180 FERC ¶ 61,053
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

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

OPINION NO. 578

ORDER ON INITIAL DECISION

(Issued July 28, 2022)

1. On September 25, 2020, the Presiding Administrative Law Judge (ALJ) issued an Initial Decision in this proceeding recommending the denial of the application for market-based rate authority of MPLX Ozark Pipe Line LLC (MPLX Ozark).[1] As discussed below, we reverse the Initial Decision and grant MPLX Ozark's application for market-based rate authority.

I. **Background**

2. MPLX Ozark owns a 433-mile, 22-inch diameter crude oil pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA).[2] Marathon Pipe Line LLC (Marathon) operates MPLX Ozark.[3] MPLX Ozark is wholly-owned by MPLX Pipe Line Holdings LLC, a subsidiary of MPLX LP, a master limited partnership formed by Marathon Petroleum Corporation. MPLX Ozark receives crude oil at its origin in Cushing, Oklahoma, and delivers crude oil to Wood River, Illinois.[4] Deliveries from MPLX Ozark may be made to one of three separate locations in the vicinity of Wood River, Illinois: (1) the WRB Refining LP refinery (Wood River Refinery), (2) an interconnect with the MPLX LP-owned WoodPat Pipeline, which transports crude oil to

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[1] *MPLX Ozark Pipe Line LLC*, 172 FERC ¶ 63,034 (2020) (Initial Decision).

[2] 49 U.S.C. app. § 1 *et seq*.

[3] Initial Decision, 172 FERC ¶ 63,034 at P 9.

[4] *Id.* P 6.

Patoka, Illinois, or (3) storage tanks that store crude oil for subsequent delivery to the WoodPat Pipeline.[5] The majority of crude oil shipments on MPLX Ozark are delivered to WoodPat Pipeline for downstream delivery to facilities in Patoka, approximately 70-75 miles away from the Wood River Refinery.[6]

3. Three additional pipelines deliver crude oil at Wood River: Platte Pipeline Co. LLC (Platte), TransCanada Keystone Pipeline, LP (Keystone), and Plains Pipeline L.P.'s Capwood pipeline (Capwood).[7] Keystone and Platte also deliver crude oil through Wood River to Patoka, while Capwood delivers crude oil to Wood River from its origin in Patoka.[8] Patoka is a crude oil hub with pipeline interconnections and storage options for crude oil.[9] In addition to the WoodPat Pipeline, pipelines that deliver crude oil to Patoka include Dakota Access, LLC (Dakota Access Pipeline or DAPL), Southern Access Extension Pipeline (Southern Access Pipeline or SAX), and Mustang Pipe Line LLC (Mustang).[10]

II. Procedural History

4. On December 21, 2018, MPLX Ozark filed an application to charge market-based rates for the transportation of crude oil from Cushing, Oklahoma to Wood River, Illinois. MPLX Ozark justified its application using an origin market of the State of Oklahoma and a destination market of the counties located in BEA No. 160 (the St. Louis BEA).[11] On February 25, 2019, Husky Marketing & Supply Company (Husky) and Phillips 66 Company (Phillips 66) (together, Joint Protesters) protested MPLX Ozark's application.

5. On June 25, 2019, the Commission issued an order finding that MPLX Ozark lacks market power in its origin market of the State of Oklahoma and granted MPLX

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[5] *Id.* P 7.

[6] *Id.* P 11.

[7] *Id.* P 12.

[8] *Id.* P 13.

[9] *Id.* P 11.

[10] Webb Test. Ex. MPX-0009, at 91:3-8.

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

Ozark market-based rate authority for its origin market.[12] However, the Commission set for hearing whether MPLX Ozark lacked market power in the destination market.[13]

6. The hearing commenced on May 6, 2020 and concluded on May 28, 2020. On September 25, 2020, the ALJ issued an Initial Decision finding that (1) the product market is the transportation of all grades of crude oil; (2) the geographic destination market is Wood River/Roxana, Illinois (Wood River); (3) the competitive alternatives in the geographic destination market are the crude oil pipelines Platte, Keystone, and Capwood; and (4) the resultant HHI[14] is within a range of 2,676 to 2,859, with a market share ranging from 30.1% to 34.5%. The ALJ concluded that MPLX Ozark did not make the requisite showing that it is unable to exercise market power in the defined geographic destination market, and therefore the ALJ recommended that the application be denied.

7. On October 26, 2020, MPLX Ozark and Joint Protesters filed briefs on exceptions. On November 16, 2020, Trial Staff, Joint Protesters, and MPLX Ozark filed briefs opposing exceptions.

III. <u>Discussion</u>

8. An oil pipeline may charge market-based rates upon a determination that it lacks market power.[15] The Commission requires an oil pipeline seeking authority to charge market-based rates to (1) describe the relevant geographic markets at the pipeline's origin and destination, (2) identify the relevant product market, (3) identify the competitive alternatives for shippers, including existing competition and potential competition constraining the pipeline's ability to exercise market power, (4) describe any other factors that bear on the issue of whether the carrier lacks significant market power in the relevant

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[12] *MPLX Ozark Pipe Line LLC*, 167 FERC ¶ 61,264, at P 23 (2019).

[13] *Id.* P 25.

[14] The Herfindahl-Hirschman Index (HHI) measures market concentration, suggesting the likelihood of a pipeline exerting market power in concert with other sources of supply. HHI equals the sum of the squared market shares of all competitors in the market. The HHI can range from just above zero, where there are a very large number of competitors in the market, to 10,000, where the market is served by a monopolist. *Id.* P 4 n.7.

[15] 18 C.F.R. pt. 348 (2021); *Mkt.-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007 (cross-referenced at 69 FERC ¶ 61,103), *order on reh'g*, Order No. 572-A, 69 FERC ¶ 61,412 (1994), *aff'd sub nom. Assoc. of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (D.C. Cir. 1996).

markets, and (5) compute the market concentration and other market power measures.[16] The Commission uses this information to determine whether the oil pipeline lacks significant market power in the relevant markets. The Commission's determination is a fact-specific, case-by-case inquiry.[17]

9. Parties filed exceptions to the Initial Decision's findings relating to (1) the geographic destination market, (2) other factors bearing on the issue of whether the carrier lacks significant market power, and (3) the market power measures and assessment. No party challenged the Initial Decision's determinations relating to the product market.[18] Moreover, parties only challenged the Initial Decision's determinations with respect to competitive alternatives as those determinations relate to the Initial Decision's findings on the geographic market.[19]

10. As discussed below, we address the exceptions to the Initial Decision's findings regarding (1) the geographic destination market, (2) other factors bearing on the issue of whether the carrier lacks significant market power, and (3) market power measures and assessment. Based upon the analysis below, we reverse the Initial Decision and grant MPLX Ozark's application for market-based rate authority.

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[16] 18 C.F.R. § 348.1(c). The carrier applicant is required to provide nine statements supporting its application on the following topics: (1) geographic markets, (2) product market, (3) carrier's facilities and services, (4) competitive alternatives, (5) potential competition, (6) maps showing the carrier's facilities and geographic markets, (7) market power measures, (8) other factors, and (9) prepared testimony.

[17] *See, e.g.*, *Guttman Energy, Inc. v. Buckeye Pipe Line Co., L.P.*, Opinion No. 558, 161 FERC ¶ 61,180, at P 241 (2017), *order on reh'g*, Opinion No. 558-A, 164 FERC ¶ 61,025 (2018).

[18] We affirm the Initial Decision's determination of the product market as the transportation of all grades of crude oil, as MPLX Ozark proposed.

[19] All parties appear to agree what the competitive alternatives to the applicant pipeline would be if a particular geographic market definition is chosen; i.e. if a Wood River destination market is used, Platte, Keystone, and Capwood would be the competitive alternatives or, in a combined Wood River/Patoka market, the competitive alternatives would be Platte, Keystone, DAPL, SAX, and Mustang. As discussed further below, under the combined market definition, Capwood would be considered an intra-market pipeline.

