An informed market power analysis that is compliant with Commission requirements cannot be performed without critical information from Seaway's actual operations. Without such information, the relevant geographic and product markets cannot be properly defined. If Seaway had an existing tariff, for example, that tariff could be used as the base price in calculating the threshold delivered price necessary to determine whether alternatives to Seaway's transportation service meet the Commission's delivered price comparability requirement for a good alternative in its destination market. Similarly, this base price could also be used to calculate the threshold netback price necessary to determine whether alternatives to Seaway's transportation service meet the price comparability requirement in its origin market. In addition, without actual operating experience, the relevant product market cannot be properly defined. If Seaway were currently providing its new service, information about the type of crude oil being transported on Seaway would be available, which would help to determine the relevant product market. Without a properly defined product market, good

alternatives cannot be identified, rendering the entire market power analysis submitted in the Application useless and misleading. *Id.*

12. The fatal deficiencies in the Application cannot be cured with hearing evidence. The Application correctly acknowledges that it is not possible to perform a netback analysis in the absence of operating experience and filed rates. Statement A at A-7, n.7. No amount of expert testimony or hypothetical calculations can supply the missing netback analysis until Seaway has actual operating experience under a regulatory rate established in accordance with the Commission's regulations. Similarly, without operating experience, a hearing would not enable Applicants to provide the required information on receipts, deliveries, throughput, and product type. Order No. 572 at 31,191. As the Application concedes, it would not be possible to calculate a delivery-based market share in the destination market or a receipt-based market share in the origin market because the reversed Seaway pipeline is not yet operating. Statement G at G-6-G-7.

13. Rather than waiving its regulations, the Commission should apply its regulations and summarily dismiss the Application until such time as Seaway has established rates in accordance with the regulations and has sufficient operating experience to determine an appropriate product market and appropriate origin and destination markets. Under 18 C.F.R. § 348.11, the Commission may reject any filing by an oil pipeline which fails to comply with the Commission's regulations. *See Dixie Pipeline Co. LLC*, 138 FERC ¶ 61,103 (2012).

14. Although the Commission has previously granted market-based rates for initial services, the principles of those cases are inapplicable here. In *Longhorn Partners Pipeline, L.P.*, the only protest to the application for market-based rates failed to challenge Longhorn's assertion that it did not have market power in either the origin or destination markets. 83 FERC ¶ 61,345, 62,380 (1998).¹ Further, no challenge was made to Longhorn's request for waiver of section 342.2 of the Commission's regulations. *Id.* In *Wolverine Pipe Line Co.*, the pipeline filed a tariff for an initial service with market-based rates, requesting waiver of section 342.2 of the Commission's regulations. Wolverine had also filed a separate application for market-based rate authority which was protested and subject to Commission review. However, the origins and destinations covered by the Wolverine tariff were not protested as part of the separate market-based rate application, and no protests were made to the tariff filing. Therefore, the Commission granted the waiver and conditionally allowed the rates as set forth in the tariff filing to go into effect, pending the ultimate determination on Wolverine's separate application for market-based rate authority. 90 FERC ¶ 61,001, 61,001-02 (2000).

15. Unlike the situations in *Longhorn* and *Wolverine*, here the Joint Shippers are challenging the definitions of the relevant product market and geographic markets proposed in the Application, are disputing the claims that Seaway lacks market power in the origin and destination markets, and are expressly objecting to the request for waiver

¹ The Commission subsequently recognized that the geographic markets in *Longhorn* were uncontested. *TE Products Pipeline Co., L.P.*, 92 FERC ¶ 61,121, 61,466 (2000).

of the Commission's regulations governing initial rates. As such, the precedents cited by Applicants in support of the requested waiver are inapplicable.

16. Under Order No. 572, the prepared testimony in the Application would serve as the case-in-chief of Enterprise and Enbridge if the Application is set for hearing. Order No. 572 at 31,193. Even if all of the information in the Application were assumed to be accurate, market-based rate authority cannot be granted in the absence of the netback analysis required under the Commission's decision in *Mobil Pipe Line Co.*, 133 FERC ¶ 61,192 (2010), and the delivered price comparisons required under *Shell Pipe Line Co., L.P.*, 103 FERC ¶ 61,236 (2003).

17. The Commission has ruled that summary disposition under Rule 217 is appropriate when a filing is patently deficient in form. *See, e.g. Columbia Gas Transmission Corp.*, 58 FERC ¶ 61,124, 61,405 (1992). Where, as in this case, an applicant has failed to set forth evidence sufficient to permit the application to go forward to an evidentiary hearing, summary disposition is appropriate. *El Paso Natural Gas Co.*, 43 FERC ¶ 63,039, 65,421-22 (1988). Summary disposition is also warranted where, as here, a pipeline's case-in-chief is deficient on its face. *Olympic Pipe Line Co.*, 101 FERC ¶ 61,245 at PP 14-17 (2002); *Olympic Pipe Line Co.*, 95 FERC ¶ 61,488 (2001).

B. The Application Fails to Justify its Overly-Broad Definition of the Product Market.

18. The Application proposes a broad product market consisting of the transportation of all crude oils without distinction among the various types, grades or qualities of crude oil. Statement B at B-5. Mr. Sullivan demonstrates that it is

unreasonable to define a product market that includes all types of crude oil because it is likely that the number of alternatives that can transport or process one type of crude oil (*e.g.*, light) will differ from the number of alternatives that can transport or process a different type of crude oil (*e.g.*, heavy). For example, if a local refinery does not process heavy sour crude and Seaway transports heavy sour crude, then the local refinery would not be a viable alternative to Seaway. Similarly, if an alternative pipeline cannot transport heavy crude, it would not be a good alternative. Sullivan Affidavit at PP 8-15. Each alternative must be individually examined to determine whether it meets the criteria of a good alternative in terms of price, availability and service. As discussed by Mr. Van Heyst, because of the differences in the markets for different for crude oil types, there will likely be different alternatives for all of these crude oil types. Van Heyst Affidavit at PP 6-9.

19. Applicants' market power witness, Dr. Schink, states that Seaway intends to transport both West Texas Intermediate ("WTI") light sweet crude oil and Western Canadian Select ("WCS") heavy sour crude oil. He further states that Seaway will be able to move any type of crude oil. Statement I at I-6. However, this assertion is insufficient to define the product market. As set forth by the Commission in *Mobil Pipe Line Co.*, the key to defining the relevant product market is whether the shippers on the applicant pipeline can switch to alternatives that could transport or process the specific type of crude oil transported on the applicant pipeline. 133 FERC ¶ 61,192 at P 28-29 (2010). Mr. Sullivan explains that, at a minimum, the Application should provide a sensitivity analysis on the product market definition that assumes that Seaway transports

only light sweet crude at one extreme and only heavy sour crude oil at the other extreme. The netback price and delivered cost tests should be based on each product market definition and the resulting market share and HHIs should be reported. Such an analysis has not been provided. Sullivan Affidavit at P 11.

20. As Mr. Sullivan explains, the product that is relevant in market power analysis is the product which Seaway's customers ship or intend to ship. Since the customers of an applicant are assumed to have selected the most profitable transportation services under current prices, the market power concern is whether these same customers can easily switch to a good alternative to move the *same commodity* that is currently moved on the applicant's pipeline. This approach is consistent with Section 1.0 of the 1992 Merger Guidelines² and Section 4.1 of the 2010 Merger Guidelines³. Sullivan Affidavit at P 12.

21. The Application's failure to examine the alternatives that are available to shippers of light crude versus the alternatives that are available to shippers of heavy crude renders its market power analysis meaningless. Some of the alternatives identified in the Application (pipelines or refineries) may not be able or willing to transport or refine both light and heavy crude. Including pipelines or refineries that cannot or will not transport or refine heavy crude in the HHI calculations makes those calculations meaningless if the relevant product market is heavy crude. Similarly, including pipelines or refineries that

² U.S. Dept. of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (Apr. 2, 1992) ("1992 Merger Guidelines").

³ U.S. Dept. of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (Aug. 19, 2010 ("2010 Merger Guidelines").

cannot or will not transport or refine light crude in the HHI calculations makes those calculations meaningless if the relevant product market is light crude. A failure to properly define the product market can lead to an over-estimate of the number of good alternatives. Sullivan Affidavit at PP 13-15.

C. The Application Fails to Justify its Overly-Broad Definition of the Origin Market.

22. The Application defines the origin market to include “the counties that are part of the crude oil production basin that the outbound crude oil pipelines are serving,” which the Application defines as multiple counties in Northwest Texas, Oklahoma, and Kansas. Statement A at A-24, A-26. The Application assumes refineries located within the counties it includes in the geographic area to be relevant competitive alternatives, and it assumes the pipelines that transport out of the area to also be relevant competitive alternatives.

23. The Application has improperly defined the relevant origin market. The Application starts with the crude oil production basins that the outbound crude oil pipelines are serving. For an origin market analysis, however, the proper starting point is the proposed origin of Seaway’s transportation service at Cushing. Justification must be provided to broaden the market beyond this area. In Order No. 572, the Commission stated that it does not require any particular geographic market definition, but that it expects oil pipelines to propose to use BEAs as their geographic markets. “If a pipeline uses BEAs, it must show that each BEA represents an appropriate geographic market.” Order No. 572 at 31,188; *Mobil Pipe Line Co.*, 121 FERC ¶ 61,268 at P 18 (2007).

Although the Application uses counties instead of BEAs, it fails to demonstrate how each individual county in its geographic market contains a good alternative to Seaway's proposed transportation service out of Cushing.

24. As shown by Mr. Sullivan, the Application simply identifies an arbitrary geographic area drawn on a map based on including or excluding certain counties. If shippers are originating different types of crude at different locations and their crude is to be delivered to different ultimate destinations via Seaway, there is likely to be a different set of alternatives potentially available to different sets of shippers in either the origin or destination market. The Application's methodology for defining the relevant origin markets completely ignores these differences and does not attempt to define the relevant origin market from the perspective of a shipper on Seaway. Sullivan Affidavit at PP 16-19.

D. The Application Does Not Properly Identify Good Alternatives to Seaway.

25. The Application also fails to identify good alternatives to Seaway located in the origin market. As stated by Mr. Sullivan, a fundamental flaw in the analysis is that it presumes that any alternative in the geographic area is a good alternative. This is incorrect. Some alternatives in the geographic areas, for example, may not be able to transport or refine the relevant product. The fact that these potential alternatives are simply located in the geographic area does not demonstrate that they are good alternatives. Sullivan Affidavit at P 21.

26. The Application and the prepared testimony of Dr. Schink completely fail to address the standards for defining origin markets in terms of competitive alternatives, as set forth by the Commission in *Shell Pipeline Co., L.P.*, 103 FERC ¶ 61,236 (2003), and as recently reaffirmed in *Mobil Pipe Line Co.*, 133 FERC ¶ 61,192 (2010). The presumption that alternatives are good alternatives (or “competitive alternatives”) merely by virtue of their location and their use of crude oil is contrary to the principles established in *Shell* and *Mobil* that require an economic analysis of each alternative to determine whether it is actually a good alternative to the applicant pipeline. This is further contrary to Order No. 572 which states that there can be “no reliance on presumed market forces.” Order No. 572 at 31,186. In *Mobil*, for example, the Commission concluded that the applicant did not demonstrate that the possible alternatives to the applicant pipeline in the origin market met the availability requirement or the price comparability requirement. *Mobil* at P 38, P 41. A good alternative must be able to check the pipeline’s ability to raise rates if market-based rate authority is granted. The Application does not show this for any alternative. Sullivan Affidavit at PP 22-23.

27. The Application does not even attempt to identify competitive alternatives based on the Commission’s three requirements for a good alternative: (1) price, (2) availability, and (3) quality. In *Mobil*, the Commission referred to these requirements as the “three-pronged test.” *Mobil* at P 37. The fundamental principles behind these requirements are the following: For origin markets, the price comparability requirement requires that netback of an alternative to Seaway is no less than the netback on Seaway after Seaway’s transportation rate is increased by 15 percent. *Mobil* at P 25. The

availability test requires that an alternative have capacity available to permit a shipper on Seaway to switch or deliver its crude oil to that alternative. A good alternative pipeline or refinery must have available capacity and be willing to transport or process the type of crude oil for which shippers use Seaway. The quality comparability test requires that the quality of service of the alternative be comparable to Seaway's service quality. The Commission explained that one aspect of the quality requirement is that the alternatives to the applicant's proposed service must be able to transport or process the specific type of crude oil that is transported by the applicant:

The ALJ found that a potential alternative that cannot transport or process this specific type of crude oil therefore cannot provide Pegasus' shippers with a service that is comparable in quality, and cannot check Pegasus' rates.

Mobil at P 27; Sullivan Affidavit at P 24.

28. Rather than performing the three-pronged test, the Application simply presumes that all potential existing alternatives are competitive alternatives. *See* Tables G.14 and G.15. In *Mobil*, this approach was rejected because it relies on an assumption that used alternatives are good alternatives, and it fails to demonstrate that existing alternatives are good alternatives in terms of price. *Mobil* at P 33. A good alternative must be able to check the pipeline's ability to raise rates if market-based rate authority is granted. In addition, the Application does not evaluate whether alternatives are competitive based on quality, which will depend, in part, on the ability of alternatives to transport and process the relevant product. *Id.* at PP 27-28. If heavy crude oil is the relevant product, and an alternative does not transport or process heavy crude oil, then

that alternative should not be considered to be a good competitive alternative. If alternatives are capacity constrained, they can not be a good alternative because their capacity is not available. Sullivan Affidavit at P 25.

29. Indeed, the attached Affidavit of John Van Heyst indicates that a number of the refineries identified in Statement D of the Application may not be usable alternatives because of physical barriers or impediments. For example, the WTI production in and around Cushing is not physically connected to several of the areas identified in Statement D, including the U.S. Rocky Mountain refineries, Western Canadian refineries, and pipelines serving those refining areas. Van Heyst Affidavit at PP 6-7.

30. Another physical barrier is the actual ability of a refinery to process or a pipeline to transport different types of crude oil. For example, heavy sour crude runs can be limited by physical constraints of both the refinery and pipeline, including but not limited to finished product quality limitations, sulfur handling ability, and process unit capabilities and limitations. Without proper equipment, a refinery cannot process heavy sour crude oil, but the Application does not identify which refineries are able to process heavy sour crude oil. Instead, the Application treats all refineries as being available to process all types of crude oil, which does not reflect the reality of refinery operations. *Id.* at P 8.

31. Another consideration affecting the types of crude oil that a refinery will use is the optimum crude oil slate which a refinery needs to produce the desired slate of finished products. Each refinery will determine the optimum crude slate for the refinery at any particular point in time. This optimization is highly dependent on finished product

market netbacks, refinery constraints, and related crude oil values, and may change seasonally. The Application does not take into account the different individual refinery usage of different types of crude oil which, again, does not reflect the reality of refinery operations. *Id.* at P 9.