A. The Geographic Destination Market

1. Initial Decision

11. In the Initial Decision, the ALJ found that the appropriate geographic destination market is the market of Wood River, as defined by Trial Staff, rather than the St. Louis BEA as proposed by MPLX Ozark.[20] In determining the scope of the geographic destination market, the ALJ adopted Trial Staff's application of the hypothetical monopolist test,[21] which began with an initial candidate market of Wood River and found that it was not appropriate to expand the market beyond Wood River.[22] As inputs for the hypothetical monopolist test, the ALJ adopted Trial Staff's determination of Capwood as the marginal supplier and the competitive price proxy of $2.28 per barrel.[23] In accepting Trial Staff's methodology, the ALJ rejected Joint Protesters' argument that determining the marginal supplier requires evaluating only competitors that provide similar service to the applicant between a given set of points and likewise rejected Joint Protesters' argument that the

[20] Initial Decision, 172 FERC ¶ 63,034 at P 179.

[21] A hypothetical monopolist test asks if any competitor could profitably impose a small but significant and non-transitory increase in price (SSNIP) above the competitive price in a defined candidate market. If a competitor or proposed group of competitors could profitably impose a SSNIP in the candidate market, the market is properly defined: it is an area within which market power could be exercised by one or more competitors if control of competitive alternatives is highly concentrated. On the other hand, if a SSNIP would be unprofitable because shippers would respond by purchasing the product from outside the candidate market, the market definition is too narrow: no competitor could exercise market power in such an area. *See White Cliffs Pipeline*, 173 FERC ¶ 61,155, at P 32 (2020).

[22] Initial Decision, 172 FERC ¶ 63,034 at PP 159-162. In its hypothetical monopolist test, Trial Staff identified the used competitive alternatives in Wood River as MPLX Ozark, Platte, Keystone, and Capwood and the competitive price proxy as the $2.28 transportation price implied by the difference between the Wood River delivered price of Bakken crude via DAPL and Capwood and the Cushing spot price of West Texas Intermediate crude. Trial Staff then applied the SSNIP of 15% or $0.34 to the competitive price proxy and found that no unused alternatives were competitive in terms of price. *Id.* P 162; *see also* Ex. S-0014 at 1; Ex. S-0001 (Norman Test.) at 100:21-101:9.

[23] Initial Decision, 172 FERC ¶ 63,034 at PP 158-162.

competitive price proxy should be based on the long-run marginal cost of the marginal supplier rather than on the highest delivered price among used alternatives.[24]

12. Regarding the use of the St. Louis BEA, the ALJ dismissed MPLX Ozark's arguments that (1) Commission precedent supports the use of BEAs; (2) the St. Louis BEA constitutes a recognized area of economic activity that includes the locations in which competition for MPLX Ozark's transportation service occurs; and (3) the St. Louis BEA captures both direct and indirect competitive alternatives to MPLX Ozark, providing for a "dynamic analysis."[25] The ALJ found that starting with the St. Louis BEA was contrary to precedent that required analysis of an initial narrow candidate market, and that the Wood River area lacked economic connections to the rest of the St. Louis BEA.[26]

13. The ALJ also rejected MPLX Ozark's secondary argument that the geographic destination market should include Patoka in addition to Wood River.[27] As an alternative to the St. Louis BEA, MPLX Ozark proposed that the geographic destination market should be expanded from an initial candidate market of Wood River to include Patoka using a hypothetical monopolist test.[28] The ALJ rejected including Patoka in the destination market because moving crude oil from Wood River to Patoka would require either an illogical round trip to Wood River and back to Patoka or the use of resources already included in the HHI analysis and market share statistics.[29]

2. **Briefs on Exceptions**

14. MPLX Ozark filed exceptions to the Initial Decision's finding that the appropriate geographic destination market is Wood River. MPLX Ozark argues that the Initial

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[24] *Id.*; Ex. JP-0004 (Arthur Answering Test.) at 57:14-60:4.

[25] Initial Decision, 172 FERC ¶ 63,034 at PP 134-135.

[26] *Id.* PP 136, 142.

[27] *Id.* P 137.

[28] Under MPLX Ozark witness Dr. Webb's proposed hypothetical monopolist test, Dr. Webb applied SSNIP to all alternatives supplying the Wood River Refinery only. Webb Test. Ex. MPX-0009 at 67:4-7. Dr. Webb used this test to argue that trucking barrels of crude oil from Patoka to Wood River would be a competitive alternative in the event that all pipelines delivering to Wood River were controlled by the hypothetical monopolist. *Id.* at 67:8-15.

[29] Initial Decision, 172 FERC ¶ 63,034 at P 140.

Decision erred by rejecting MPLX Ozark's proposed geographic destination market of the St. Louis BEA, arguing that the Initial Decision adopts a geographic destination market that contradicts actual market dynamics and mischaracterizes the analysis MPLX Ozark conducted to support its proposed geographic market. In addition, MPLX Ozark argues that the Initial Decision erred by focusing on a single customer of MPLX Ozark, the Wood River Refinery, without considering other shippers on the pipeline.

15. MPLX Ozark argues that there is substantial evidence demonstrating that the majority of volumes transported on MPLX Ozark is delivered to WoodPat Pipeline for further delivery to Patoka. Therefore, MPLX Ozark argues, limiting the geographic destination market to Wood River excludes the transportation alternatives that Patoka shippers would use to avoid a supracompetitive price on MPLX Ozark.[30] MPLX Ozark identifies several pipelines that transport crude oil to Patoka without delivering to Wood River that are not included in the Initial Decision's market power analysis.[31]

16. While Joint Protesters believe the ALJ reached the correct result in the Initial Decision, Joint Protesters argue on exception that the ALJ erred in adopting aspects of Trial Staff's hypothetical monopolist test, specifically in finding that Capwood is the marginal supplier and in basing the proxy for the competitive price on the highest commodity price for crude oil delivered to Wood River and therefore assuming that all transportation prices in the market reflect competitive levels.[32] Likewise, Joint Protesters argue that the Initial Decision erred in rejecting Joint Protesters' argument that the marginal supplier is MPLX Ozark and that the competitive price for transportation service provided by MPLX Ozark is at or below the level of the rate that MPLX Ozark recently negotiated for long-term service on expansion capacity, which was designed to ensure MPLX Ozark recovered its marginal cost of expansion.[33]

3. Briefs Opposing Exceptions

17. Trial Staff and Joint Protesters oppose MPLX Ozark's exceptions. Trial Staff and Joint Protesters argue that the Initial Decision correctly rejected the use of the St. Louis BEA and the inclusion of Patoka in the geographic destination market and adopted Trial

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[30] MPLX Ozark Br. on Exceptions 19.

[31] *Id.* at 20. Joint Protesters agree with the Initial Decision's finding that the relevant destination market is Wood River. Joint Protesters Br. on Exceptions 4. Joint Protesters' limited challenges to the Initial Decision's analysis of the geographic market are discussed below. *See infra* P 26.

[32] Joint Protesters Br. on Exceptions 5-8.

[33] *Id.* at 10-18.

Staff's hypothetical monopolist test. Joint Protesters similarly argue that the Initial Decision properly weighed the evidence provided by MPLX Ozark supporting a geographic destination market that included Patoka and rejected it.[34] Specifically, Trial Staff disputes MPLX Ozark's argument that shippers continuing on to Patoka will help insulate the Wood River Refinery from supracompetitive price increases on MPLX Ozark. Trial Staff explains that many Patoka-bound volumes belong to affiliates of MPLX Ozark and the WoodPat Pipeline is also affiliated with MPLX Ozark.[35] Trial Staff and Joint Protesters argue that these affiliations reduce the incentive for Patoka-bound shippers to respond to price increases on MPLX Ozark.[36] Joint Protesters argue that the record contains significant evidence that the affiliate relationships between MPLX Ozark and its shipper affiliate and parent company are problematic.[37]

4. Commission Determination

18. We modify the Initial Decision's findings limiting the geographic destination market to Wood River and find that the geographic destination market should also include Patoka.

19. The Commission has held that the "relevant geographic market is the area in which a shipper may rationally look for transportation service."[38] Determining the proper geographic destination market for a crude oil pipeline requires consideration of the area within which the pipeline's shippers are supplying downstream needs using the crude oil actually shipped on the pipeline (or the area within which "buyers are able to purchase a pipeline's product").[39] The geographic destination market contains the transportation

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[34] *Id.* at 13-15.

[35] Trial Staff Br. Opposing Exceptions 40-41.

[36] *Id.* at 50-55; Joint Protesters Br. Opposing Exceptions 42-50.

[37] Joint Protesters Br. Opposing Exceptions 44.

[38] Opinion No. 558, 161 FERC ¶ 61,180, at P 183, *order on reh'g*, Opinion No. 558-A, 164 FERC ¶ 61,025.

[39] *Buckeye Linden Pipe Line Co.*, 160 FERC ¶ 61,021, at P 15 (2017) (citing *W. Shore Pipe Line Co.*, 100 FERC ¶ 61,001, at P 5 n.7 (2002)); *Marketlink, LLC*, 169 FERC ¶ 61,194, at P 11 (2019). The area in which a pipeline's shippers may look for transportation service may include refineries connected to a pipeline's terminus where the crude oil shipped on the pipeline is immediately consumed. However, in some circumstances the applicant pipeline's shippers may be supplying their own or their customers' demand for crude oil shipped on the pipeline at refineries or market hubs accessed through downstream transportation options, and it may be appropriate to include

alternatives that would be available to customers to obtain crude oil if the applicant pipeline attempted to exercise market power.[40] That is to say, the Commission also considers whether the appropriate geographic market definition should be expanded based on where shippers may look for alternatives in the event of a price increase. In all cases, the determination of a geographic destination market is a fact-specific inquiry.[41]

20. Based upon the record in this proceeding, we find that the appropriate geographic destination market should include both Patoka and Wood River because these areas contain the alternatives that would be available to shippers if MPLX Ozark attempted to exercise market power. First, Patoka-bound shippers on MPLX Ozark could transfer their business to pipelines serving Patoka in the event that MPLX Ozark attempts to exercise market power. The majority of volumes on MPLX Ozark delivered to Wood River are further transported via WoodPat Pipeline on to Patoka.[42] For example, all of the volumes that Husky ships on MPLX Ozark make this movement on to Patoka.[43] Patoka-bound shippers on MPLX Ozark can turn to alternative options for transportation to Patoka that do not go through Wood River; these alternatives would not be captured in

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such downstream areas in the geographic market in order to fully capture the alternatives available to the pipeline's shippers in the market power analysis. *See Enterprise Prod. Partners & Enbridge*, 146 FERC ¶ 61,115, at P 35 (2014) (describing how "the proper geographic origin market for crude oil pipelines is the production field from where the crude oil being shipped on the pipeline derives," which in some circumstances may include production fields accessible by inbound pipelines). This does not necessitate that the geographic market must include every ultimate or remote destination of the crude oil shipped on the applicant pipeline. Rather, evidence of observable market behavior of the pipeline's shippers and the level of economic integration in the region to which the pipeline delivers are relevant to identifying the proper geographic destination market. *See* Opinion No. 558, 161 FERC ¶ 61,180 at P 183 ("a market's geographic scope must correspond to the commercial realities of the industry") (citing *Brown Shoe Co. v. United States*, 370 U.S. 294, 336-337 (1962)).

[40] *See Marketlink*, 169 FERC ¶ 61,194 at P 14; *see also* Opinion No. 558, 161 FERC ¶ 61,180 at PP 183-184.

[41] *Mobil Pipe Line Co.*, 121 FERC ¶ 61,268, at P 18 (2007) (quoting *Mkt.-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007, 31,180 (1994)); Opinion No. 558, 161 FERC ¶ 61,180 at P 183; *Seaway I*, 146 FERC ¶ 61,115 at P 35; *Marketlink*, 169 FERC ¶ 61,194 at P 11.

[42] Stechschulte Test. Ex. MPX-0001, at 11:11-13; Webb Test. Ex. MPX-0009, at 49:4-8.

[43] Chan Test. Ex. JP-0002, at 2:16-21.

the market power analysis if Patoka were excluded from the geographic destination market.[44] This demonstrates that Patoka and Wood River should be incorporated together into the geographic market.

21. Other factors provide further assurance that Patoka and Wood River are properly considered together as a combined market. In addition to those volumes traveling from Wood River on to Patoka, crude oil volumes also travel on Capwood from Patoka to Wood River.[45] Although not determinative, the facts that Patoka and Wood River are physically near one another (between 70 and 80 miles apart, depending on the route)[46] and are in the same BEA are indicative of a common geographic market.[47]

22. Accordingly, we conclude that the proper geographic market for MPLX Ozark is the combined Wood River and Patoka market. Because the market power measures demonstrate that the combined Wood River and Patoka market is competitive, as discussed below, there is no need to consider expanding the market definition beyond the combined Wood River and Patoka market, because expansion would only further increase the level of competition.[48]

23. We are not persuaded by the ALJ, Trial Staff, or Joint Protesters' rationales for restricting the geographic market to Wood River and excluding Patoka. We are unconvinced by the hypothetical monopolist test adopted by the ALJ. Models, such as the hypothetical monopolist test, can be critically important for the Commission's disposition of market-based rate applications, and we encourage parties to present them.[49]

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[44] *See Buckeye Linden*, 160 FERC ¶ 61,021 at P 15; *Marketlink*, 169 FERC ¶ 61,194 at P 14.

[45] *See* Webb Test. Ex. MPX-0009, at 51:7-56:6; Graham Test. Ex. JP-0001, at 2:15-18, 3:23-7:2; Tr. 1962:14-1963:18 (Graham). Capwood is a short pipeline with one origin point at Patoka and one destination point at Wood River, and a correspondingly low transportation rate of 24.84 cents per barrel. Ex. MPX-0026 at 2. WoodPat Pipeline also links the two areas; it has characteristics similar to Capwood but flows in the opposite direction.

[46] Tr. 2275:21 (Norman).

[47] The Commission has found BEAs are relevant to identifying the appropriate geographic markets. *See, e.g.*, *White Cliffs Pipeline, L.L.C.*, 163 FERC ¶ 61,120, at P 23 (2018); *Sunoco Pipeline L.P.*, 114 FERC ¶ 61,036, at P 31 (2006).

[48] Norman Test. Ex. S-0001, at 78:12-79:7; Tr. 2294:3-14 (Norman); *see also Seaway Crude Pipeline Co., LLC*, 157 FERC ¶ 63,024, at P 174 (2016).

[49] *See* Opinion No. 558, 161 FERC ¶ 61,180 at P 183; Opinion No. 529,

However, the hypothetical monopolist test is not always necessary to determine the geographic market.[50] The hypothetical monopolist test is a "methodological tool" that predicts how shippers would react in the event that a hypothetical monopolist raised its price in the candidate market.[51] Moreover, the Commission has noted that "mechanical application" of a hypothetical monopolist test may lead to "misleading answers."[52] Here, we opt not to rely on the results of any of the hypothetical monopolist test in the record, because, as discussed above, the behavior of market participants provides sufficient information to define the relevant geographic market as the combined Wood River and Patoka market without the consideration of a detailed hypothetical monopolist test.[53]

24. Moreover, we are not persuaded by the ALJ's reliance upon Trial Staff's application of the hypothetical monopolist test to justify defining the geographic destination as limited to Wood River and excluding Patoka.[54] A high percentage of the

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146 FERC ¶ 61,157 at PP 19, 42; *White Cliffs Pipeline*, 173 FERC ¶ 61,155 at P 32.