E. The Application Fails to Provide the Required Netback Analysis.

32. The Application fails to perform a netback analysis to properly identify alternatives that meet the price comparability requirement as required by the Commission. The Application states that it is not possible to conduct a netback analysis because Seaway does not have initial rates on file and has not begun providing its transportation service. Statement A at A-7, n.7. Despite Commission requirements to show that an alternative is a good alternative, the Application erroneously assumes that all currently existing alternatives surrounding Cushing are good alternatives in its origin market, and all currently existing alternatives surrounding its destinations near Houston are good alternatives in its destination market. However, in an origin market, if alternatives do not offer a netback price at least as high as the netback offered via Seaway after Seaway's transportation cost is increased by a small but significant nontransitory increase in price ("SSNIP"), then the alternative should not be considered a good alternative in terms of price. Similarly, in a destination market, a delivered price test must be conducted to determine whether an alternative is price comparable to Seaway. A good alternative must be able to check the pipeline's ability to raise rates if market-based

rate authority is granted. Otherwise the proposed alternative cannot be included in the market power analysis. Sullivan Affidavit at P 28.

33. In order to perform a netback analysis, the competitive rate for transportation service must be calculated. Ideally, the netback analysis would be based on the competitive rate for transportation on the service that Seaway proposes to offer. As a practical matter, the competitive rate must be approximated. If Seaway had an existing regulatory rate, that rate might serve as a good proxy for the competitive rate. Because Seaway does not have an initial rate for its service, the Application correctly recognizes that it is not possible to perform a netback analysis. Sullivan Affidavit at P 29.

34. Dr. Schink erroneously claims that a netback analysis is only needed if it is questionable whether a supplier would be cost effective. Statement A at A-7. Under Commission precedent, a netback analysis is required to determine whether an alternative is price comparable to the service of the applicant. It appears that Dr. Schink is relying on the theory that “used alternatives are good alternatives” – a theory that the Commission has rejected. *Mobil* at P 41. The Commission has made it clear that “in the case of protested geographic markets applicants *must* justify their geographic markets and alternatives based on a detailed cost analyses.” *Mobil Pipe Line Co.*, 128 FERC ¶ 63,008 at P 33 (2009) (citing *TE Products Pipeline Co L.P.*, 92 FERC ¶ 61,121,61,467 (2000); *Shell*, 103 FERC ¶ 61,236 at P 35); Sullivan Affidavit at P 30.

35. As shown in Mr. Sullivan’s affidavit, if the relevant product to be transported on Seaway is West Texas Intermediate (“WTI”), a light sweet crude, the

Energy Information Agency (“EIA”) reports that the reversal of Seaway is not likely to eliminate the existing bottlenecks and capacity constraints for moving WTI crude oil to downstream markets.⁴ The existence of capacity constraints out of Cushing causes the price at Cushing to be depressed relative to areas where there is no excess crude oil supply or capacity constraints, thereby indicating that the netbacks from selling WTI at Cushing (or the surrounding refineries drawing supply from Cushing) are likely to be less than the netbacks attainable by transporting the crude on Seaway. EIA explains that the marginal mode of transportation will be rail, which strongly suggests that the WTI price in the Midwest will be discounted relative to Gulf Coast prices by more than a cost-based pipeline transportation rate. Thus, it is highly questionable that the netbacks attainable on alternatives in Cushing and on pipelines to the Midwest will be comparable to the netback on Seaway. Sullivan Affidavit at P 31.

36. Mr. Sullivan’s analysis is confirmed by the crude oil price data provided by Mr. Van Heyst. As Mr. Van Heyst demonstrates, the Gulf Coast market value of light crude oil is based on the price for a benchmark light crude oil known as Louisiana Light Sweet (“LLS”). Mr. Van Heyst shows that the average price differential between LLS and WTI for the period January 2011 through January 2012 was \$18.88 per barrel. This is important because WTI transported on the reversed Seaway pipeline could be purchased at the WTI price at Cushing, but sold on the Gulf Coast at a price based on

⁴ See *Spread Between WTI and Brent Prices Narrows on Signs of Easing Transportation Constraints*, EIA, Dec. 5, 2011, <http://www.eia.gov/todayinenergy/detail.cfm?id=4170>.

LLS. The average price differential of \$18.88 is far higher than any plausible pipeline tariff. Van Heyst Affidavit at P 15.

37. Mr. Van Heyst also explains that the Gulf Coast market value of heavy crude oil is based on the price for a benchmark heavy crude oil imported from Mexico known as “Maya.” Mr. Van Heyst shows that the average price differential between Maya and WCS for the period January 2011 through January 2012 was \$20.39 per barrel. Again, this is important because WCS transported on the reversed Seaway pipeline could be purchased at the WCS price at Hardisty but sold on the Gulf Coast at a price based on Maya. The average price differential of \$20.39 per barrel is far higher than any plausible cost of pipeline transported from Hardisty to the Gulf Coast. Van Heyst Affidavit at P 16.

38. Because there is no current tariff on Seaway, it is not possible to do a netback analysis comparing the netbacks available on Seaway with the alternatives included in the market power analysis set out in Statement G of the Application. However, in light of the price differentials discussed above, it’s not likely that any of the alternatives identified in Statement G would be good alternatives to Seaway in terms of price. Van Heyst Affidavit at P 17. In that case, Seaway’s market share in the relevant origin market would be 100 percent and corresponding HHI statistic would be 10,000, indicating substantial market power.

39. In the absence of a netback analysis, Dr. Schink’s calculation of HHI statistics for the origin market of 1,126 and 909 is meaningless and misleading.

Statement G at G-44, Table 3. As the Commission explained in *TE Products Pipeline Co., L.P.*, 92 FERC ¶ 61,121, 61,467 (2000):

. . . applicants must justify their geographic markets and alternatives based on detailed cost analyses If an alternative source has not been shown to be a good alternative, it should not be included in the relevant geographic market and used in market share, HHI, or other market power statistics. Such statistics are meaningless if all of the alternatives are not good alternatives. (emphasis supplied)

F. The Application Fails to Demonstrate a Lack of Market Power in the Destination Market.

40. The Affidavit of Mr. Sullivan notes the same deficiencies in the analysis of the destination market that were identified above in the analysis of the origin market. Regarding the inclusion of Lake Charles in the Houston destination market, if alternatives to Seaway sourced from Lake Charles are good alternatives, then Lake Charles should be included in the relevant destination market. However, the Application does not contain the necessary information, which requires a delivered price analysis to show price comparability and additional support to show that the Lake Charles sources are also comparable in quality and readily available to transport crude oil to Houston refineries. With regard to Dr. Schink's proposed expanded Gulf Coast destination market, Mr. Sullivan shows a similar failure to conduct an analysis of good alternatives. Sullivan Affidavit at PP 32-37.

41. As Mr. Sullivan explains, the smallest market principle requires that the relevant product market and the relevant geographic market be defined as the smallest

market in which a possible market power concern arises. The Application's failure to apply the smallest market principle, as described in the 1992 Merger Guidelines at Sections 1.0 and 1.21, and in the 2010 Merger Guidelines at Section 4.1.1, results in product and geographic markets that are too broad. Thus, Dr. Schink's claim that the HHI for the destination market is between 26 to 169 (Application at 13), depending on whether the destination market is defined as the Gulf Coast or the Houston to Lake Charles area, is baseless and highly misleading. Sullivan Affidavit at P 36.

42. Although the Commission found the Gulf Coast destination market to be competitive in the *Mobil* case,⁵ it is not clear that all the alternatives which were considered to be good alternatives to that applicant pipeline's service to Nederland/Port Arthur are also good alternatives to Seaway's proposed service to Houston. The Application presumes that this is the case without providing any evidence that each alternative in the Gulf Coast meets the Commission's three requirements for a good alternative to Seaway's service to Houston. Alternatively stated, all sellers located in the geographic market should not be presumed to be good alternatives — rather each alternative should be demonstrated to be a good alternative in terms of quality, availability, and price. Some sellers located in the relevant geographic market may not be good alternatives, and those sellers must be excluded from the HHI analysis. The Application does not address this issue. Instead, the Application simply presumes that all sellers located in the geographic area are good alternatives to Seaway's proposed service

⁵ *Mobil Pipe Line Co.*, 121 FERC ¶ 61,268 at P 16 (2007).

to Houston. As stated in Order No. 572, the appropriate geographic markets should be determined “in each proceeding based on its facts” and market power determinations must be “pipeline specific”. Order No. 572 at 31,183, 31,188. Notably, the Commission has set for hearing geographic markets that were similar to ones presented in prior market-based rate applications and for which the Commission previously granted market-based rates. *Shell*, 103 FERC ¶ 61,236 at PP 47 – 50; Sullivan Affidavit at P 37.

G. The Application Fails to Demonstrate Potential Competition which Would Mitigate the Exercise of Market Power by Seaway.

43. Although the Application describes several proposed new pipeline and expansion projects which could serve the origin and destination markets, it fails to demonstrate that these entry projects actually represent good alternatives or that entry is easy, as required by the 1992 Merger Guidelines. *See* 1992 Merger Guidelines at Sections 3.0-3.4. Thus, the Application fails to demonstrate how any project or group of projects will mitigate Seaway’s market power. Sullivan Affidavit at PP 38-39; Van Heyst Statement at PP 18-20.

44. As Mr. Sullivan explains, the 1992 Merger Guidelines impose three requirements for entry projects to be good alternatives for which entry is “easy.” Sullivan affidavit at P 39. First, entry must be timely (*i.e.*, occur within two years). 1992 Merger Guidelines at Section 3.2. Second, entry must be profitable. (*i.e.*, likely to occur). *Id.* at Section 3.3. Third, entry must be sufficient in magnitude (*i.e.*, sufficient to defeat a price increase by the applicant). *Id.* at Section 3.4. The Application does not demonstrate that the entry projects it identifies meet these three requirements. For

example, the new pipeline alternatives identified in the Application do not have firm in-service dates, and some are not expected to be in operation until 2015. Statement E at E-1-E-9. In addition, the rail and barge alternatives are reported to have high prices relative to pipeline transportation rates and, therefore, do not appear to be good alternatives to Seaway in terms of price. Statement E at E-10-E-14.

45. As Mr. Van Heyst explains, it is not clear whether any of the potential origin market alternatives identified in the Application would actually be competitive with Seaway. Mr. Van Heyst provides comments which show the preliminary and tentative status of the potential projects. Van Heyst Affidavit at P 18.

46. The Application fails to specify the types of crude oil which would be transported or processed by the potential projects. In addition, some of the projects are speculative or are not far along in the planning and development process. For other projects, the Application does not provide enough information to analyze what impact the project would have as potential competition with Seaway. The Application also fails to account for the supply impact of potential increases in crude oil production and inbound pipeline capacity, which could offset the benefit of potential alternatives to Seaway. Finally, several of the projects are at least partially owned by Enterprise or Enbridge and therefore, as affiliates, should be included with Seaway in performing a market power analysis. Van Heyst Affidavit at PP 19-20.

H. Seaway's Status as a New Entrant Does not Justify Market-Based Rate Authority.

47. The Application's claim that Seaway is a new entrant is not sufficient reason to grant authority to charge market-based rates. *See* Statement H at H-3. If capacity out of Cushing is currently constrained, then a new entrant offering a transportation service to a given destination may be in a position to exercise market power over its transportation service if the commodity price in the origin market is sufficiently low relative to the commodity price at the destination. Sullivan Affidavit at P 40. As well, the fact that other alternatives exist is irrelevant because in order to be considered in a market power analysis, an alternative must be able to check the pipeline's ability to raise rates if market-based rate authority is granted.

REQUEST FOR DISCOVERY

48. If the Application is not summarily dismissed, Joint Shippers request discovery of the information identified in the attached Discovery Requests. Order No. 572 provides that parties protesting applications for market-based rates may request discovery when their protests are filed. Order No. 572 at 31,196. Joint Shippers submit the attached Discovery Requests in accordance with Rules 401-11.

49. The information sought in the Discovery Requests is needed to clarify the factual basis, or lack of factual basis, for the Application. In particular, the attached Discovery Requests will produce any competitive analyses prepared by Enterprise, Enbridge, or Seaway in deciding to reverse Seaway, or prepared by Enbridge in deciding to purchase its interest in Seaway. It would be highly relevant to determine whether or

not such internal competitive analyses are consistent with the competitive analysis presented in the Application.

REQUEST FOR HEARING

50. If the Application is not summarily dismissed, Joint Shippers request a hearing under Rule 502 to resolve any factual issues pertaining to the Application. Order No. 572 provides that parties protesting applications for market-based rate authority may request a hearing when their protests are filed. Order No. 572 at 31,196.

CONCLUSION

51. For the forgoing reasons, the Application of Enterprise and Enbridge for authority to charge market-based rates on the reversed Seaway pipeline should be summarily dismissed. If the Application is not summarily dismissed, it should be set for discovery and hearing to resolve any factual issues. *Mobil* at P 24. At hearing, Enterprise and Enbridge should be allowed to defend the Application, but they should not be allowed to present a new case-in-chief or to rely on new grounds or theories not contained in their case-in-chief as originally filed. *See Olympic Pipe Line Co.*, 101 FERC ¶ 61,245 at P 27-29 (2002).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of February, 2012, served the foregoing Joint Protest and Request for Discovery and Hearing of Suncor Energy Marketing Inc., Canadian Natural Resources Limited, Continental Resources, Inc., Denbury Onshore LLC, and Husky Marketing and Supply Company by email on each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

/s/ Frederick G. Jauss IV
Frederick G. Jauss IV


VERIFIED STATEMENTS OF INTEREST

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners, L.P. § Docket No. OR12-4-000
and Enbridge Inc.**


VERIFIED STATEMENT OF CURTIS SERRA

The undersigned, Curtis Serra, being duly sworn, hereby attests that Suncor Energy Marketing Inc. has a substantial economic interest in the captioned proceedings. Suncor Energy Marketing Inc. is an active participant in crude oil markets which will be served by the reversed Seaway pipeline. Suncor Energy Marketing Inc. has a genuine commercial interest and the ability to become a future shipper on the reversed Seaway pipeline when the reversed service is implemented.



Name: Curtis Serra
Title: Legal Director

Subscribed and sworn to before me
this 4th day of February, 2012



Geoffrey L. Macleod
Barrister & Solicitor

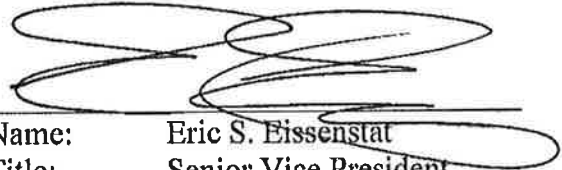
**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners, L.P. § Docket No. OR12-4-000
and Enbridge Inc.**

VERIFIED STATEMENT OF ERIC S. EISSENSTAT

The undersigned, Eric S. Eissenstat, being duly sworn, hereby attests that Continental Resources Inc. has a substantial economic interest in the captioned proceedings.

Continental Resources Inc. is an active participant in crude oil markets which will be served by the reversed Seaway pipeline. Continental Resources Inc. has a genuine commercial interest and the ability to become a future shipper on the reversed Seaway pipeline when the reversed service is implemented.



Name: Eric S. Eissenstat
Title: Senior Vice President,
General Counsel and
Secretary

Subscribed and sworn to before me
this 14th day of February, 2012

1-13-2015



**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners, L.P. § Docket No. OR12-4-000
and Enbridge Inc.**


VERIFIED STATEMENT OF MARK OVERWATER

The undersigned, Mark Overwater, being duly sworn, hereby attests that Canadian Natural Resources Limited has a substantial economic interest in the captioned proceedings. Canadian Natural Resources Limited is an active participant in crude oil markets which will be served by the reversed Seaway pipeline. Canadian Natural Resources Limited has a genuine commercial interest and the ability to become a future shipper on the reversed Seaway pipeline when the reversed service is implemented.



Name: Mark Overwater
Title: Manager, Crude Oil
Marketing

Subscribed and sworn to before me
this 13 day of February, 2012



PETER G. ANDREKSEN
BARRISTER & SOLICITOR

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners, L.P. § Docket No. OR12-4-000
and Enbridge Inc.**

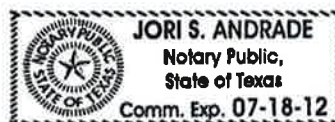
VERIFIED STATEMENT OF KARL G. STUCKEY

The undersigned, Karl G. Stuckey, being duly sworn, hereby attests that Denbury Onshore LLC has a substantial economic interest in the captioned proceedings. Denbury Onshore LLC is an active participant in crude oil markets which will be served by the reversed Seaway pipeline. Denbury Onshore LLC has a genuine commercial interest and the ability to become a future shipper on the reversed Seaway pipeline when the reversed service is implemented.


Name: Karl G. Stuckey
Title: Manager Oil Marketing

Subscribed and sworn to before me
this 14th day of February, 2012






**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners, L.P. § Docket No. OR12-4-000
and Enbridge Inc.**

VERIFIED STATEMENT OF MARK NELSON

The undersigned, Mark Nelson, being duly sworn, hereby attests that Husky Marketing and Supply Company has a substantial economic interest in the captioned proceedings. Husky Marketing and Supply Company is an active participant in crude oil markets which will be served by the reversed Seaway pipeline. Husky Marketing and Supply Company has a genuine commercial interest and the ability to become a future shipper on the reversed Seaway pipeline when the reversed service is implemented.



Name: Mark Nelson
Title: Business Optimization
 Manager
 Commodity Marketing

Subscribed and sworn to before me
this 14 day of February, 2012



DAVID ROSS PUTNAM
A Notary Public in and for the
Province of Alberta; my Commission
expires at the pleasure of the
Lieutenant-Governor in Council

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enterprise Products Partners L.P.
and Enbridge Inc.

Docket No. OR12-4-000

AFFIDAVIT OF BARRY E. SULLIVAN

Table of Contents

I.	QUALIFICATIONS.....	1
II.	SUMMARY OF AFFIDAVIT	2
III.	DEFICIENCIES IN APPLICATION.....	3
A.	The Application Is Premature and Does not Provide the Necessary Information for a Market-Power Analysis.	3
B.	The Application Fails to Justify its Overly-Broad Definition of the Product Market.	5
C.	The Application Fails to Apply Standards for Defining Origin Markets as Set Forth in <i>Shell</i> and <i>Mobil</i>	9
D.	The Application Ignores the Commission’s Three-Pronged Test to Identify Good Alternatives.....	13
E.	The Application Fails to Demonstrate that the Origin Market Alternatives to Seaway Are Good Alternatives in Terms of Price, Availability, and Quality.....	14
F.	Without a Netback Analysis to Demonstrate that Alternatives Are Good Alternatives in Terms of Price, the Competitive Analysis in the Application Is Meaningless.....	16
G.	The Application Erroneously Claims that a Netback Analysis Is only Required for Alternatives which Are Questionable.....	17
H.	The Application Fails to Demonstrate a Lack of Market Power in the Destination Market.....	19
I.	The Application Fails to Demonstrate Potential Competition that Would Impact Seaway’s Exercise of Market Power.....	23
J.	Seaway’s Status as a New Entrant Does not Justify Market-Based Rate Authority.....	24
IV.	CONCLUSION	25

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enterprise Products Partners L.P.
and Enbridge Inc.

Docket No. OR12-4-000

AFFIDAVIT OF BARRY E. SULLIVAN

I, the undersigned, being duly sworn, depose and say the following:

I. QUALIFICATIONS

1. My name is Barry E. Sullivan. I am the President of Brown, Williams, Moorhead & Quinn, Inc. ("BWMQ"), an energy consulting company. My business address is 1155 15th Street, N.W. Suite 400, Washington, D.C. 20005. BWMQ offers technical, economic, and policy assistance to the various segments of the oil pipeline industry, natural gas pipeline industry, and the electric utility industry on business and regulatory matters.
2. Over the past 32 years, I have filed testimony in over 40 pipeline rate and market power proceedings at the Federal Energy Regulatory Commission ("FERC or Commission"). I have been employed at BWMQ for the past six years and before my employment with BWMQ, I was an employee at the Commission for 26 years. My curriculum vitae is attached to this affidavit as Exhibit A, which includes my resume, a list of all the Commission rate case proceedings that I supervised and sponsored, and a list of the rate case proceedings in which I filed testimony as an expert witness on behalf of BWMQ clients and for the Commission Staff.

II. SUMMARY OF AFFIDAVIT

3. I am submitting this affidavit at the request of Suncor Energy Marketing Inc. (“Suncor”), Canadian Natural Resources Limited (“CNRL”), Continental Resources, Inc. (“Continental”), Denbury Onshore LLC (“Denbury”), and Husky Marketing and Supply Company (“Husky”). The purpose of my affidavit is to analyze the deficiencies in the application (“Application”) of Enterprise Products Partners L.P. and Enbridge Inc. (“Applicants”) for authority to allow the Reversed Seaway Pipeline (“Seaway”) to charge initial market-based rates for crude oil pipeline transportation service from Cushing, Oklahoma, to the Gulf Coast. My affidavit explains why it is not possible to conduct an informed and meaningful market power analysis in the absence of actual operating experience and without any existing regulatory tariff for the reversed service on Seaway. I also explain how the deficiencies of the Application in determining the relevant product market and relevant geographic markets and in identifying competitive alternatives cause the market share and HHI statistics in the Application to be meaningless. In particular, I show that:

- The Application is premature and does not provide the basis for an informed or meaningful market power analysis.
- The Application fails to justify its overly-broad definition of the product market.
- The Application fails to apply the standards for defining origin markets required by Commission precedent.
- The Application ignores the Commission’s three-pronged test for the identification of good alternatives.

- The Application fails to demonstrate that the origin market alternatives to Seaway are good alternatives in terms of price, availability, and quality.
- Without a netback analysis to demonstrate that alternatives are good alternatives in terms of price, the competitive analysis in the Application is meaningless.
- The Application erroneously claims that a netback analysis is only required for alternatives which are questionable.
- The Application fails to demonstrate a lack of market power in the destination market.
- The Application fails to demonstrate potential competition which would mitigate Seaway's exercise of market power.
- Seaway's status as a new entrant does not justify market-based rate authority.

III. DEFICIENCIES IN APPLICATION

A. The Application Is Premature and Does not Provide the Necessary Information for a Market-Power Analysis.

4. The Application is premature and does not provide the information required for an informed and meaningful market power analysis. The Application acknowledges that Seaway has no operational experience in transporting crude oil from Cushing to the Gulf Coast. Statement A at A-7, n.7. The Application further recognizes that it is not possible to conduct a netback analysis since Seaway does not have rates on file. *Id.*
5. Because Seaway has no shipper history, it is not possible to determine the relevant product market because this can only be determined by examining actual shipments on the pipeline. Since the Application admits that a netback analysis is not possible, it is therefore impossible to define the relevant geographic markets properly or to identify good alternatives in the geographic markets properly.

Without properly defined product and geographic markets, there is no reliable data for use in conducting market share or HHI analyses. Consequently, the market share and HHI statistics in the Application are meaningless and provide no useful information.

6. The Commission requires that initial rates for a new service must be either cost-based or negotiated rates. This ensures that market-based rate applications will only be considered with the benefit of operating experience, shipper history, and an actual cost-based or negotiated rate that serves as a starting point for the required netback or delivered price analysis. 18 C.F.R. § 342.2. The Application acknowledges that this key information is not available.
7. A properly informed market power analysis cannot be performed without critical information from Seaway's actual operations. Without such information, the relevant geographic market cannot be properly defined. If Seaway had an existing tariff, for example, that tariff could be used as the base price in calculating the threshold delivered price necessary to determine whether alternatives to Seaway's transportation service meet the Commission's delivered price comparability requirement for a good alternative in its destination market. Similarly, this base price could also be used to calculate the threshold netback price necessary to determine whether alternatives to Seaway's transportation service meet the price comparability requirement in its origin market. In addition, without actual operating experience, the relevant product market cannot be properly defined. If Seaway were currently providing its new service, information about the type of

crude oil being transported on Seaway would be available, which would help to determine the relevant product market. Without a properly defined product market, good alternatives cannot be identified, rendering the entire market power analysis useless and misleading.

B. The Application Fails to Justify its Overly-Broad Definition of the Product Market.

8. The Application fails to identify the specific types of crude oil that will be transported on Seaway. Instead, the Application simply combines the transportation of all crude types into a single product market. It is unreasonable to define a product market that includes all types of crude oil because it is likely that the number of alternatives that are able or willing to transport or process one type of crude oil (*e.g.*, light) will differ from the number of alternatives that are able or willing to transport or process a different type of crude oil (*e.g.*, heavy). For example, if a local refinery does not process heavy sour crude and Seaway is going to transport heavy sour crude, then the local refinery would not be a viable alternative to Seaway. Similarly, if an alternative pipeline cannot transport heavy crude, it would not be a good alternative to Seaway.
9. In addition, it is possible that Seaway will charge different transportation rates for different grades of crude oil, as is done on some crude oil pipelines. If Seaway can charge different rates for each type of crude, then the alternatives to each type of crude should be evaluated separately, as a rate increase can be applied to one specific type of crude.

10. If the product market is correctly defined to include specific types of crude oil, the alternatives to Seaway must be able to transport or process these specific types of crude oil. A careful analysis is required to confirm that each alternative included in the market power analysis can, in fact, transport or process the specific type of crude oil that will be transported by Seaway.
11. Applicants' market power witness, Dr. Schink, states that Seaway intends to transport both West Texas Intermediate light sweet crude oil and Western Canadian Select heavy sour crude oil. He further states that Seaway will be able to move any type of crude oil. Statement I at I-6. These claims alone do not provide a sufficient basis to define the relevant product market properly. The proper basis to define the relevant product market is to identify what types of crude oil are actually transported on Seaway. The Commission explained in *Mobil* that what matters in defining the relevant product market is whether the shippers on the applicant pipeline can switch to alternatives that could transport or process the specific type of crude transported on the applicant pipeline. *Mobil Pipe Line Co.*, 133 FERC ¶ 61,192 at P 28 (2010). At a minimum, the Application should provide a sensitivity analysis on the product market definition that assumes that Seaway transports only light sweet crude at one extreme and only heavy sour crude oil at the other extreme. The netback price and delivered cost tests should be based on each product market definition and the resulting market share and HHIs should be reported. Such an analysis has not been provided.

12. Applicant's *intent* to transport light sweet and heavy crude oils and the *ability* of Seaway to transport any type of crude oil do not provide a proper basis to define the relevant product market. The product that is relevant in market power analysis is the product which Seaway's customers actually ship, or at least at a minimum, intend to ship. The issue is whether the customers of a pipeline can avoid a potential price increase above a competitive level by easily switching to alternative providers. Since the customers of a pipeline are assumed to have selected the most profitable transportation services under current prices, the market power concern is whether these same customers can easily switch to a good alternative to move the *same commodity* that is currently moved on the applicant's pipeline. This approach is consistent with the 1992 Merger Guidelines¹ (Section 1.0), with the 2010 Merger Guidelines² (Section 4.1), and with the conceptual approach to analyzing market power previously followed by the Commission.³

¹ U.S. Dept. of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (Apr. 2, 1992) ("1992 Merger Guidelines).

² U.S. Dept. of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (Aug. 19, 2010) ("2010 Merger Guidelines"). The 2010 Merger Guidelines build upon the economic principles contained in the prior 1992 Merger Guidelines which the Commission has relied upon in past decisions. While the new Merger Guidelines encompass the economic framework of the prior Merger Guidelines for defining relevant markets, measuring concentration in those markets, and evaluating potential entry, the 2010 Merger Guidelines (Section 0-2) expand the scope of evidence that can be considered in merger market power analysis.

³ See, e.g. at PP 27-29.

13. The Application's failure to examine the alternatives that are available to shippers of light crude versus the alternatives that are available to shippers of heavy crude renders its market power analysis meaningless. Some of the alternatives identified in the Application (pipelines or refineries) may not be able to transport or refine both light and heavy crude, which will likely lead to an over-estimate of the number of good alternatives. Including pipelines or refineries that cannot transport or refine heavy crude in the HHI calculations makes those calculations meaningless if the relevant product market is heavy crude. Similarly, including pipelines or refineries that cannot transport or refine light crude in the HHI calculations makes those calculations meaningless if the relevant product market is light crude.
14. In addition, an improper product market definition undermines the market power analysis in other ways. For example, if Seaway charges different rates to transport different types of crude oil, such a difference would impact the netback analysis or the delivered price analysis used to determine good alternatives in Seaway's origin and destination markets, respectively. Yet, the Application is silent on the issue of whether its tariff will be crude type blind or whether it will charge different rates for different crude types.
15. As well, as demonstrated in the affidavit of Mr. Van Heyst, different crude oil types operate in different markets. Crude oil types may have different clearing markets, which means netbacks for those crude oil types would be calculated differently. The differences between these markets could lead to differences in the

netback analysis or the delivered price analysis used to determine good alternatives in Seaway's origin and destination markets, respectively.

C. The Application Fails to Apply Standards for Defining Origin Markets as Set Forth in *Shell* and *Mobil*.

16. The Application defines the origin market to include "the counties that are part of the crude oil production basin that the outbound crude oil pipelines are serving," which the Application defines as multiple counties in Northwest Texas, Oklahoma, and Kansas. Statement A at A-24, A-26. The Application assumes refineries located within the counties it includes in the geographic area to be relevant competitive alternatives, and it assumes the pipelines that transport out of the area to also be relevant competitive alternatives.
17. The Application has improperly defined the relevant origin market. The Application starts with the crude oil production basins that the outbound crude oil pipelines are serving. For an origin market analysis, however, the proper starting point is the proposed origin of Seaway's transportation service at Cushing. Justification must be provided to broaden the market beyond this area. (Similarly, for a destination market analysis, the proper starting point is the proposed destination of Seaway's transportation service.) In Order No. 572, the Commission stated that it does not require any particular geographic market definition, but that it expects oil pipelines to propose to use BEAs as their geographic markets. "If a pipeline uses BEAs, it must show that each BEA represents an appropriate geographic market." *Market-Based Ratemaking for Oil*

Pipelines, Order No. 572, FERC Stats. & Regs. ¶ 31,007, 31,188 (1994); *Mobil Pipe Line Co.*, 121 FERC ¶ 61,208 at P 18 (2007). Although the Application uses counties instead of BEAs, it fails to demonstrate how each individual county in its geographic market contains a good alternative to Seaway's proposed transportation service out of Cushing.