[50] Opinion No. 558, 161 FERC ¶ 61,180 at P 112 ("Parties may utilize a detailed price analysis for determining geographic markets and good alternatives in market-based rate proceedings, but such an analysis is not required. Since the issuance of Order No. 572, the Commission has not required an oil pipeline to file pursuant to any particular geographic market definition or methodology."). *See also Ente. TE Prods. Pipeline Co. LLC*, Opinion No. 529, 146 FERC ¶ 61,157, at P 40 (2014) (approving the use of a methodology other than the SSNIP test to identify the geographic market).

[51] *Williams Pipe Line Co.*, Opinion No. 391, 68 FERC ¶ 61,659 (1994) (citation omitted).

[52] *Id*. (citation omitted). *See also* Opinion No. 529, 146 FERC ¶ 61,157 at P 20 ("As with any methodology, . . . if the data employed in the SSNIP is unreliable, the results will be flawed.").

[53] *See* Opinion No. 558, 161 FERC ¶ 61,180 at P 183 ("a market's geographic scope must correspond to the commercial realities of the industry") (citation omitted); *see also* Opinion No. 558-A, 164 FERC ¶ 61,025 at P 91 (declining to rely on a methodology that contained flawed assumptions and produced results inconsistent with actual evidence in the record). We recognize that MPLX Ozark, as the applicant in this proceeding, carries the burden to support its proposed geographic market. Here, we find the evidence in the record sufficient to identify the relevant geographic destination market in this proceeding, notwithstanding the absence of a properly conducted hypothetical monopolist test.

[54] Initial Decision, 172 FERC ¶ 63,034 at PP 144, 180-181, 184.

volumes traveling on MPLX Ozark to Wood River are delivered to Patoka via interconnecting pipelines.[55] In response to a SSNIP on MPLX Ozark, shippers travelling into Patoka have several options.[56] These options include using pipelines within the Wood River candidate market (MPLX Ozark, Platte, and Keystone) as well as pipelines that are not in the Wood River market (DAPL, SAX, and Mustang). However, the hypothetical monopolist test adopted by the Initial Decision was not designed to consider, and thus did not evaluate, the possibility that Patoka-bound shippers could shift to pipelines outside the Wood River candidate market (DAPL, SAX, and Mustang) and thereby defeat an exercise of market power in the Wood River candidate market.[57] Because it did not evaluate this possibility, the hypothetical monopolist test does not undermine the rationale advanced by this order for expanding the geographic market to include Patoka.

25. We are not persuaded by the arguments on brief that Patoka should be excluded from the geographic market based upon a shipper's affiliation with the pipeline.[58] Neither Trial Staff nor Joint Protesters cite any prior Commission decisions that considered affiliate relationships when establishing the geographic market. Moreover, we are not persuaded by Joint Protesters' and Trial Staff's argument[59] that the geographic market should be limited to Wood River in this proceeding because Marathon-affiliated Patoka-bound shippers will have a reduced incentive to respond to a competitive price increase on MPLX Ozark. The affiliated shipper is not the only shipper on MPLX Ozark that makes the subsequent movement from Wood River to Patoka.[60] A significant

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[55] Stechschulte Test. Ex. MPX-0001, at 11:11-13; Webb Test. Ex. MPX-0009, at 49:4-8.

[56] *See, e.g.*, *Seaway Crude Pipeline Co., LLC*, 157 FERC ¶ 63,024 at PP 66-69 (discussing the ready availability of feeder pipelines and truck routes to refineries within Oklahoma that would serve as resources for shippers if a theoretical monopolist raised prices at Cushing, and therefore should be included in the origin market).

[57] Norman Test. Ex. S-0001, 87:5-88:14; *see also* Tr. 2302:15-2303:25 (Norman).

[58] Trial Staff Br. Opposing Exceptions 40-50; Joint Protesters Br. Opposing Exceptions 13, 30, 44-46, 57.

[59] Joint Protesters Br. Opposing Exceptions 44-49; Trial Staff Br. Opposing Exceptions 41, 44-47.

[60] As noted above, other shippers including Husky move volumes on MPLX Ozark to Wood River for further transportation to Patoka via WoodPat Pipeline. Chan Test. Ex. JP-0002, at 2:16-21; Stechschulte Test. Ex. MPX-0001, at 11:11-13; Webb Test. Ex. MPX-0009, at 49:4-8.

minority of Patoka-bound shipments are not affiliated with MPLX Ozark, and these shippers would help to discipline a supracompetitive price increase by MPLX Ozark by moving to other means of transportation to Patoka as discussed above.[61] The presence of an affiliated shipper does not justify this approach to identifying the geographic market.[62]

26. We are also not persuaded by Trial Staff's further argument based upon Exhibit No. S-0067 that insufficient numbers of non-affiliated Patoka-bound shippers would leave MPLX Ozark to discipline a price increase on Wood River.[63] Trial Staff's conclusion relies upon an unsupported assumption of -1 elasticity for delivered sources of crude. Although in his analysis Dr. Webb used a -1 cross-elasticity for changes to *transportation rates*,[64] this is fundamentally different from the elasticity for the *delivered sources of crude*.[65] Trial Staff's application of the -1 elasticity to the delivered sources of crude translates to a cross-elasticity of -0.06664 for changes to the transportation rates, which is so low as to be practically zero, meaning that all shippers are assumed to be

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[61] *See* Ex. MPX-0071 at 46:18-48:3.

[62] Trial Staff concedes that MPLX Ozark's affiliated shipper would have a "potentially reduced incentive" rather than "no incentive" to respond to a price increase on MPLX Ozark. Tr. 2324:20-2325:2 (Norman). However, Trial Staff's hypothetical monopolist test does not take into account the unaffiliated and affiliated Patoka-bound volumes that may be relevant to disciplining a price increase on MPLX Ozark. Instead of attempting to evaluate the impact of Patoka-bound volumes, Trial Staff presumes that downstream discipline from Patoka-bound shippers would be insufficient. *Id.* at 2303:25-2305:24, 2308:15-2309:5, 2313:2-2314:10; 2324:20-2327:11; 2360:15-2361:20; 2370:2-2372:13; 2396:2-14.

[63] Trial Staff Br. Opposing Exceptions at 49; Ex. S-0067 at 1. Exhibit No. S-0067 is a modified version of a scenario provided by Dr. Webb in order to rebut Joint Protesters' argument that MPLX Ozark's affiliated shipper would lack motivation to shift volumes away from MPLX Ozark in the event of a rate increase. *See* Ex. MPX-0082 at 3; Webb Test. MPX-0071, at 43:8-50:3. Trial Staff argues that, assuming an elasticity of -1 for the unaffiliated shippers and 0 for the affiliated shipper, the reduction in volumes associated with a 1% delivered price increase due to a 15% increase in the transportation rate would only lower throughput by 1%, making the rate increase profitable to Marathon Petroleum Corporation. Trial Staff Br. Opposing Exceptions 48.