18. The Application simply identifies an arbitrary geographic area drawn on a map based on including or excluding certain counties. However, the relevant geographic market, and the potential alternatives within the relevant geographic market, should be determined from the perspective of the shippers tendering product on Seaway. In Order No. 572, the Commission explained that an applicant for market-based rates would be required to identify competitive alternatives "for its shippers." Order No. 572 at 31,187.
19. It is the shippers that would respond to an attempt by Seaway to increase its price above the competitive level, and the extent of the competitive alternatives available to those shippers will determine whether Seaway is able to exercise market power by maintaining a price above the competitive level. This is the test that the Commission uses to assess market power, but it is ignored by the Application. If shippers are transporting different types of crude to or from different locations, and their crude is to be delivered to different ultimate destinations via Seaway, there are likely to be different alternatives available to different shippers in either the origin or destination market. It is therefore likely that there will be different origin and destination markets that are dependent upon

the applicable product market. The Application's methodology for defining the relevant origin markets completely ignores these differences and does not attempt to define the relevant origin market from the perspective of a shipper on Seaway.

20. Further, no justification is provided to support the inclusion of particular counties and the exclusion of adjacent counties. The Application provides no criteria for selecting 66 counties in Oklahoma, 89 counties in Kansas, and 60 counties in Northwest Texas. Statement A at A-25; Figure A.5 at A-26; and Table A.3 at A-35 to A-40.
21. The Application also fails to identify alternatives located in the origin market properly. A fundamental flaw in the analysis is that it presumes that any alternative in the geographic area is a good alternative. This is incorrect. Some alternatives in the geographic areas, for example, may not be able to receive or refine the relevant product. The fact that these potential alternatives are simply located in the geographic area does not demonstrate that they are good alternatives. Indeed, it is possible that these alternatives do not meet any of the three requirements for a good alternative. Some alternatives located in the geographic area, for example, may not be price comparable with Seaway and, therefore, would not represent good alternatives. The Application also ignores the availability and quality requirements for a good alternative. It assumes refineries located within the counties it includes in the geographic area to be relevant competitive alternatives without any consideration of the ability to transport the relevant type of crude oil to these local refineries. The Application also fails to

provide any evidence that these local refineries have available capacity and can process the relevant type of crude oil.

22. The method of identifying alternatives in the Application is not consistent with *Shell* and *Mobil*. The presumption that alternatives are good alternatives (or “competitive alternatives”) merely by virtue of their location and their use of crude oil is contrary to the principles established in *Shell* and *Mobil* that require an economic analysis of each alternative to determine whether it is a good alternative. This is further contrary to Order No. 572 which states that there can be “no reliance on presumed market forces.” Order No. 572 at 31,186. In *Mobil*, for example, the Commission concluded that the applicant did not demonstrate that the possible alternatives to the applicant pipeline in the origin market met the availability requirement or the price comparability requirement. *Mobil* at P 38 and P 41.
23. The Application’s failure to identify good alternatives properly in the origin market distorts its HHI analysis. The Application calculates a number of HHIs for the origin market, ranging from 878 to 1264. Application at 12. However, the failure to define the relevant product market properly, to define the origin market properly, or to identify any good alternatives in the origin market properly produces HHI calculations that are meaningless and misleading.

D. The Application Ignores the Commission's Three-Pronged Test to Identify Good Alternatives.

24. The Application does not attempt to identify competitive alternatives based on the Commission's three requirements for a good alternative: (1) price, (2) availability, and (3) quality. In *Mobil*, the Commission referred to these requirements as the "three-pronged test." *Mobil* at P 37. The fundamental principles behind these requirements are the following: For origin markets, the price comparability requirement requires that the netback of an alternative to Seaway is no less than the netback on Seaway after Seaway's transportation rate is increased by 15 percent. *Mobil* at P 25. For destination markets, the price comparability requirement requires that the delivered price of an alternative is no higher than the delivered price on Seaway after Seaway's transportation rate is increased by 15 percent. The availability test requires that an alternative have capacity available to permit a shipper on Seaway to switch or deliver its crude oil to that alternative. A good alternative pipeline or refinery must have available capacity to transport or process the type of crude oil for which shippers use Seaway. The quality comparability test requires that the quality of service of the alternative be comparable to Seaway's service quality. *Mobil* at P 27; *see also Mobil Pipe Line Co.*, 128 FERC ¶ 63,008 at PP 45, 155, 168 (2009).

E. The Application Fails to Demonstrate that the Origin Market Alternatives to Seaway Are Good Alternatives in Terms of Price, Availability, and Quality.

25. Rather than performing the three-pronged test to determine which alternatives are competitive with Seaway, the Application simply presumes that all potential existing alternatives are competitive alternatives. See Tables G.14 and G.15. In *Mobil*, this approach was rejected because it relies on an assumption that used alternatives are good alternatives, and it fails to demonstrate that existing alternatives are good alternatives in terms of price. *Mobil* at P 23. In addition, the Application does not evaluate whether alternatives are competitive based on quality, which will depend, in part, on the ability of alternatives to transport or process the relevant product. *Id.* at PP 27-28. If heavy crude oil is the relevant product, and an alternative does not transport or process heavy crude oil, then that alternative should not be considered to be a good competitive alternative. If alternatives are capacity constrained, they are not a good alternative because their capacity is not available.
26. There is publicly-available evidence that capacity restraints may prevent some pipelines and refineries in the Midwest from being viable alternatives to Seaway. For example, on November 18, 2011 Enbridge Pipelines (Ozark) LLC made a tariff filing proposing to implement a modification to its pro-rationing policy and stating in its cover letter “Enbridge Ozark is currently operating at its full capacity of 240,000 barrels per day due to the limited pipeline capacity ex-Cushing available to move an over-supply of crude petroleum at Cushing. As a result, the

Enbridge Ozark system is experiencing significant levels of apportionment.” The tariff filing further stated “Enbridge Ozark believes that the rapidly increasing number of shippers is a symptom of ongoing competition for the limited space available to transport crude oil out of the Cushing Terminal.”⁴ If a shipper on Seaway cannot avoid a price increase on Seaway by switching to an alternative because of a lack of available capacity, that alternative fails to meet the availability requirement and is not a good alternative. Yet, the Application considers the Enbridge Ozark pipeline to be a competitive alternative in its HHI calculation despite evidence that it does not have available capacity. Statement G at G-68 Table G.15. To the extent other pipelines identified in the Application are constrained in transporting volumes out of Cushing, those pipelines should not be considered good alternatives.

27. In market power analysis, a competitive alternative must be an alternative that is not partially or wholly owned by the applicant, the parent company, or its affiliates. Only independent alternatives should be included in the market power analysis because it is unrealistic to assume that sellers with common ownership would compete against one another. Since Enbridge is a 50-percent owner of Ozark, the Enbridge Ozark line is not an independent alternative to Seaway and should be combined with Seaway’s market share. In Table G.14 at G-67, for example, the market share of Seaway (based on effective capacity) is reported as

⁴ *Enbridge Pipeline (Ozark) L.L.C.*, Docket No. IS12-37-000 (Nov. 18, 2011).

18 percent. If the capacity of Seaway and Ozark are aggregated, however, Enbridge's market share increases to 29.1 percent. The failure to consider the relationship between Seaway and Ozark results in an underestimate of Seaway's market share, and the corresponding HHI calculated by Seaway understates the level of market concentration.

F. Without a Netback Analysis to Demonstrate that Alternatives Are Good Alternatives in Terms of Price, the Competitive Analysis in the Application Is Meaningless.

28. The Application fails to perform a netback analysis to identify properly alternatives that meet the price comparability requirement. The Application states that it is not possible to conduct a netback analysis because Seaway does not have an initial rate and has not begun providing its transportation service. Statement A at A-7, n.7. Instead, the Application erroneously assumes that all currently existing alternatives surrounding Cushing are good alternatives in its origin market, and all currently existing alternatives surrounding its destinations near Houston are good alternatives in its destination market. However, in an origin market, if alternatives do not offer a netback price at least as high as the netback offered via Seaway after Seaway's transportation cost is increased by a small but significant nontransitory increase in price ("SSNIP"), then the alternative should not be considered a good alternative in terms of price. Similarly, in a destination market, a delivered price test must be conducted to determine whether an alternative is price comparable to Seaway. Without this evidence, it cannot be determined whether an alternative is a good alternative in terms of price.

29. As part of a netback analysis, the competitive rate for transportation service must be calculated. Ideally, the netback analysis would be based on the competitive rate for transportation on the service that Seaway proposes to offer. As a practical matter, the competitive rate must be approximated. If Seaway had an existing regulatory rate, that rate might serve as a good proxy for the competitive rate. Because Seaway does not have a rate for its service, the Application correctly recognizes that it is not possible to perform a netback analysis.

G. The Application Erroneously Claims that a Netback Analysis Is only Required for Alternatives which Are Questionable.

30. Dr. Schink's claim in Statement A at A-7 that a netback analysis is only needed if it is questionable whether a supplier would be cost effective is inconsistent with the Commission's methodology for determining whether an alternative is price comparable to the service of the applicant. It appears that Dr. Schink is relying on his theory that "used alternatives are good alternatives" – a theory that the Commission has rejected. *Mobil* at P 41. The Commission has made it clear that "in the case of protested geographic markets applicants *must* justify their geographic markets and alternatives based on detailed cost analyses." *Mobil Pipe Line Co.*, 128 FERC ¶ 63,008 at P 33 (2009) (citing *TE Products Pipeline Co., L.P.*, 92 FERC ¶ 61,121, 61,467 (2007); *Shell*, 103 FERC ¶ 61,236 at P 35).
31. For example, if the relevant product to be transported on Seaway is WTI, a light sweet crude, the Energy Information Agency ("EIA") reports that the reversal of Seaway is not likely to eliminate the existing bottlenecks and capacity constraints

for moving WTI crude oil to downstream markets.⁵ The existence of capacity constraints out of Cushing causes the price at Cushing to be depressed relative to areas where there is no excess crude oil supply or capacity constraints, thereby indicating that the netbacks from selling WTI at Cushing (or the surrounding refineries drawing supply from Cushing) are likely to be less than the netbacks attainable by transporting the crude on Seaway and selling at the Gulf Coast. The EIA expects the flow reversal partially to alleviate the existing transportation constraint by allowing crude oil to move from the Cushing hub to refineries located on the Gulf Coast. The EIA reports that, following the announcement of the reversal, the difference between the spot price of Brent crude oil and WTI fell to under \$10 per barrel after reaching a record of \$29.70 per barrel on September 22, 2011. However, and more importantly, the EIA reports:

The reversal of the Seaway Pipeline will not eliminate bottlenecks moving WTI's crude oil to downstream markets. With crude oil production increases from Canada and the Bakken and other shale formations in the coming years expected to continue, the market will still be dependent on rail as the marginal mode of transportation, meaning some discount will be required to account for the costs of moving inland US crudes to the Gulf Coast.

The EIA explains that the marginal mode of transportation will be rail, which strongly suggests that the WTI price in the Midwest will be discounted relative to Gulf Coast prices by more than a cost-based pipeline transportation rate. Thus, it

⁵ *See Spread Between WTI and Brent Prices Narrows on Signs of Easing Transportation Constraints*, EIA, Dec. 5, 2011, <http://www.eia.gov/todayinenergy/detail.cfm?id=4170>.

is highly questionable that the netbacks attainable on alternatives in Cushing and on pipelines to the Midwest will be comparable to the netback on Seaway to the Gulf Coast. The Application does not address this issue.

H. The Application Fails to Demonstrate a Lack of Market Power in the Destination Market.

32. Many of the same deficiencies in the Application's market power analysis of the origin market are also found in its market power analysis of the destination market. To define the Lake Charles destination market, Dr. Schink merely asserts that "the destination market to be served from Enterprise's ECHO terminal in Houston should encompass all the refineries that can be supplied economically *from* this crude oil terminal." Statement A at A-21 (emphasis added). According to Dr. Schink, the destination market should be expanded beyond Houston because the Enterprise ECHO terminal (the only delivery point on Seaway) can supply crude oil to refineries in the Lake Charles area.
33. Dr. Schink's logic is backwards. What Dr. Schink does suggest is that if the Lake Charles destination market were to be analyzed, the market should be expanded to include Houston. That is, if the price of crude oil in Lake Charles were to increase, the Enterprise ECHO terminal in Houston could deliver crude oil to refineries in Lake Charles. But the issue in this case is whether it is appropriate to expand the Houston destination market – not the Lake Charles market. The question that needs to be answered is whether refineries in Houston can receive deliveries of competitive crude oil from pipelines, barges, or tankers located in the

Lake Charles area that are good alternatives to Seaway's proposed service to Houston. If alternatives to Seaway sourced from Lake Charles are good alternatives, then Lake Charles should be included in the relevant destination market. However, the Application does not contain the necessary information, which requires a delivered price analysis to show price comparability and additional support to show that the Lake Charles sources are also comparable in quality and readily available to transport crude oil to Houston refineries. Therefore, there is no justification for their inclusion in the market power analysis.

34. Dr. Schink claims that the port facilities for barges and tankers in the Houston area will enable crude oil carried by Seaway to be used by all Gulf Coast refineries in PADD III. Statement A at A-19. Dr. Schink considers movements of crude oil out of Lake Charles to the rest of the Gulf Coast (*i.e.*, to Corpus Christi, Texas to the west and to Mobile, Alabama to the east). Statement A at A-19 and Figure A-2 at A-21. Instead, Dr. Schink should be looking for deliveries to the refineries supplied by the crude transported by Seaway from alternatives located in these distant Gulf Coast areas. Then, for each alternative identified, it must be demonstrated that the alternative is a good alternative to Seaway's proposed service to Houston.
35. In sum, the Application's destination market analysis is fatally flawed because it fails to limit the alternatives to good alternatives in terms of availability, quality, and price. The Application does not provide a delivered price test or other comparable test to compare the price of the alternatives in the destination market

to the threshold price of crude oil delivered by Seaway. Absent such a test, the price comparability of the alternatives cannot be determined. As in the origin market analysis, the Application ignored all three requirements of a good alternative and presumes that used alternatives are good alternatives. In addition, as described above, the Application simply combines the transportation of all crude types into a single product market. No analysis is provided to estimate the type of crude oil that shippers on Seaway are likely to transport. Consequently, the product and geographic markets are both defined too broadly. The inclusion of alternatives in the product market other than the relevant type of crude oil and the inclusion of alternatives in the destination market that are not good alternatives render the corresponding HHIs and Seaway's market shares meaningless.

36. In market power analysis, the smallest market principle requires that the relevant product market and the relevant geographic market be defined as the smallest market in which a possible market power concern arises. The Application's failure to apply the smallest market principle, as described in the 1992 Merger Guidelines at Sections 1.0 and 1.21, and in the 2010 Merger Guidelines at Section 4.1.1, results in product and geographic markets that are too broad. This, in turn, produces market shares and HHIs that are diluted and, therefore, meaningless. Thus, Seaway's claim that the HHI for the destination market is between 26 to 169 (Application at 13), depending on whether the destination market is defined as the Gulf Coast or the Houston to Lake Charles area, is baseless and highly misleading.

37. Although the Commission found the Gulf Coast destination market to be competitive in the *Mobil* case,⁶ it has not been shown that all the alternatives that were good alternatives to applicant pipeline's service to Nederland/Port Arthur in that case are also good alternatives to Seaway's proposed service to Houston. The Application presumes that this is the case without providing any evidence that each alternative in the Gulf Coast meets the Commission's three requirements for a good alternative to Seaway's service to Houston. Alternatively stated, all sellers located in the geographic market should not be presumed to be good alternatives — rather each alternative should be demonstrated to be a good alternative in terms of quality, availability, and price. Some sellers located in the relevant geographic market may not be good alternatives, and those sellers must be excluded from the HHI analysis. The Application does not address this issue. Instead, the Application simply presumes that all sellers located in the geographic area are good alternatives to Seaway's proposed service to Houston. As stated in Order No. 572, the appropriate geographic markets should be determined “in each proceeding based on its facts” and market power determinations must be “pipeline specific”.⁷ Notably, the Commission has set for hearing geographic markets that

⁶ *Mobil Pipe Line Co.*, 121 FERC ¶ 61,268 at P 16 (2007).

⁷ *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs., ¶ 31,007 at 31,183, 31,188 (1994).

were similar to ones presented in prior market-based rate applications and for which the Commission previously granted market-based rates.⁸

I. The Application Fails to Demonstrate Potential Competition that Would Impact Seaway's Exercise of Market Power.

38. Although the Application identifies several potential alternatives, it fails to demonstrate that these entry projects represent good alternatives or that entry is easy, as required by the 1992 Merger Guidelines. Thus, the Application fails to demonstrate how each project or group of projects will mitigate Seaway's market power.
39. The 1992 Merger Guidelines impose three requirements for entry projects to be considered good alternatives for which entry is "easy." 1992 Merger Guidelines at Sections 3.0-3.4. First, entry must be timely (*i.e.*, occur within two years). *Id.* at Section 3.2. Second, entry must be profitable (*i.e.*, likely to occur). *Id.* at Section 3.3. Third, entry must be sufficient in its magnitude (*i.e.*, sufficient to defeat a price increase by the applicant). *Id.* at Section 3.4. The Application does not demonstrate that any of the entry projects it identifies meet these three requirements.

For example, the new pipeline alternatives identified in the Application do not have firm in-service dates, and some are not expected to be in operation until 2015. Statement E at E-1-E-9. In addition, the rail and barge alternatives identified by Seaway are reported to have high prices relative to pipeline

⁸ *Shell Pipeline Co. L.P.*, 103 FERC ¶ 61,236 at PP 47 - 50 (2003).

transportation rates and, therefore, do not appear to be good alternatives to Seaway in terms of price. Statement E at E-10-E-14.

J. Seaway's Status as a New Entrant Does not Justify Market-Based Rate Authority.

40. The Application's claim that Seaway is a new entrant is not sufficient reason to grant authority to charge market-based rates. *See* Statement H at H-3. If capacity out of Cushing is currently constrained (as stated in Enbridge Ozark's Nov. 18, 2011 tariff filing and in EIA's December 5, 2011 report), then a new entrant offering a transportation service to a given destination may be in a position to exercise market power over its transportation service if the commodity price in the origin market is sufficiently low relative to the commodity price at the destination. In *Mobil*, the Commission summarized the issue created by a relatively high Gulf Coast commodity price and relatively low Midwest commodity price:

The ALJ held that if the Commission granted Mobil market-based rate authority, this differential would in turn allow Mobil to profitably raise Pegasus' rate above competitive levels without the loss of volumes. Thus, the ALJ found that under a market-based rate regime, it is not Pegasus who would be at the mercy of crude oil producers; it is Pegasus' shippers who would be at the mercy of Mobil.

Mobil at P 52. The Commission affirmed the ALJ's finding that Mobil definitively possessed market power in the relevant origin market. *Id.* at P 54.

IV. CONCLUSION

41. As explained above, the Application is premature and does not provide the information required for an informed and meaningful market power analysis. In the absence of operating experience and an established regulatory rate, it is not possible to conduct the required netback analysis. Because the Application does not properly define the relevant product market and relevant geographic markets and does not properly identify good competitive alternatives to Seaway, the market share and HHI statistics in the Application are meaningless and misleading.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

In the Matter of)
)
ENTERPRISE PRODUCTS PARTNERS LP)
AND ENBRIDGE INC.)

DOCKET NO. OR12-4-000

DISTRICT OF COLUMBIA)
) ss:
DISTRICT OF COLUMBIA)

AFFIDAVIT

Barry E. Sullivan, being first duly sworn, on oath, states that he is the Barry E. Sullivan whose Affidavit in the above-entitled proceeding accompanies this Affidavit.

Barry E. Sullivan further states that the information contained in the accompanying affidavit is true and accurate to the best of his knowledge and belief.



Barry E. Sullivan

State of District of Columbia
County of District of Columbia



My Commission expires June 30, 2014

Subscribed and sworn to (or affirmed) before me on this 13th day of February, 2012 by Barry E. Sullivan, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature 
Signature of Notary Public

EXHIBIT A TO

AFFIDAVIT OF

BARRY E. SULLIVAN

CURRICULUM VITAE

NAME : Barry E. Sullivan

HOME ADDRESS : 2548 Lavall Court
Davidsonville, MD 21035

EDUCATION : Bachelor of Arts Degree in Economics
University of Massachusetts at Boston
Graduate Work at University of York, England

PRESENT POSITION : President
Brown, Williams, Moorhead & Quinn, Inc.
1155 15th Street N.W., Suite 400
Washington, D.C. 20005

NATURE OF WORK
PERFORMED WITH
FIRM : Mr. Sullivan joined BWMQ in September 2005. He was elected President of BWMQ in April 2006. Mr. Sullivan has filed testimony in a number of FERC proceedings since his employment at BWMQ (see detailed list in Attachment B). Mr. Sullivan has addressed issues including: rate design, short-term rates and the proxy group companies in the Columbia Gulf Transmission proceeding in Docket No. RP11-1435; depreciation, short-term rates, and the proxy group companies in the PNGTS proceedings in Docket Nos. RP10-729 and RP08-306; rate design in the El Paso proceeding in Docket No. RP10-1398; market power in the Mobil Pipe Line Company proceeding in Docket No. OR07-21; the proxy group companies included in return calculations in the Southern Natural proceeding in Docket No. RP09-427; short-term value-based rates, FERC cost allocation and rate design history, and discounting in the El Paso proceedings in Docket No. RP08-426; Commission policy and market power in the GTN proceeding in Docket No. RP06-407, an expert report in the USGen proceeding in Docket No. RP06-391, and oil pipeline ratemaking testimony in the TAPS proceeding in Docket No. IS05-82. Mr. Sullivan has 32 years of experience in the natural gas pipeline, oil pipeline and electric utility industries. His areas of expertise include formal market power analysis and all facets of natural gas, oil pipeline and electric utility ratemaking. In addition, he has testified as an expert

witness on depreciation, cost classification, cost allocation, rate design, billing determinants, market power and market-based rates, and other rate-related issues in numerous natural gas pipeline proceedings, oil pipeline proceedings, and electric proceedings.

PREVIOUS
EMPLOYMENT

: Mr. Sullivan was employed by the Federal Energy Regulatory Commission from March 1979 to September 2005. He retired as a Supervisor in the Technical Analysis Division of the Office of Administrative Litigation. Mr. Sullivan was a technical expert for the entire 26 years he was at the Commission and provided testimony in many formal proceedings. The areas of his expertise included: formal market power analysis, market based rates, cost allocation and rate design, oil pipeline regulation, electric utility regulation, depreciation, Mcf/mileage studies, refunctionalization studies, offshore regulation, negotiated rates, discount studies, and other regulatory issues. Mr. Sullivan has applied his expertise relating to natural gas pipeline, oil pipeline and electric utility issues in a wide range of formal proceedings at the Commission. He has developed many creative and innovative approaches to deal with these and related issues in administrative proceedings at the Commission.

As a Supervisor in the Office of Administrative Litigation, Mr. Sullivan supervised, initiated, directed and coordinated the preparation and presentation of the Commission's technical Trial Staff's settlement and testimony position on all matters set for formal hearing in natural gas pipeline, oil pipeline and electric utility proceedings. These issues include formal market power analysis, market based rates, rate design; seasonal rates; distance based rates; separation of services (unbundling); discounting; capacity release; capacity assignments; interruptible transportation rates; storage rate design; refunctionalization studies; stranded costs; restructuring issues; incremental versus rolled-in rates; depreciation and negative salvage; cost of service and rate base issues; oil pipeline rates; tariffs and operational issues; and the resolution of contract disputes.

Mr. Sullivan has testified as an expert witness on market power and market based rates, cost classification, allocation and rate design, billing determinants, depreciation, and other rate related issues in numerous natural gas rate proceedings, oil pipeline proceedings and electric

proceedings. He has been responsible for various presentations to FERC Commissioners on such topics as Offshore Gathering Policy, Negotiated Rates and Discounting, Enron and Manipulation of the Western Energy Markets in 2000-2001, and Section 5 rate case proceedings.

A list of the cases that Mr. Sullivan supervised while at the Commission is attached as Attachment A. A list of the cases in which Mr. Sullivan provided testimony and/or testified is attached as Attachment B.

Formal Proceedings Supervised by Mr. Sullivan

Applicant Name	Docket Number	Role	Case Type
AES OCEAN EXPRESS V FGT	RP04-249	Sponsor	Complaint Gas Quality on FGT
ALPINE TRANSPORTATION COMPANY	IS01-0033-000	Sponsor	Oil Pipeline Cost Based Rates
ANR PIPELINE COMPANY	CP00-0391-000	Sponsor	Gas Section 7 Certificate Proceeding
ANR PIPELINE COMPANY	RP02-0335-000	Sponsor	Gas Section 5 Cost Based Rates
ANR PIPELINE COMPANY	RP04-435-000	Sponsor	Complaint on Gas Quality Hydrocarbon Dew Point
ARCO PRODUCTS	OR96-2-000	Sponsor	Oil Pipeline Cost Based Rates
BIG WEST OIL CO v. ANSCHUTZ RANCH EAST	OR01-0003-002	Sponsor	Complaint Oil
BIG WEST OIL CO v. FRONTIER PIPELINE CO	OR01-0002-002	Sponsor	Complaint Oil
BOSTON EDISON COMPANY	EL02-0123-000	Sponsor	Complaint/Electric Transmission Rates, losses, Transmission Upgrades
BP TRANSPORTATION (ALASKA) INC	IS01-0504-000	Sponsor	Oil Pipeline Cost Based Rates
CANYON CREEK COMPRESSION COMPANY	RP02-0356-000	Sponsor	Gas Section 4 Cost Based Rates
CINERGY SERVICES INC.	ER01-0200-000	Sponsor	Electric Contractual Dispute
CITY OF DETROIT, MICHIGAN v. DETROIT EDI	EL00-0071-000	Sponsor	Electric Contractual Dispute
COLORADO INTERSTATE GAS COMPANY	RP01-0350-000	Sponsor	Gas Section 4 Cost Based Rates
CONOCO PIPE LINE COMPANY	IS01-0444-000	Sponsor	Oil Pipeline Cost Based Rates
CONOCO PIPE LINE COMPANY	IS01-0445-005	Sponsor	Oil Pipeline Cost Based Rates
EASTERN SHORE NATURAL GAS COMPANY	RP02-0034-000	Sponsor	Gas Section 4 Cost Based Rates
ENRON POWER MARKETING INC.	EL03-180 et al.	Sponsor	Western Market Show Cause Proceeding
ENRON AFFILIATED QF'S (INVESTIGATION OF)	EL03-0047-000	Sponsor	Complaint/Electric - Not Otherwise Categorized
ENTERGY OPERATING COMPANIES	ER99-3084-000	Team Leader	Electric Transmission Rate, Ancillary Services and/or Terms and Conditions
ENTERGY SERVICES, INC.	ER05-696	Sponsor	Electric Transmission Rate, Ancillary Services and/or Terms and Conditions
EQUITRANS	RP05-164	Sponsor	Gas Section 4 Cost Based Rates