[64] $\frac{Percentage\ Change\ in\ Barrels\ of\ Delivered\ Crude}{Percentage\ Change\ in\ Price\ of\ Transportation}$ or $\frac{\Delta Q_{Crude}}{\Delta P_{Transportation}}$

[65] $\frac{Percentage\ Change\ in\ Barrels\ of\ Delivered\ Crude}{Percentage\ Change\ in\ Price\ of\ Delivered\ Crude}$ or $\frac{\Delta Q_{Crude}}{\Delta P_{Crude}}$

completely insensitive to the transportation rate.[66] Following this logic to its conclusion would mean that pipelines would always charge the highest transportation rate possible because shippers are indifferent to the transportation rate. A finding that shippers are completely insensitive to transportation rates would also logically result in no pipeline being granted market-based rate authority, because it would mean there was no effective price discipline for any pipeline. Accordingly, we find Trial Staff's arguments based upon Exhibit No. S-0067 to be unpersuasive.[67]

27. Similarly, we are not persuaded by the arguments on brief that Patoka-bound shippers should not be considered when developing the geographic market based upon the WoodPat Pipeline's affiliation with MPLX Ozark.[68] Trial Staff and Joint Protesters posit that MPLX Ozark's affiliation with WoodPat Pipeline would allow MPLX Ozark to increase rates to Wood River on MPLX Ozark while simultaneously reducing rates from Wood River to Patoka on WoodPat Pipeline, thereby mitigating the rate increase for Patoka-bound shippers.[69] The Commission has not previously considered horizontal affiliate issues in the context of determining the geographic market for an oil pipeline. We do not find Trial Staff and Joint Protesters' arguments to be persuasive in this case. Given the assurances MPLX Ozark has provided in this proceeding that it would not price discriminate by coordinating the rates of MPLX Ozark and WoodPat Pipeline,[70] MPLX Ozark will have to explain how any future discounted joint rate for Patoka-bound shippers is consistent with its assurances.[71] Moreover, because WoodPat Pipeline's local

[66] For every 15% increase in price, a pipeline would lose approximately 1% of its volumes (-0.06664*15%=0.9996%, or approximately 1%). Thus, even if every single shipper was a non-affiliate, it would still be profitable for the pipeline to continue raising its rates under these assumptions.

[67] Trial Staff likewise claims that a -0.05 elasticity for delivered sources of crude is appropriate, but this would lead to an even lower elasticity for transportation and is unrealistic for the reasons stated above.

[68] Trial Staff Br. Opposing Exceptions 41, 51-54; Joint Protesters Br. Opposing Exceptions 47-48.

[69] Trial Staff Br. Opposing Exceptions 41.

[70] MPLX Ozark Br. on Exceptions 66.

[71] MPLX Ozark has also argued in this proceeding that the ICA prohibits it from engaging in the kind of pricing scheme Trial Staff and Joint Protesters describe by prohibiting pipelines from offering unduly preferential rates to certain shippers (citing section 3(1) of the ICA) and by prohibiting pipelines from sharing shipper-specific data without consent (citing section 15(13) of the ICA). *See* MPLX Ozark Initial Br. 53-54.

rate (set using the Commission's indexing rate methodology) from Wood River to Patoka is currently only 21.83 cents per barrel, MPLX Ozark would only be able to raise its rate to Wood River by up to that amount in order to have it be fully offset by the WoodPat Pipeline rate.[72] Therefore, the extent to which MPLX Ozark could theoretically increase its rates to Wood River and mitigate the impact for downstream shippers to Patoka by reducing rates from Wood River is limited.

28. While Trial Staff cites to other proceedings where the Commission adopted a narrow geographic destination market,[73] these examples do not require us to adopt a market definition of only Wood River here.[74] As noted above, in each case, the analysis of geographic markets is conducted based on its specific facts.[75] For example, in *SFPP* the Commission merely found that the applicant pipeline's conservatively defined market was sufficient to show that the pipeline lacked market power and that the final destination of the refined product did not preclude a finding that the applicant's narrow market was a relevant destination market.[76] Similarly, in *Kaneb*, the Commission found that the "particular characteristics of the Casper BEA and the location of Kaneb's terminal in that BEA" made the Casper BEA inappropriate as the relevant geographic market.[77]

Therefore, if MPLX Ozark does file a discounted joint rate with WoodPat Pipeline in the future, it will need to justify such a rate in light of its statements in this proceeding.

[72] For example, Trial Staff's hypothetical monopolist test supposes an increase on MPLX Ozark of $1.70, including a SSNIP of $0.34. Ex. S-0014 at 1.

[73] Trial Staff Br. Opposing Exceptions 63 (citing *SFPP, L.P.*, 84 FERC ¶ 61,338, at 62,494 (1998); *Kaneb Pipe Line Operating P'ship*, 83 FERC ¶ 61,183, at 61,761 (1998)).

[74] *See* Opinion No. 558, 161 FERC ¶ 61,180 at P 204 (explaining that "[g]eographic markets are determined on a case-by-case basis" and the fact that a methodology was approved in one proceeding "does not require all subsequent proceedings to adopt the same methodology").

[75] *Mobil Pipe Line*, 121 FERC ¶ 61,268 at P 18 (quoting Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,180); *Seaway I*, 146 FERC ¶ 61,115 at P 35; *Marketlink*, 169 FERC ¶ 61,194 at P 11; *see* Opinion No. 558, 161 FERC ¶ 61,180 at P 204.

[76] *See SFPP*, 84 FERC at 62,494.

[77] *Kaneb*, 83 FERC at 61,761. The Commission found that because the Casper BEA was extremely large, using it as the geographic destination market would lump Kaneb's terminal together with refineries 250 miles away without sufficient explanation of why those refineries impacted Kaneb's ability to exercise market power. *Id.*

Therefore, *SFPP* and *Kaneb* are not determinative as to the appropriate geographic market in this proceeding. Here, we find that the facts warrant the inclusion of Patoka in the geographic destination market.

29. Although Trial Staff argues that Opinion No. 558 necessitates limiting the geographic market to Wood River,[78] Opinion No. 558 does not mandate such a result. In Opinion No. 558, the Commission concluded that the relevant origin market in that proceeding was properly defined by examining where an individual refinery could acquire alternative transportation service in response to a price increase under the hypothetical monopolist test used in that case. The Commission explained that a refinery at the pipeline's receipt point was "the sole source for interstate movements" on the pipeline and "therefore the only shipper subject to a potential exercise of market power by [the pipeline]."[79] Here, in contrast, the volumes on MPLX Ozark are not solely received by the Wood River refinery, but rather a majority of MPLX Ozark's shippers and a majority of its volumes are delivered to Patoka as discussed above. Therefore, the relevant geographic market is defined from the perspective of MPLX Ozark's shippers, including Patoka-bound shippers.

30. Furthermore, in adopting Wood River and Patoka as the geographic destination market, we acknowledge Trial Staff's assertion that the mere flow of crude oil between two points does not necessarily justify including both points in a geographic market and that adopting such a principle could lead to overly expansive results.[80] However, we are basing our finding here on the behavior of the shippers and the close integration between Wood River and Patoka as demonstrated by this record.[81]

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[78] *See* Trial Staff Br. Opposing Exceptions 68 (citing Opinion No. 558, 161 FERC ¶ 61,180 at P 184). The ALJ also relied on the geographic market the Commission adopted in Opinion No. 558 to support adopting the analysis conducted by Trial Staff in this proceeding. *See* Initial Decision, 172 FERC ¶ 63,034 at P 145.

[79] Opinion No. 558, 161 FERC ¶ 61,180 at P 184.

[80] *See* Trial Staff Br. Opposing Exceptions 65-66.

[81] To ensure a properly defined geographic market, we must consider the commercial realities of the industry and evaluate where customers can reasonably look to avoid an attempt to exercise market power by the applicant pipeline. *See* Opinion No. 558, 161 FERC ¶ 61,180 at P 183 (citing *Brown Shoe Co. v. United States*, 370 U.S. 294, 336-337 (1962)). Trial Staff posits that because the final destination of crude oil that Husky ships on MPLX Ozark is Lima, Ohio, MPLX Ozark's theory of including Patoka would also require us to look at all alternative sources of crude oil accessible to Husky at Lima. Trial Staff Br. Opposing Exceptions 66. However, as Trial Staff itself notes and we agree, it is not necessary to trace flows of oil beyond a

31. For the same reason, *SFPP* is distinguishable from the circumstances here. As Trial Staff notes, in *SFPP*, the Commission rejected an attempt to expand a geographic market because shippers were "connected to pipelines that are, or could be, interconnected to other pipelines which are themselves interconnected to other pipelines."[82] As the Commission explained in that case, "the focus of the analysis should not be on all pipelines in the three county area, but on whether customers using [the applicant pipeline] have competitive alternatives that would enable them to avoid [the applicant pipeline] in the event SFPP charged monopolistic prices."[83] The Commission found SFPP's arguments based solely on potential pipeline interconnections and exchanges insufficient to meet this standard.[84] Unlike in *SFPP*, we find that there is sufficient evidence in the record here to support including Patoka within the area to which MPLX Ozark's shippers would rationally turn if MPLX Ozark attempted to exercise market power. We are not basing our determination merely on the possibility of pipeline connections and exchanges.

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competitive intermediate location to a less competitive onward destination; shippers downstream of the market in question have at least the same number of alternatives as a shipper at the market in question. Norman Test. Ex. S-0001, at 78:12-79:7; *see also* Tr. 2294:3-14 (Norman) ("[W]hen we are looking at remote . . . destinations . . . from the actual pipeline that is the applicant pipeline, . . . we can consider where the more competitive locations intermediate along the journey are. So I evaluate Patoka as a more competitive location along the journey of crude oil that is delivered on [MPLX Ozark] that ultimately goes to more remote refineries past Patoka."); *id.* at 2297:22-24; *Seaway Crude Pipeline Co., LLC*, 157 FERC ¶ 63,024 at P 174. In other words, those shippers intending to go to Lima from Patoka could select multiple sources (MPLX Ozark or other pipelines) for supplying the crude to Patoka that will ultimately travel onto Lima.

[82] Trial Staff Br. Opposing Exceptions 67 n.260 (quoting *SFPP*, 84 FERC at 62,496).

[83] *SFPP*, 84 FERC at 62,496.

[84] *Id.* ("SFPP has enumerated only a few of the connections it suggests may be possible, and does not provide any detail about how refiners could effect shipments through this web. . . . Given the lack of detail provided by SFPP, SFPP has not presented sufficient evidence that its proposed train of pipeline interconnections in the three-county area provides a meaningful substitute to using [the applicant pipeline]."); *id.* ("the possibility of exchanging product does not limit a pipeline's ability to exercise market power, because an exchange is dependent on each party physically delivering the product to the other party's market").

32. We are not persuaded by the concern noted in the Initial Decision that including Patoka in the geographic destination market would require an "illogical round-trip."[85] First, this round trip is only relevant under Dr. Webb's hypothetical monopolist test, which assumed that the hypothetical monopolist controlled all used alternatives.[86] Because the hypothetical monopolist tests presented in the record are fundamentally flawed, as discussed above, we need not address this concern. Second, outside of Dr. Webb's particular hypothetical, no such "round trip" arises (i.e., crude oil traveling through Wood River and back to Wood River again) if a shipper moves volumes on Patoka-bound pipelines such as Dakota Access Pipeline or Mustang (neither of which traverses Wood River) and then on to Wood River using Capwood. Moreover, to the extent that such a "round trip" movement through Wood River to Patoka and back to Wood River did occur, it could be for logical reasons: a shipper could store crude oil in tanks at Patoka and ship it back to Wood River as needed.[87]

33. We are not persuaded by Joint Protesters' arguments relating to the determination of the marginal supplier to be used in determining the proxy for a competitive price. While Joint Protesters argue that the marginal supplier must be the applicant pipeline because no other currently used pipelines offer the same service of crude transportation service from Cushing to Wood River, the Commission has previously rejected the use of such corridor-based market analysis.[88] Regarding the determination of the competitive price proxy, we are not persuaded by Joint Protesters' argument that using the highest delivered price among used alternatives to establish the competitive price proxy falls into the "cellophane trap" because the used alternatives' rates may also be higher than competitive rates.[89] There is no concern of the cellophane trap in ascertaining the

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[85] Initial Decision, 172 FERC ¶ 63,034 at P 140.

[86] *Id.* P 164.

[87] *See, e.g.*, Tr. 1962:14-1963:15 (Graham).

[88] *Explorer Pipeline Co.*, 87 FERC ¶ 61,374, at 62,388 (1999); *see also* Opinion No. 558, 161 FERC ¶ 61,180 at P 114 (discussing determination of the marginal supplier).

[89] The cellophane trap or cellophane fallacy describes a type of incorrect reasoning used in market power analyses. The term arose in *U.S. v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956). The fallacy arises where a firm sells a product with few substitutes, which in turn allows the firm to increase the price of that product. The decision has been invoked when referring to a potential flaw in market analyses that fail to evaluate whether demand elasticity is a result of a company already charging a monopoly price, which would increase the likelihood that consumers would switch from one product to another but would not be indicative of a competitive market. *White Cliffs*,

competitive price proxy using the delivered cost of crude oil in the destination market less the cost of crude oil on the subject pipeline in a situation where pipelines are subject to cost-based rate regulation.[90]

34. Because we find that the geographic destination market properly includes Patoka, we need not reach MPLX Ozark's alternative argument that the use of trucking could expand the market to Patoka.[91] Further, because we find that MPLX Ozark lacks market power if the geographic destination market is defined to include Patoka, as discussed below, we need not consider MPLX Ozark's argument that the Initial Decision should have adopted MPLX Ozark's broader proposed geographic destination market of the St. Louis BEA.

B. Other Factors

1. Initial Decision

35. The Commission's regulations require an oil pipeline seeking a market power determination to describe any "other factors" that bear on the issue of whether the carrier lacks significant market power in the relevant markets.[92] The ALJ found that none of the options that MPLX Ozark offered as pro-competitive mitigating factors, including local production, trucking from Patoka to Wood River, and barging on the Mississippi River, were shown to be meaningful substitutes for MPLX Ozark's transportation service.[93]

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173 FERC ¶ 61,155 at P 48 n.97; Opinion No. 558, 161 FERC ¶ 61,180 at P 125 n.313 (citing *Enter. Prod. Partners L.P.*, 152 FERC ¶ 61,203, at P 22 (2015) (citing *U.S. v. Eastman Kodak Co.*, 63 F.3d 95, 105 (2d Cir. 1995)).

[90] *Enterprise Products Partners*, 152 FERC ¶ 61,203 at P 27. Although, as Joint Protesters argue, some of the pipelines present in this case have committed rates, the Commission requires pipelines to offer uncommitted rates agreed to by at least one unaffiliated shipper, or to support its uncommitted rates through a cost-of-service filing. 18 C.F.R. § 342.2 (2021); *see also White Cliffs*, 173 FERC ¶ 61,155 at P 49 n.105 (citing *Seaway I*, 146 FERC ¶ 61,115 at P 50 n.56).

[91] MPLX Ozark Br. on Exceptions 39-42. Trucking from Patoka to Wood River could be considered an intra-market transportation alternative and is therefore not relevant to the market power calculations.

[92] 18 C.F.R. § 348.1(c)(8).

[93] Initial Decision, 172 FERC ¶ 63,034 at P 228.