EXPRESS PIPELINE LLC	IS02-0081-000	Sponsor	Oil Pipeline Cost Based Rates
EXXON-MOBILE PIPELINE COMPANY	IS00-0221-000	Sponsor	Oil Pipeline Cost Based Rates
FRENCH BROAD ELECTRIC MEMBERSHIP CORP V.	EL00-0076-000	Sponsor	Electric Contractual Dispute
HIGH ISLAND OFFSHORE SYSTEM	RP03-221	Sponsor	Gas Section 4 Cost Based Rates
KERN RIVER GAS TRANSMISSION	RPO4-274	Sponsor	Gas Section 4 Cost Based Rates
KINDER MORGAN OPERATING L.P.	IS02-0230-000	Sponsor	Oil Pipeline Cost Based Rates
MIDAMERICA OIL PIPELINE	IS05-216	Sponsor	Oil Pipeline Cost Based Rates
MILFORD POWER COMPANY, LLC	ER05-163	Sponsor	Electric Cost Based Rates RMR
NEW ENGLAND POWER COMPANY	ER01-0745-000	Sponsor	Electric Interconnection of Transmission Facilities
NATURAL GAS PIPELINE COMPNAV	RP01-503-002	Sponsor	Complaint on Gas Quality Hydrocarbon Dew Point
NORTHERN NATURAL GAS COMPANY	RP01-0395-000	Member	Fuel Adjustment Rates
NORTHERN NATURAL GAS COMPANY	RP98-0203-000	Member	Gas Section 4 Cost Based Rates
NSTAR SERVICES CO v. NEPOOL	EL00-0062-010	Sponsor	Complaint/Electric Transmission Rates, losses, Transmission Upgrades
PG&E GAS TRANSMISSION, NW CORPORATION	RP99-0518-019	Sponsor	Gas Market Based Rates
PINE NEEDLE LNG COMPANY, L.L.C.	RP02-0407-000	Sponsor	Gas Section 4 Cost Based Rates
PIONEER PIPE LINE COMPANY	IS01-0108-000	Sponsor	Oil Pipeline Cost Based Rates
PLATTE PIPE LINE COMPANY v. EXPRESS PIPE	IS02-0384-000	Sponsor	Oil Pipeline Cost Based Rates
PORTLAND NATURAL GAS TRANSMISSION SYSTEM	RP02-0013-000	Sponsor	Gas Section 4 Cost Based Rates
PSEG POWER CONNECTICUT, LLC	ER05-231	Sponsor	Electric Cost Based Rates RMR
PUB. UTIL. Comm. (CPUC) v. EL PASO NAT.	RP00-0241-006	Subject Expert	Gas Market Based Rates
PUB. UTIL. COMM. (CPUC) v. EL PASO NAT.	RP00-0241-000	Subject Expert	Complaint/Gas or Oil - Not Otherwise Categorized
SFPP, L.P. (PHASE I - MARKET POWER)	OR98-0011-000	Team Leader	Complaint/Gas or Oil - Not Otherwise Categorized
SFPP, L.P. (PHASE II - COST-OF-SERVICE)	OR98-0011-001	Sponsor	Complaint/Gas or Oil - Not Otherwise Categorized
SHELL OFFSHORE INC v. TRANSCO ET AL	RP02-0099-000	Member	Complaint/Gas or Oil - Not Otherwise Categorized
SOUTHERN LNG INC	RP02-0129-000	Sponsor	Gas Section 4 Cost Based Rates
SOUTHERN NATURAL GAS COMPANY	RP99-0496-000	Team Leader	Gas Section 4 Cost Based Rates
SOUTHERN NATURAL GAS COMPANY	RP04-523	Sponsor	Gas Section 4 Cost Based Rates
SUFFOLK COUNTY ELECTRICAL AGENCY	TX96-0004-000	Sponsor	Electric Transmission Rate, Ancillary Services and/or Terms and Conditions
SUMMIT POWER NW LLC, v. PORTLAND GENERAL	RP01-0433-000	Sponsor	Complaint/Gas or Oil - Not Otherwise Categorized
TEXAS GAS TRANSMISSION CORPORATION	RP00-0260-000	Subject Expert	Gas Section 4 Cost Based Rates
TRAILBLAZER PIPELINE COMPANY	RP03-0162-000	Sponsor	Gas Section 4 Cost Based Rates
TRANSCONTINENTAL GAS PIPELINE CORPORATIO	RP01-0245-000	Sponsor	Gas Section 4 Cost Based Rates

TRANSWESTERN PIPELINE COMPANY	RP97-0288-009	Sponsor and Witness	Gas Section 4 Cost Based Rates
VENICE GATHERING SYSTEM,L.L.C.	RP01-0196-000	Sponsor	Gas Section 4 Cost Based Rates
VIKING GAS TRANSMISSION COMPANY	RP02-0132-000	Sponsor	Gas Section 4 Cost Based Rates
WEST TEXAS LPG PIPELINE LIMITED PARTNERS	IS02-0331-000	Sponsor	Oil
WESTERN RESOURCES, INC	EC97-0056-000	Member	Merger Proceeding
WILLISTON BASIN INTERSTATE PIPELINE COMPANY	RP00-107	Sponsor	Gas Section 4 Cost Based Rates

Attachment B

Formal Proceedings in Which Barry E. Sullivan Testified:

Docket No. CP79-80, Trailblazer Pipeline Company;
Docket No. RP80-121, United Gas Pipeline Company;
Docket Nos. RP80-97, and RP81-54, Tennessee Gas Pipeline Company;
Docket Nos. RP81-17 and RP81-57, Midwestern Gas Transmission Company;
Docket No. CP80-17, Trans Anadarko Pipeline System;
Docket No. RP82-46, South Georgia Natural Gas Company;
Docket No. RP85-39, Wyoming Interstate Company, Ltd.;
Docket No. RP85-60, Overthrust Pipeline Company;
Docket No. RP84-94, Trailblazer Pipeline Company;
Docket Nos. IS85-9 and OR85-1, Kuparuk Transportation Company;
Docket No. CP85-437 et al., Mojave Pipeline Company;
Docket No. RP88-197-000, Williston Basin Interstate Pipeline Company;
Docket No. RP90-109-000, Pacific Gas Transmission Company;
Docket No. RP90-8-000, Transcontinental Gas Pipe Line Corporation;
Docket No. RP90-119-000, Texas Eastern Transmission Corporation;
Docket No. RP85-39-009, Wyoming Interstate Company, Ltd;
Docket No. RP93-55-000, Trailblazer Pipeline Company;
Docket No. RP94-72-000, Iroquois Gas Transmission System;
Docket No. RP95-112-000, Tennessee Gas Pipeline Company;
Docket No. RP95-364-000, Williston Basin Interstate Pipeline Company;
Docket No. RP95-362-000, Koch Gateway Pipeline Company;
Docket No. RP91-203-062, Tennessee Gas Pipeline Company;
Docket No. RP97-126-000, Iroquois Gas Transmission System;
Docket No. RP97-373-000, Koch Gateway Pipeline Company;
Docket No. RP98-203-000, Northern Natural Gas Company;
Docket No. OR98-11-000, SFPP, L.P.;
Docket No. RP97-288-009 through 016, Transwestern Pipeline Company;
Docket No. RP02-99-000, Shell Offshore Inc., v Williams Field Services;
Docket No. EL02-114-000, Portland General Electric Company;
Docket No. EL03-154 and EL03-180, Enron Power Marketing, Inc.;
Docket No. IS05-82, Anadarko/Tesoro versus TAPS Carriers;
Docket No. RP06-407-000, Gas Transmission Northwest;
Docket No. RP07-21-000, Mobil Pipeline Company;
Docket No. RP08-306, Portland Natural Gas Transmission System;
Docket No. RP08-426-000, El Paso Natural Gas Company;
Docket No. RP09-427-000, Southern Natural Gas Company;
Docket No. RP10-729-000, Portland Natural Gas Transmission System;
Docket No. RP10-1398, El Paso Natural Gas Company;

Docket No. RP11-1435-000, Columbia Gulf Transmission Company; and
Docket No. RP 11-1823-000, Tuscarora Gas Transmission Company.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Enterprise Products Partners L.P.
and Enbridge Inc.**

Docket No. OR12-4-000

AFFIDAVIT OF JOHN VAN HEYST

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enterprise Products Partners L.P.
and Enbridge Inc.

Docket No. OR12-4-000

AFFIDAVIT OF JOHN VAN HEYST

The undersigned, John Van Heyst, does hereby state as follows:

1. I hold the position of Manager, Marketing Logistics for Suncor Energy Marketing Inc. ("Suncor"). My business address is 150 - 6th Avenue SW, Calgary, Alberta, Canada T2P 3E3.
2. I am submitting this Affidavit in support of the Joint Protest of Suncor, Canadian Natural Resources Limited ("CNRL"), Continental Resources, Inc. ("Continental"), Denbury Onshore LLC ("Denbury") and Husky Marketing and Supply Company ("Husky") against the application of Enterprise Products Partners L.P. ("Enterprise") and Enbridge Inc. ("Enbridge") for authority to charge market-based rates for transportation of crude oil on Enterprise and Enbridge's proposed reversed service on the Seaway pipeline from Cushing, Oklahoma to the United States Gulf Coast (the "Gulf Coast") (the "Application").
3. I have more than 27 years of experience in the oil and gas industry. Recently I have been involved in the arrangement of pipeline transportation throughout North America of crude oil produced in Western Canada. I am familiar with the technical, logistical, and economic considerations involved in the transportation and marketing of

crude oil in North America.

4. The information contained in this Affidavit is based on my personal knowledge and understanding of petroleum production, transportation, and refining. It is also based on publicly available crude oil price information published by Platts and Argus Media.

Lack of Competitive Alternatives

5. The application filed by Enterprise and Enbridge relies heavily on a number of alleged competitive alternatives to support the position that they lack significant market power and the supporting HHI calculations. Practically speaking there are no true alternatives to Seaway primarily for the following reasons:

- (a) many of the suggested alternatives are not competitive alternatives in all cases, having regard to certain physical barriers and impediments, as discussed below; and
- (b) the suggested alternatives are not economic alternatives having regard to general price differentials, as discussed below.

Use of Different Types Crude Oil

6. Although the Application lists refineries and their corresponding capacity as alleged alternatives, as set out below a number of these alternatives may not be usable alternatives having regard to certain physical barriers or impediments.

7. The Application in Statement D identifies many alleged competitive alternatives to Seaway, but many of these alternatives are not actually available to shippers, especially if the various types of crude oil are taken into account. For example, the Application identifies West Texas Intermediate ("WTI") as a type of crude oil that will be shipped on the Seaway pipeline. WTI is produced in and around Cushing,

Oklahoma. The WTI production area is not physically connected to several of the areas that are identified in Statement D, including the U.S. Rocky Mountain refineries, Western Canada refineries and the pipelines serving those refining areas. Therefore the inclusion of these areas as alternatives is completely irrelevant in the examination of a WTI product market. Until the product market for Seaway is adequately defined, it is not possible to determine which of the alternatives are actually able to act as alternatives to Seaway to transport or process crude oil.

8. Another physical barrier is the actual ability of a refinery to process and pipeline to transport different types of crude oil. For example, heavy sour crude oil runs can be limited by physical constraints of both the refinery and pipeline, including but not limited to, finished product quality limitations, sulfur handling ability, and process unit capabilities and limitations. Without proper equipment, a refinery cannot process heavy sour crude oil, but the Application does not identify which refineries are able to process heavy sour crude oil. Instead, it treats all refineries as being available to process all types of crude oil, which does not reflect the reality of refinery operations. A refinery cannot be an alternative for the shipment of heavy sour crude oil on Seaway if it cannot refine heavy sour crude oil. Pipelines also often limit access to different grades of crude oil because of operational issues related to capacity, segregation and contamination. The Application does not take this into account in assuming that all pipeline capacity is available to transport all crude types. A pipeline cannot be an alternative for the shipment of heavy sour crude oil on Seaway if it cannot transport heavy sour crude oil.

9. Another consideration affecting the types of crude oil that a refinery will use is the optimum crude oil slate which a refinery needs to produce the desired slate of finished products. Each refinery will determine the optimum crude oil slate for the refinery at any point in time, typically using a linear program. The purpose of this is to maximize the profitability of the refinery operation. The crude oils used will be determined by the finished product outputs required by the refinery and the refinery process unit constraints for the period that the crude oil is being purchased. This optimization is highly dependent on finished product market netbacks, refinery constraints and related crude oil values, and may change seasonally. An example of this is asphalt production, which typically occurs more in the summer months, and which therefore often results in a higher consumption of heavier crude oils at some refineries in those months. The Application does not take into account the different individual refinery usage of different types of crude oil. Instead, it treats all refineries as being available to process all types of crude oil at all times, which does not reflect the reality of refinery operations.

Netback Comparisons

10. Currently there is a significant market price differential between crude oil sold in inland Canadian and US markets compared to the same types of crude oil at the Gulf Coast due to an oversupply of crude oil in these inland markets. This oversupply results primarily from increased crude oil production and the limited infrastructure connecting the inland markets to the Gulf Coast.

11. As a result, similar grades of crude oil sell at a substantial premium on the Gulf Coast compared to the price available at the inland markets. The Gulf Coast differs from the inland markets because it has many domestic and international crude oil sources. There is limited access to the Gulf Coast for crude oil produced in Canada and the United States inland markets. This results in crude oil pricing on the Gulf Coast differing substantially from crude oil pricing at Cushing. For example, Cushing is the clearing market for WTI, a light, sweet crude oil, and is the only transparent market for WTI. For all destinations for WTI, in all regions except the Gulf Coast, the price is based on the market price at Cushing. The various inland refineries typically contract for crude oil based on the price at Cushing, plus transportation costs to arrive at the "landed price". The cost of transportation is subtracted from the "landed price" to yield the netback to the seller, which equals the price at Cushing. Given that the transportation cost is effectively a wash, the netback is the same for all refinery locations even though the respective transportation costs are different based upon the refinery locations. Accordingly, the netback to the WTI seller is still the Cushing price.

12. The same analysis applies to the pipelines identified in the Application as alternatives to Seaway that transport crude oil from Cushing. The BP pipeline to Whiting, Indiana, the Enbridge Ozark pipeline to Wood River, Illinois, and the Occidental Centurion pipeline to Slaughter, Texas all serve refineries in their destination markets. Like the refineries identified in the Application, the refineries served by these pipelines typically contract for WTI based on the price at Cushing, plus the cost of transportation.

13. The only exception in the inland market to this pricing structure is the Alon USA refinery at Big Spring, Texas, which takes WTI at Midland, Texas, before it is transported to Cushing on the Basin pipeline. This refinery typically pays the Cushing price less the cost of transportation on the Basin pipeline, however, its pricing is still therefore based on Cushing prices.

14. Similarly, Hardisty, Alberta is the clearing market in the Western Canadian production region for a benchmark Canadian heavy crude oil known as Western Canadian Synthetic (or "WCS") and is the only transparent market for WCS. For all destinations for WCS, in all regions except the Gulf Coast, the market is based on the pricing at Hardisty because the refineries purchasing WCS will typically pay the price at Hardisty plus the applicable transportation costs to reach their refinery.

15. The Gulf Coast market value of light crude oil is based on the price for a benchmark light crude oil known as Louisiana Light Sweet ("LLS"). Attachment A to this Affidavit calculates the differential in prices between LLS and WTI. Attachment A shows that the average differential for the period January 2011 through January 2012 was \$18.88 per barrel. This is important because WTI transported on the reversed Seaway pipeline could be purchased at the WTI price at Cushing, but sold on the Gulf Coast at a price based on LLS. This means that with an average market differential of \$18.88 per barrel, the tariff on Seaway could be that amount on average. This tariff is far higher than any other pipeline tariff that I am aware of.

16. The Gulf Coast market value of heavy crude oil is based on the price for a benchmark heavy crude oil imported from Mexico known as Maya. Attachment A to this

Affidavit calculates the differential in prices between Maya and WCS. Attachment A shows that the average differential for the period January 2011 through January 2012 was \$20.39 per barrel. This is important because WCS transported on the reversed Seaway pipeline could be purchased at the WCS price at Hardisty, but sold on the Gulf Coast at a price based on Maya. This means that with an average market differential of \$20.39 per barrel, the tariff on Seaway could be that amount on average, less the cost of transporting WCS to Cushing, which is approximately \$6.00 to \$7.00 per barrel for uncommitted transportation, depending on the pipelines used. This potential Seaway tariff for WCS, of \$13.39 per barrel, is also far higher than any other pipeline tariff that I am aware of.

17. There is no current tariff on Seaway, so it is not possible to do a netback analysis comparing the netbacks available on Seaway with the alternatives included in the Application's market power analysis set out in Statement G. However, in light of the price differentials discussed above, it is not likely that any of these alternatives would be a good alternative to Seaway in terms of price.

New Pipeline and Expansion Projects

18. The Application identifies several pipeline and other projects that it claims will be potential competition for the Seaway pipeline. However, as set out in the chart below, it is not clear whether any of the potential alternatives to Seaway in the origin market would actually be a competitive alternative to Seaway.

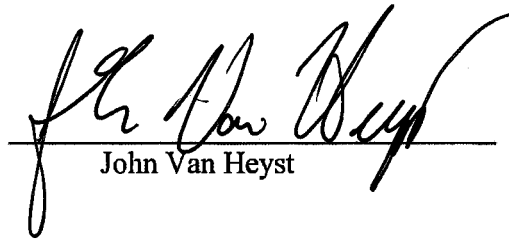
Project Name	Project Description	In-Service Date	Other Comments
Keystone XL	Hardisty, AB to Gulf Coast (through Cushing)	At least 2015	Has not received regulatory approval, in-service date too late

Keystone pre-build	Cushing to Gulf Coast	Uncertain	
Enterprise Eagle Ford projects	Eagle Ford production area, TX, to Houston	Q2 2012	Does not serve origin market, owned by Enterprise
Magellan pipeline	Cushing to Houston	One year from shipper commitments	
Longhorn Pipeline	Permian Basin, TX to Houston	2013	Does not serve origin market
Increased rail and barge transportation			Not enough information provided, not competitive in origin market, marginal transportation method
WTG Pipeline Expansion	Expansion of WTG Pipeline from Permian Basin to East Texas	Q2 2012	Does not serve origin market
Refinery Expansions in U.S. Upper Midwest, Rocky Mountains and Western Canada	Total increase in capacity of 100 MBPD, increase in capacity to process Western Canada heavy sour crude oil of 315 MBPD	Various expansions to be completed in next year	Likely not price competitive with Seaway – netback price of crude types used by expansions will be clearing market price
Enbridge Northern Gateway Pipeline	Edmonton, AB to Canada West Coast	At least 2015	Does not serve origin market, in-service date too late, owned by Enbridge
Kinder Morgan TransMountain pipeline expansion	Edmonton, AB to Canada West Coast	2017	Does not serve origin market, in-service date too late
Enbridge Line 9 reversal	Reversal of pipelines in eastern Canada and US, would transport crude oil from Sarnia, ON to	At least 2014	Does not serve origin market

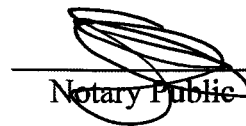
	Portland, MN		
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19. The Application does not adequately explain how any of these projects will actually be competitive alternatives to the Seaway pipeline, particularly because the analysis of the proposed projects does not identify the types of crude oil that would potentially be transported or processed by them. Many of these projects are speculative, or are not very far along in the planning and development process. Other projects do not provide enough information to analyze what impact the project would have as potential competition to Seaway. As well, some of the projects are at least partially owned by Enterprise or Enbridge, and therefore, as affiliates of Seaway, even if they could be considered to be competitive alternatives to Seaway, they should actually be included with Seaway in performing a market power analysis.

20. Finally, the forward looking analysis of potential competition in the Application does not contain a forward looking analysis of potential increases of crude oil production. It also does not take into account proposed projects that will provide increased transportation capacity into the Cushing market, such as the recently announced Plains All American Mississippian Lime Pipeline, and the segment of the Enbridge Gulf Coast Access Project that will transport crude oil from Flanagan, Illinois to Cushing. Increases in crude oil production and crude oil supply into Cushing would offset the benefit the potential competition would have in crude oil market because the additional production and supply necessitates new take away pipeline or refining capacity.


John Van Heyst

SUBSCRIBED and SWORN to before me this 15th day of February, 2012.


Notary Public

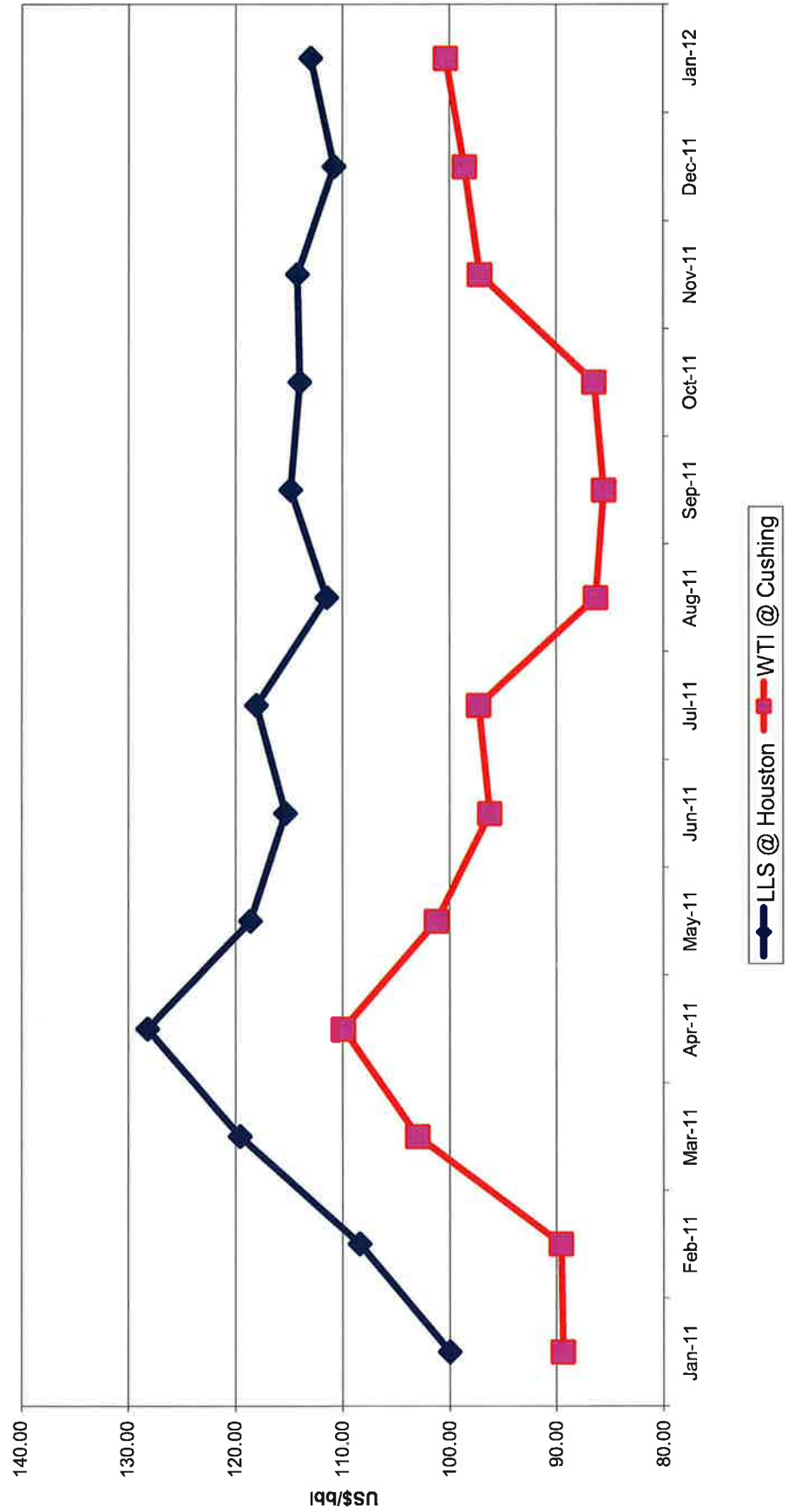
Geoffrey L. Macleod
Barrister & Solicitor

My Commission expires:

ATTACHMENT A TO

**AFFIDAVIT OF
JOHN VAN HEYST**

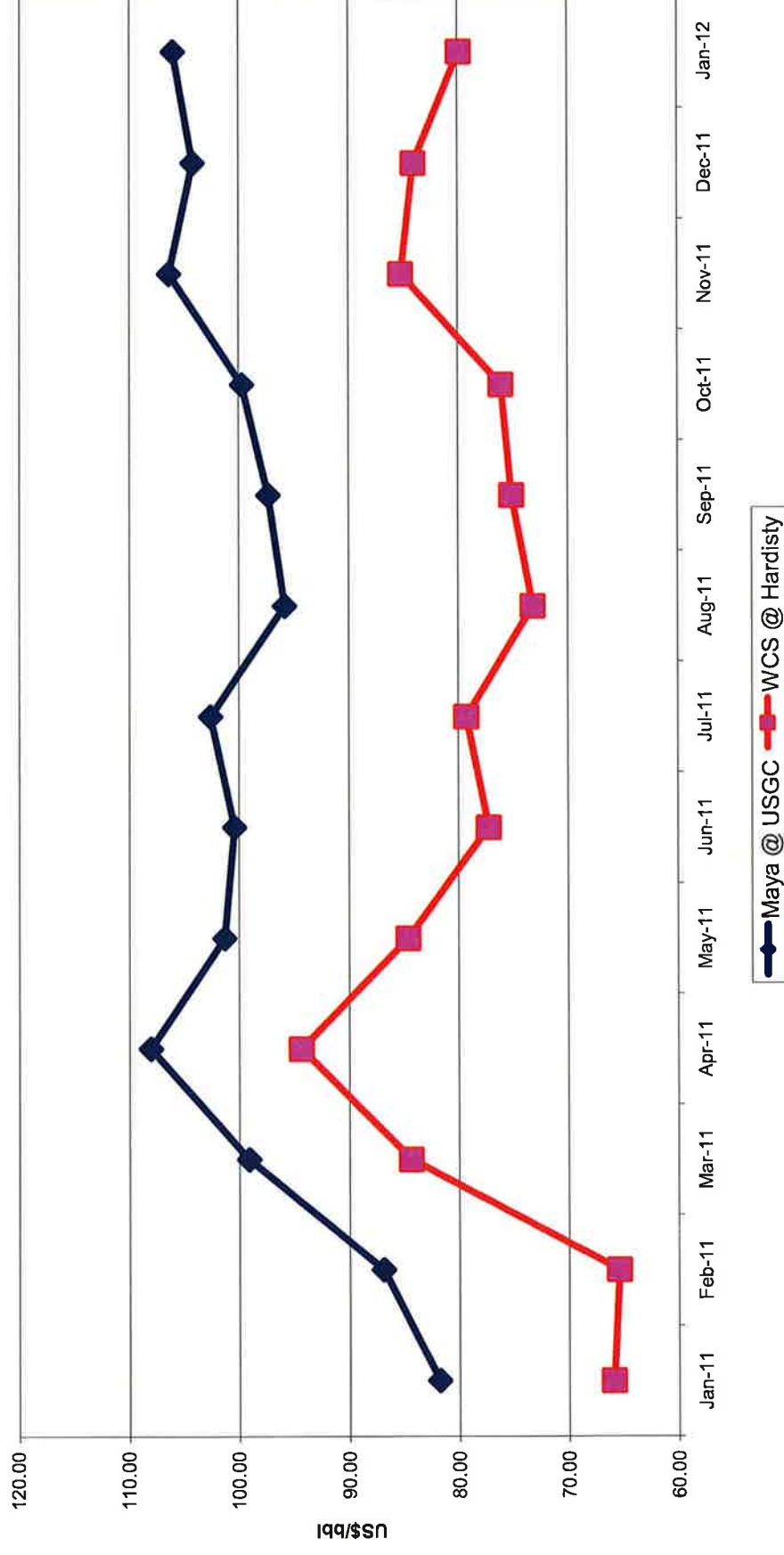
LLS @ Houston vs. WTI @ Cushing



Source:

- 1) LLS @ Houston equals Platts LLS quote @ St. James plus estimated Barge fee (St James to Houston)
- 2) WTI @ Cushing equals Platts WTI @ Cushing price quote.

Maya @ USGC vs. WCS @ Hardisty



Source:
 1) Maya @ USGC equals delivered Argus Maya quote @ USGC
 2) WCS @ Hardisty equals Argus WCS quote @ Hardisty

Pricing Differentials										
Heavy			Light							
	Argus Maya USGC Dated	Argus Hardisty WCS Month 1	Maya @USGC minus WCS @ Hardisty	Platts WTI Cushing Month 1	Platts LLS St James Month 1	St James to Houston Estimate barge Fee ¹	LLS @ Houston	LLS @ Houston minus WTI @ Cushing		
Date	Close	Close		Close	Close					
1/1/2011	81.83	65.94	15.89	89.38	97.83	2.17	100.00	10.62		
2/1/2011	86.91	65.44	21.47	89.57	106.21	2.17	108.38	18.81		
3/1/2011	99.13	84.37	14.76	102.99	117.41	2.17	119.58	16.59		
4/1/2011	108.05	94.36	13.70	109.89	126.03	2.17	128.20	18.31		
5/1/2011	101.33	84.60	16.74	101.22	116.44	2.17	118.61	17.40		
6/1/2011	100.43	77.26	23.17	96.21	113.17	2.17	115.34	19.13		
7/1/2011	102.61	79.25	23.36	97.26	115.86	2.17	118.03	20.77		
8/1/2011	95.85	73.20	22.65	86.30	109.29	2.17	111.46	25.16		
9/1/2011	97.31	75.13	22.19	85.55	112.67	2.17	114.84	29.29		
10/1/2011	99.73	76.08	23.66	86.45	111.82	2.17	113.99	27.54		
11/1/2011	106.39	85.20	21.19	97.17	112.04	2.17	114.21	17.05		
12/1/2011	104.23	84.06	20.17	98.58	108.62	2.17	110.79	12.21		
1/1/2012	106.03	79.90	26.13	100.36	110.81	2.17	112.98	12.62		
Average	99.22	78.83	20.39	95.46	112.17	2.17	114.34	18.88		

¹From Seaway Application Table D.11 assuming cost is the same in either direction

DISCOVERY REQUESTS

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enterprise Products Partners L.P.
and Enbridge Inc.

:

Docket No. OR12-4-000

DISCOVERY REQUEST TO ENBRIDGE INC.

Pursuant to Rules 401-411, Suncor Energy Marketing, Inc., Canadian Natural Resources Limited, Continental Resources, Inc., Denbury Onshore LLC, and Husky Marketing and Supply Company submit the following discovery request to Enbridge Inc. Please provide responses and responsive documents to:

Marcus W. Sisk, Jr.
Frederick G. Jauss IV
Dorsey & Whitney LLP
1801 K Street, N.W., Suite 750
Washington, D.C. 20006
Telephone: (202) 442-3000
Fax: (202) 442-3199
sisk.marcus@dorsey.com
jauss.fred@dorsey.com

INSTRUCTIONS

1. Please begin the response or objection to each data request on a separate page.
2. Individual responses or objections of more than one page should be numbered consecutively.
3. Please restate each data request before providing the response or objection.
4. For each data response, please identify the preparer or person under whose direct supervision the response was prepared.
5. Please provide the date of each response or objection on the response or objection.
6. These data requests impose a continuing obligation to respond and to provide additional information as it becomes available as required by Commission Rule of Practice and Procedure 403(d)(2), 18 C.F.R. § 385.403 (d)(2).
7. If no information or documents are responsive to any one of these data requests, please so indicate.