Accordingly, the ALJ gave these factors little weight in assessing the competitiveness of the market.[94]

36. With respect to barging, the ALJ found that three factors are considered in determining the pro-competitive nature of a potential barging facility: (1) the all-in cost of delivering the crude oil barge to the barging dock, (2) the unloading fee at the barging dock, and (3) the cost of getting the imported crude oil from the barging dock to the destination.[95] For each of the four sources of barging that MPLX Ozark contended could serve as a pro-competitive factor (a Marathon-affiliated barging dock, an Omega Partners-owned dock, a Phillips 66-owned dock, and barge imports to St. Louis, Missouri), the ALJ found that MPLX Ozark provided insufficient evidence of either the costs or the feasibility of using the sources to deliver crude oil to the Wood River Refinery.[96]

37. In addition, the ALJ found that the affiliation of MPLX Ozark with a certain shipper and with the WoodPat Pipeline are concerns to be considered along with the market power analysis, based on arguments from Trial Staff.[97] Specifically, the ALJ was persuaded by Trial Staff's argument that because of these affiliate connections, MPLX Ozark could, given market-based rate authority, raise its rates from Cushing to Wood River, while mitigating the impact of the rate increase for onward shippers to Patoka on WoodPat Pipeline.[98] Further, the ALJ found that MPLX Ozark's affiliated shipper's parent company would profit from a rate increase on MPLX Ozark and therefore the affiliated shipper would have a reduced incentive to lower its shipments on MPLX Ozark in response to an exercise of market power.[99] However, the ALJ noted that these concerns were secondary to the market power analysis and therefore not weighed.[100]

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[94] *Id.*

[95] *Id.* P 216.

[96] *Id.* P 227.

[97] *Id.* P 284.

[98] *Id.*; *see also* Trial Staff Br. Opposing Exceptions 40-41.

[99] Initial Decision, 172 FERC ¶ 63,034 at P 284; *see also* Trial Staff Br. Opposing Exceptions 45-46.

[100] Initial Decision, 172 FERC ¶ 63,034 at P 284.

2. **Briefs on Exceptions**

38. MPLX Ozark argues that the potential for waterborne movements should be considered a pro-competitive factor because the record shows that crude oil has been barged to Wood River in the past. MPLX Ozark argues that Dr. Webb's cost analysis showed that barging would be a competitively priced alternative to MPLX Ozark's transportation service to Wood River and significant infrastructure currently exists to support barging to Wood River.[101] Further, MPLX Ozark argues that the Initial Decision articulated the wrong test for establishing barging as a pro-competitive factor, erroneously requiring detailed cost evidence that is contrary to the Commission's guidance in Opinion No. 558.[102]

39. In addition, MPLX Ozark argues that the Initial Decision erred in finding that the presence of certain affiliate relationships is a factor that warrants consideration.[103] MPLX Ozark argues that claims that MPLX Ozark and its affiliates would coordinate in some manner to allow MPLX Ozark to wield market power are baseless and unsupported by record evidence.[104]

3. **Briefs Opposing Exceptions**

40. Trial Staff and Joint Protesters oppose MPLX Ozark's exception on barging as a pro-competitive factor, arguing that the Initial Decision correctly ruled that barges are not a pro-competitive factor. Specifically, Joint Protesters argue that the Initial Decision examined MPLX Ozark's evidence of costs related to barging and found that MPLX Ozark did not carry its burden to provide adequate information regarding the cost of barging and to prove that the cost of barging is comparable to the costs of other transportation alternatives.[105] Trial Staff similarly argues that MPLX Ozark failed to demonstrate that specific plans or steps have been taken to make barging a viable option

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[101] MPLX Ozark Br. on Exceptions 73 (citing Webb Rebuttal Test. Ex. MPX-0071, at 172:7-175:10).

[102] *Id.* at 72 (citing Opinion No. 558, 161 FERC ¶ 61,180).

[103] *Id.* at 52.

[104] *Id.* at 53.

[105] Joint Protesters Br. Opposing Exceptions 51-54.

and also that MPLX Ozark failed to demonstrate that barging would be competitive with MPLX Ozark if it were to become a viable transportation option.[106]

41. Trial Staff and Joint Protesters both oppose MPLX Ozark's exception relating to affiliate issues, arguing that the Initial Decision correctly accounted for affiliate relationships as a factor in its analysis.[107]

4. Commission Determination

42. We modify the ALJ's finding regarding barging to clarify that a detailed cost analysis is not required to support pro-competitive factors. Pursuant to Order No. 572, potential competition and pro-competitive factors, such as buyer market power or exchanges, are relevant and necessary considerations in performing a market power analysis.[108] In Opinion No. 558, the Commission held that because pro-competitive factors are not included in the market share and market concentration calculations, they need not be cost-justified to the same extent as competitive alternatives that are included in the market calculations.[109] Therefore, we agree with MPLX Ozark that the Initial Decision misstated the required analysis for barging as a pro-competitive factor. However, we do not find that this misstatement impacts our analysis. Because, as discussed below, we find the market power measures in this case to indicate a market that is not highly concentrated, we do not need to consider the additional pro-competitive factors MPLX Ozark offers, including the potential for barging.

43. Regarding affiliate concerns, we reverse the Initial Decision to the extent it finds that the presence of affiliate relationships is an additional factor that weighs against granting MPLX Ozark market-based rate authority under these facts.[110] First, MPLX Ozark's affiliation with WoodPat Pipeline is taken into consideration in the market power calculations for the destination market. Essentially, for purposes of the market power evaluation, it is already assumed that MPLX Ozark can use its affiliate WoodPat Pipeline

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[106] Trial Staff Br. Opposing Exceptions 69-81.

[107] Joint Protesters Br. Opposing Exceptions 42-50, 57; Trial Staff Br. Opposing Exceptions 55-56.

[108] Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,192.

[109] Opinion No. 558, 161 FERC ¶ 61,180 at P 296.

[110] Initial Decision, 172 FERC ¶ 63,034 at PP 278-286. The ALJ found that the consideration of affiliate relations is not determinative and not weighed, but that it was "generally assessed as an additional factor in a market that has otherwise been empirically demonstrated to be highly concentrated to concentrated." *Id.* P 284.

to increase its market power, and therefore WoodPat Pipeline's capacity is combined with MPLX Ozark's in calculating the company's market share. Second, because, as discussed above, the geographic destination market includes both Wood River and Patoka, and because there are sufficient transportation alternatives available in the market, the fact that MPLX Ozark is affiliated with a shipper does not affect the market power determination.[111] In other words, because the geographic markets have been determined to be competitive, shippers can use transportation alternatives in the event that MPLX Ozark attempts to exercise market power, whether or not one of the shippers is affiliated with MPLX Ozark.[112]

C. Market Power Measures and Assessment

1. Initial Decision

44. The ALJ found that the HHI for the Wood River market was within a range of 2,676 to 2,859, with a market share ranging from 30.1% to 34.5% and an excess capacity ratio of between 3.93 and 4.45.[113] The ALJ determined that these results indicated that the application is a close case, meaning that the market is moderately concentrated.[114]

45. Because the ALJ found that the market power measures present a close case, the ALJ went on to evaluate secondary market measures, including excess capacity in the market, tiers of affiliate connections (discussed above), and elasticity of demand. As discussed above, the ALJ found that the affiliation between MPLX Ozark and other entities in the market could impact MPLX Ozark's ability to exercise market power.[115] In addition, the ALJ found that there is some evidence of optionality, pro-rationing, and

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[111] *See Amoco Pipeline Co.*, 58 FERC ¶ 61,185, at 61,574 (1992) (noting that vertical integration is generally not relevant to a market power analysis, because without market power, non-affiliated customers will be able to turn to other options in the event a firm attempts to set rates in a way that would advantage affiliates). MPLX Ozark provides service to both affiliated shippers and non-affiliated shippers (including Joint Protesters Husky and Phillips 66).

[112] Regardless of MPLX Ozark's authority to charge market-based rates, if a shipper believes that MPLX Ozark is discriminating in favor of an affiliate, it may file a complaint with the Commission. *See Mobil Pipe Line*, 142 FERC ¶ 61,175 at P 15 n.9.

[113] Initial Decision, 172 FERC ¶ 63,034 at PP 4, 276.

[114] *Id.* P 232.