8. Please specify the data request(s) in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.
9. For those data requests calling for the production of document(s), please provide legible, true and complete copies of the original document(s). If an original has been destroyed, please follow instruction number 12 below.
10. Wherever a data request specifically requests a narrative answer rather than the production of documents alone, a narrative answer is required. The production of documents does not substitute for the narrative answer.
11. These data requests are to be construed broadly to elicit all information requested and discoverable under the Commission's Rules of Practice and Procedure. To this end:
 - a. the present tense includes the past tense and the past tense includes the present tense; and
 - b. the singular includes the plural and the plural includes the singular.
12. If any information is not available in the exact form requested, please provide whatever information or documents are available that best responds to the data request.
13. These data requests require you to produce all responsive documents in your possession, custody or control, or in the possession, custody or control of your attorney or other agent, from all files that contain responsive documents, wherever located, including active and inactive files and including files on computer.
14. If a document responsive to any of these requests is not in your possession, custody or control, but you know or believe that it exists, please identify the document and indicate to the best of your ability the document's location and custodian.
15. If a document responsive to any of these data requests has been destroyed, please identify (i) all persons involved in ordering the document's destruction, (ii) the date of the document's destruction; and (iii) the reason for the document's destruction or any other reason for its unavailability. If the destruction occurred pursuant to a document destruction program, describe the destruction program in detail and provide copies of all documents explaining the program. Describe, in detail, any other communications related to the document's destruction.
16. If you assert any claim of privilege or discovery immunity in response to any of these data requests, please identify each document withheld and include the following:
 - a. the document's title and type (*e.g.*, letter, memorandum, report, agreement, invoice);
 - b. the privilege or immunity claimed and a detailed basis for claiming such privilege or immunity;

- c. the document's author(s), signer(s), and sender(s);
 - d. the addressee(s) and recipient(s) of the original document and of any copies;
 - e. the names appearing on any circulation lists associated with such document;
 - f. the document's date; and a summary of the document's subject matter.
17. For each response that is generated by a computer or data storage mechanism, please separately state:
 - a. the name of the program or file from which the data came;
 - b. how the data are stored (punch cards, tapes, disks, etc.) and how it can be transmitted and retrieved; and
 - c. the identify of the person who collected or entered the information into the computer or data storage mechanism.
 18. For each response in which data is requested to be provided in electronic form, please provide a hard copy and an electronic version.
 19. For any request consisting of a number of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.
 20. If you perceive any ambiguity in interpreting any of the following requests, or a definition or instruction applicable thereto, secure a clarification by contacting the undersigned counsel as soon as the ambiguity is perceived.

DEFINITIONS

1. "Enbridge" refers to Enbridge Inc., and its parents, partners, subsidiaries, affiliates, predecessors, successors and assigns and includes its officers, directors, agents and employees.
2. "You" and "your" refers to Enbridge as described in definitions 1 above.
3. "Communication" means any correspondence, contact, discussion or exchange between any two or more persons. The term includes, but is not limited to, all documents, telephone conversations or face-to-face conversations, electronic mail, conferences or other meetings.
4. "Document" means any written, recorded, computer stored, computer-generated or graphic material however stored, produced or reproduced. The term is to be construed to the full extent of the definition in Rule 407(a)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 407(a)(1) and in Rule 34 of the Federal Rules of Civil Procedure. Any document that is not exactly identical to another document for any

reason, including but not limited to marginal notations or deletions, is a separate document.

5. “Each” includes the term “every” and “every” includes the term “each.” “Any” includes the term “all” and “all” includes the term “any.” “And” includes the term “or” and “or” includes the term “and.”
6. “Identify” means to state as follows:
 - a. With respect to a document (i) the document’s title, date, author(s), signer(s), sender(s), addressee(s) and recipient(s); (ii) the type of document (*e.g.*, letter, memorandum, agreement, invoice), and its location and custodian; and (iii) a detailed description of its contents or principal terms and provisions.
 - b. With respect to a communication (i) the time, date and place of the communication; (ii) all maker(s) and recipient(s) of the communication; (iii) the mode of communication; (iv) the subject matter of the communication; and (v) any document generated in connection with the communication.
 - c. With respect to a person (i) the person’s full name; (ii) the person’s employer, job title, and a brief description of the person’s current duties and duties at the time relevant to the data request; and (iii) the person’s business address.
7. The terms “related to” or “relating to” mean being in any way relevant to, commenting on, consisting of, referring to, composing, comprising, discussing, evidencing, identifying, involving, reflecting, or underlying.
8. The terms “state,” “describe” and “explain” call for answers independent from any documents that are required in response to these data requests. Such answers should be in a form (*e.g.*, narrative, tabular) appropriate to a complete response to the request.
9. “Commission” means the Federal Energy Regulatory Commission.
10. “Seaway” refers to Enterprise and Enbridge’s interstate crude oil pipeline originating at Cushing, Oklahoma, and delivering crude oil at Houston, Texas.
11. The term “Application” means the Application of Enterprise Products Partners L.P. and Enbridge Inc. for Authorization to Charge Market-Based Rates filed in this Docket.

DATA REQUESTS

1. Please provide all work papers used in preparation of the Application.
2. Please provide all studies or analyses of competitive alternatives to Seaway prepared since January 1, 2010.
3. Please provide any studies, analyses, or calculations of the netback to shipper using any alternative to Seaway.

4. Please provide any feasibility studies or other studies or analyses prepared in connection with the proposed reversal of Seaway described in the Application, including any study or analysis of competitive alternatives to Seaway.
5. Please provide any studies or analyses prepared in connection with your acquisition of ConocoPhillips' 50 percent share of Seaway Crude Pipeline Company as described in the Application.

February 15, 2012

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enterprise Products Partners L.P.
and Enbridge Inc.

:

Docket No. OR12-4-000

DISCOVERY REQUEST TO ENTERPRISE PRODUCTS PARTNERS L.P.

Pursuant to Rules 401-411, Suncor Energy Marketing, Inc., Canadian Natural Resources Limited, Continental Resources, Inc., Denbury Onshore LLC, and Husky Marketing and Supply Company submit the following discovery request to Enterprise Products Partners L.P. Please provide responses and responsive documents to:

Marcus W. Sisk, Jr.
Frederick G. Jauss IV
Dorsey & Whitney LLP
1801 K Street, N.W., Suite 750
Washington, D.C. 20006
Telephone: (202) 442-3000
Fax: (202) 442-3199
sisk.marcus@dorsey.com
jauss.fred@dorsey.com

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14. If a document responsive to any of these requests is not in your possession, custody or control, but you know or believe that it exists, please identify the document and indicate to the best of your ability the document's location and custodian.
15. If a document responsive to any of these data requests has been destroyed, please identify (i) all persons involved in ordering the document's destruction, (ii) the date of the document's destruction; and (iii) the reason for the document's destruction or any other reason for its unavailability. If the destruction occurred pursuant to a document destruction program, describe the destruction program in detail and provide copies of all documents explaining the program. Describe, in detail, any other communications related to the document's destruction.
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 - b. the privilege or immunity claimed and a detailed basis for claiming such privilege or immunity;

- c. the document's author(s), signer(s), and sender(s);
 - d. the addressee(s) and recipient(s) of the original document and of any copies;
 - e. the names appearing on any circulation lists associated with such document;
 - f. the document's date; and a summary of the document's subject matter.
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- a. the name of the program or file from which the data came;
 - b. how the data are stored (punch cards, tapes, disks, etc.) and how it can be transmitted and retrieved; and
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- 2. "You" and "your" refers to Enterprise as described in definitions 1 above.
- 3. "Communication" means any correspondence, contact, discussion or exchange between any two or more persons. The term includes, but is not limited to, all documents, telephone conversations or face-to-face conversations, electronic mail, conferences or other meetings.
- 4. "Document" means any written, recorded, computer stored, computer-generated or graphic material however stored, produced or reproduced. The term is to be construed to the full extent of the definition in Rule 407(a)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 407(a)(1) and in Rule 34 of the Federal Rules of Civil Procedure. Any document that is not exactly identical to another document for any

reason, including but not limited to marginal notations or deletions, is a separate document.

5. “Each” includes the term “every” and “every” includes the term “each.” “Any” includes the term “all” and “all” includes the term “any.” “And” includes the term “or” and “or” includes the term “and.”
6. “Identify” means to state as follows:
 - a. With respect to a document (i) the document’s title, date, author(s), signer(s), sender(s), addressee(s) and recipient(s); (ii) the type of document (*e.g.*, letter, memorandum, agreement, invoice), and its location and custodian; and (iii) a detailed description of its contents or principal terms and provisions.
 - b. With respect to a communication (i) the time, date and place of the communication; (ii) all maker(s) and recipient(s) of the communication; (iii) the mode of communication; (iv) the subject matter of the communication; and (v) any document generated in connection with the communication.
 - c. With respect to a person (i) the person’s full name; (ii) the person’s employer, job title, and a brief description of the person’s current duties and duties at the time relevant to the data request; and (iii) the person’s business address.
7. The terms “related to” or “relating to” mean being in any way relevant to, commenting on, consisting of, referring to, composing, comprising, discussing, evidencing, identifying, involving, reflecting, or underlying.
8. The terms “state,” “describe” and “explain” call for answers independent from any documents that are required in response to these data requests. Such answers should be in a form (*e.g.*, narrative, tabular) appropriate to a complete response to the request.
9. “Commission” means the Federal Energy Regulatory Commission.
10. “Seaway” refers to Enterprise and Enbridge’s interstate crude oil pipeline originating at Cushing, Oklahoma, and delivering crude oil at Houston, Texas.
11. The term “Application” means the Application of Enterprise Products Partners L.P. and Enbridge Inc. for Authorization to Charge Market-Based Rates filed in this Docket.

DATA REQUESTS

1. Please provide all work papers used in preparation of the Application.
2. Please provide all studies or analyses of competitive alternatives to Seaway prepared since January 1, 2010.
3. Please provide any studies, analyses, or calculations of the netback to shipper using any alternative to Seaway.

4. Please provide any feasibility studies or other studies or analyses prepared in connection with the proposed reversal of Seaway described in the Application, including any study or analysis of competitive alternatives to Seaway.

February 15, 2012

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Enterprise Products Partners L.P.
and Enbridge Inc.

:

Docket No. OR12-4-000

DISCOVERY REQUEST TO SEAWAY CRUDE PIPELINE COMPANY

Pursuant to Rules 401-411, Suncor Energy Marketing, Inc., Canadian Natural Resources Limited, Continental Resources, Inc., Denbury Onshore LLC, and Husky Marketing and Supply Company submit the following discovery request to Seaway Crude Pipeline Company. Please provide responses and responsive documents to:

Marcus W. Sisk, Jr.
Frederick G. Jauss IV
Dorsey & Whitney LLP
1801 K Street, N.W., Suite 750
Washington, D.C. 20006
Telephone: (202) 442-3000
Fax: (202) 442-3199
sisk.marcus@dorsey.com
jauss.fred@dorsey.com

INSTRUCTIONS

1. Please begin the response or objection to each data request on a separate page.
2. Individual responses or objections of more than one page should be numbered consecutively.
3. Please restate each data request before providing the response or objection.
4. For each data response, please identify the preparer or person under whose direct supervision the response was prepared.
5. Please provide the date of each response or objection on the response or objection.
6. These data requests impose a continuing obligation to respond and to provide additional information as it becomes available as required by Commission Rule of Practice and Procedure 403(d)(2), 18 C.F.R. § 385.403 (d)(2).
7. If no information or documents are responsive to any one of these data requests, please so indicate.

8. Please specify the data request(s) in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.
9. For those data requests calling for the production of document(s), please provide legible, true and complete copies of the original document(s). If an original has been destroyed, please follow instruction number 12 below.
10. Wherever a data request specifically requests a narrative answer rather than the production of documents alone, a narrative answer is required. The production of documents does not substitute for the narrative answer.
11. These data requests are to be construed broadly to elicit all information requested and discoverable under the Commission's Rules of Practice and Procedure. To this end:
 - a. the present tense includes the past tense and the past tense includes the present tense; and
 - b. the singular includes the plural and the plural includes the singular.
12. If any information is not available in the exact form requested, please provide whatever information or documents are available that best responds to the data request.
13. These data requests require you to produce all responsive documents in your possession, custody or control, or in the possession, custody or control of your attorney or other agent, from all files that contain responsive documents, wherever located, including active and inactive files and including files on computer.
14. If a document responsive to any of these requests is not in your possession, custody or control, but you know or believe that it exists, please identify the document and indicate to the best of your ability the document's location and custodian.
15. If a document responsive to any of these data requests has been destroyed, please identify (i) all persons involved in ordering the document's destruction, (ii) the date of the document's destruction; and (iii) the reason for the document's destruction or any other reason for its unavailability. If the destruction occurred pursuant to a document destruction program, describe the destruction program in detail and provide copies of all documents explaining the program. Describe, in detail, any other communications related to the document's destruction.
16. If you assert any claim of privilege or discovery immunity in response to any of these data requests, please identify each document withheld and include the following:
 - a. the document's title and type (*e.g.*, letter, memorandum, report, agreement, invoice);
 - b. the privilege or immunity claimed and a detailed basis for claiming such privilege or immunity;

- c. the document's author(s), signer(s), and sender(s);
 - d. the addressee(s) and recipient(s) of the original document and of any copies;
 - e. the names appearing on any circulation lists associated with such document;
 - f. the document's date; and a summary of the document's subject matter.
17. For each response that is generated by a computer or data storage mechanism, please separately state:
- a. the name of the program or file from which the data came;
 - b. how the data are stored (punch cards, tapes, disks, etc.) and how it can be transmitted and retrieved; and
 - c. the identify of the person who collected or entered the information into the computer or data storage mechanism.
18. For each response in which data is requested to be provided in electronic form, please provide a hard copy and an electronic version.
19. For any request consisting of a number of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.
20. If you perceive any ambiguity in interpreting any of the following requests, or a definition or instruction applicable thereto, secure a clarification by contacting the undersigned counsel as soon as the ambiguity is perceived.

DEFINITIONS

- 1. "Enterprise" refers to Enterprise Products Partners L.P., and its parents, partners, subsidiaries, affiliates, predecessors, successors and assigns and includes its officers, directors, agents and employees.
- 2. "Enbridge" refers to Enbridge Inc., and its parents, partners, subsidiaries, affiliates, predecessors, successors and assigns and includes its officers, directors, agents and employees.
- 3. "Seaway" refers to Enterprise and Enbridge's interstate crude oil pipeline originating at Cushing, Oklahoma, and delivering crude oil at Houston, Texas. The term "Seaway" includes Seaway's parents, partners, subsidiaries, affiliates, predecessors, successors and assigns and includes its officers, directors, agents and employees.
- 4. "You" and "your" refers to Seaway as described in definition 3 above.

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