[115] *Id.* P 284.

historical usage that affect shipper behavior in the geographic destination market.[116] For example, the ALJ noted that both MPLX Ozark and WoodPat Pipeline have been in prorationing for some time.[117]

46. In sum, the ALJ found that the weight of substantial evidence, including the HHI and market share in the Wood River market, as well as the lack of evidence of significant competitive alternatives, indicated that MPLX Ozark may be able to exercise market power.[118] The ALJ distinguished the decision in *Kaneb*,[119] where the Commission found that the pipeline would be unable to exercise market power with an HHI of 2,742 and an effective-capacity market share of 29.5%, by noting that in that case there were three existing pipelines in the destination market with the same effective capacity as the applicant.[120]

2. <u>Briefs on Exceptions</u>

47. MPLX Ozark argues that the Initial Decision erred in concluding that MPLX Ozark has the ability to exercise market power.[121] MPLX Ozark argues that, because the geographic destination market properly includes both Wood River and Patoka, the HHI for the destination market is 2,176 under the FERC Staff Method,[122] which is well under the threshold HHI of 2,500 that the Commission has found to be indicative of a competitive market without consideration of other market power statistics.[123] Further,

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[116] *Id.* P 286.

[117] *Id.* P 279.

[118] *Id.* PP 288, 290.

[119] *Kaneb*, 83 FERC ¶ 61,183.

[120] Initial Decision, 172 FERC ¶ 63,034 at P 289.

[121] MPLX Ozark Br. on Exceptions 75.

[122] The FERC Staff Method is the effective capacity method used by FERC Staff, which is based on the capacity share of a given facility relative to the total capacity in the market. *See Buckeye Linden*, 160 FERC ¶ 61,021 at P 25.

[123] MPLX Ozark Br. on Exceptions 76.

MPLX Ozark argues that the excess capacity ratio is 4.3 times local crude consumption, meaning that there is significant excess capacity available in the market.[124]

48. MPLX Ozark argues that the ALJ's attempt to distinguish *Kaneb* by pointing to the number of competing pipelines in the destination market fails because the number and concentration of competing pipelines is already captured by the market statistics, including the HHI analysis.[125]

49. MPLX Ozark also finds fault with the Initial Decision's finding that Capwood has a capacity of 138,000 barrels per day rather than 270,000 barrels per day, as reflected in the Capwood tariff.[126] MPLX Ozark argues that Capwood's capacity has been temporarily reduced because it removed a booster station, but that 270,000 barrels per day is the appropriate figure because that is the level that Capwood holds itself out as being able to offer in its tariff and because Capwood could reinstate the booster station if MPLX Ozark attempted to exercise market power.[127]

3. <u>Briefs Opposing Exceptions</u>

50. Trial Staff and Joint Protesters oppose MPLX Ozark's exceptions regarding the market power analysis. Trial Staff and Joint Protesters' primary argument is that the appropriate market power statistics that the Commission should evaluate are those of the Wood River geographic market, which according to Trial Staff and Joint Protesters indicate a highly concentrated market.[128] Further, Trial Staff argues that unlike in other "close call" cases, here there are insufficient pro-competitive factors to counter the concerns raised by the market power measures.[129] Joint Protesters also argue that even if Patoka is included in the destination market, the HHI for the market would increase to 2,941 if a proposed Dakota Access Pipeline expansion project goes forward, and that the

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[124] *Id.*

[125] *Id.* at 77.

[126] *Id.* at 77-78.

[127] *Id.* at 78.

[128] Trial Staff Br. Opposing Exceptions 82, 86-87; Joint Protesters Br. Opposing Exceptions 54-55.

[129] Trial Staff Br. Opposing Exceptions 87-88.

HHI would increase even more significantly if the Dakota Access Pipeline is shut down as a result of pending litigation.[130]

51. Trial Staff and Joint Protesters also argue that Capwood's capacity is appropriately considered to be 138,000 barrels per day because that is the number Plains provided in response to a subpoena and MPLX Ozark presents no evidence showing that the pipeline could reactivate a pump station to increase its capacity.[131] Further, Trial Staff notes that under MPLX Ozark's geographic destination market definition, Capwood is an intra-market transportation option and therefore not relevant to the HHI calculation.[132]

4. Commission Determination

52. Because, as discussed above, we find that the appropriate geographic destination market includes both Wood River and Patoka, we modify the Initial Decision's ruling on market power measures and find that the appropriate market power measures are an HHI ranging from 2,199 to 2,233 and a capacity-based market share for MPLX Ozark ranging from 22.9% to 23.3%. These figures are derived from the calculations for the market power measures for the St. Louis BEA, but they exclude local crude oil production that is not present in the smaller Wood River/Patoka market adopted by this order.[133] These market power measures indicate that the market is not highly concentrated and that MPLX Ozark does not possess significant market power.[134]

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[130] Joint Protesters Br. Opposing Exceptions 58.

[131] Trial Staff Br. Opposing Exceptions 83-86; Joint Protesters Br. Opposing Exceptions 56.

[132] Trial Staff Br. Opposing Exceptions 83.

[133] Ex. BE-0011 at 17, 19. Exhibit BE-0011 is a bench exhibit prepared at the request of the ALJ during the proceeding that provides a comparison of HHI calculations provided by the parties with differing capacity assumptions. The HHI range we adopt here uses Dr. Webb's calculation of the HHI for the St. Louis BEA (*see* Ex. MPX-0055) for the low end of the range and Dr. Arthur's calculation of the HHI for the St. Louis BEA (*see* Joint Protesters Br. Opposing Exceptions 57) for the high end of the range and removes local production from each. All the pipelines included in the St. Louis BEA market power measures deliver into Wood River or Patoka, and thus those pipelines are also included in the market power measures for the Wood River/Patoka market adopted by this order.

[134] Commission precedent supports the granting of an application for market-based rate authority in each case where the HHI is 1,800 or less, and in most cases where the HHI is less than 2,500. *See, e.g.*, *White Cliffs Pipeline*, 173 FERC ¶ 61,155 at P 57

53. On the issue of the capacity of Capwood, because, as discussed above, the Commission finds that the geographic destination market encompasses both Wood River and Patoka, the capacity of Capwood is not relevant to the market power analysis because it is an intra-market pipeline.[135]

54. Regarding Joint Protesters' arguments relating to Dakota Access Pipeline, Joint Protesters have not explained how the expansion of capacity on a competing pipeline would cause MPLX Ozark's market power to increase, rather than decrease. In addition, the argument that the HHI would increase significantly if Dakota Access Pipeline were shut down is too speculative to be considered in the market power calculation at this time.[136]

IV. Conclusion

55. For the foregoing reasons, we find that the appropriate geographic destination market in this case encompasses both Wood River and Patoka. Based on the market power analysis in this case, we find that MPLX Ozark does not possess significant market power, and we therefore approve MPLX Ozark's application for market-based rate authority.

The Commission orders:

The Initial Decision is hereby reversed and MPLX Ozark's application for market-based rate authority is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

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n.129; *Marketlink, LLC*, 169 FERC ¶ 61,194 at P 25; Opinion No. 558, 161 FERC ¶ 61,180 at P 298; Opinion No. 563, 163 FERC ¶ 61,127 at PP 80-81; *Colonial Pipeline Co*., 92 FERC ¶ 61,144, at 61,535-36 (2000).

[135] For the same reason, WoodPat Pipeline is also an intra-market pipeline.

[136] As the ALJ noted in an order denying a motion to reopen the record in light of the July 2020 U.S. District Court decision in *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, Dakota Access Pipeline continues to operate, and the ultimate outcome of the pending litigation is speculative. *MPLX Ozark Pipe Line LLC*, 172 FERC ¶ 63,006, at P 16 (2020). If the Dakota Access Pipeline shuts down in the future or changes its capacity in a way that materially impacts MPLX Ozark's ability to exercise market power, Joint Protesters may file a complaint. *See* Opinion No. 558, 161 FERC ¶ 61,180 at PP 87-90, *order on reh'g*, Opinion No. 558-A, 164 FERC ¶ 61,025 at PP 8-13.

Kimberly D. Bose,
Secretary.

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