

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT
In the Matter of Enbridge Inc. and Spectra Energy Corp
*File No. 161-0215***

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with Enbridge Inc. (“Enbridge”) and Spectra Energy Corp (“Spectra”). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from Enbridge’s proposed merger with Spectra (the “Merger”).

The Merger, if consummated, will result in Respondent Enbridge having ownership interests in the two closest and likely lowest-cost pipelines that provide or can provide natural gas pipeline transportation from many Deepwater Outer Continental Shelf oil and gas leasing and exploration blocks (“blocks”) in certain natural gas producing areas in the Gulf of Mexico. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. Spectra has an indirect, minority ownership interest in the Discovery Pipeline. The Complaint alleges that, resulting from the Merger, Enbridge will have access to competitively sensitive information of its competitor, the Discovery Pipeline, and gain voting rights over the Discovery Pipeline’s significant capital expenditures, including expansions needed to connect to new wells. Without adequate safeguards, Enbridge could misuse that information and its voting rights, leading to anticompetitive conduct that would make the Discovery Pipeline a less effective competitor or would facilitate coordination in the industry. To remedy these concerns, under the terms of the Proposed Decision and Order (“Order”) contained in the Consent Agreement, Enbridge is required to erect firewalls to limit its access to non-public information relating to the Discovery Pipeline. In addition, all board members appointed by Enbridge or Spectra to the boards of directors overseeing the Discovery Pipeline must recuse themselves from any vote pertaining to the Discovery Pipeline, with limited exceptions.

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

II. The Parties

A. Enbridge

Enbridge is an energy delivery company that operates primarily in the United States and Canada. Its primary business is in pipeline transportation of crude oil; however, it also has significant natural gas gathering, processing, transportation, and storage assets. Enbridge owns several interconnected natural gas pipelines that export natural gas from the Gulf of Mexico to processing plants in Louisiana.

B. Spectra

Spectra is one of the largest North American pipeline and midstream companies. Spectra predominately focuses on natural gas, providing natural gas gathering, storage, and transportation in the southeastern and northeastern United States and in southeastern Canada. Through a joint venture with Phillips 66 (“Phillips”), Spectra owns an indirect minority interest in the Discovery Pipeline, a natural gas pipeline that transports natural gas from Deepwater areas in the Gulf of Mexico to processing plants in Louisiana.

III. The Proposed Merger

Respondent Enbridge and affiliated companies under its control entered into a merger agreement with Spectra, dated September 5, 2016, pursuant to which Sand Merger Sub, Inc., a newly created direct wholly owned subsidiary of Enbridge, will merge with and into Spectra, with Spectra surviving the Merger. The combined entity will be the largest energy infrastructure company in North America, with a geographically diverse asset portfolio used in the gathering, processing, storage, and transportation of natural gas and the pipeline transportation of crude oil.

The Commission’s Complaint alleges that the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the transportation of natural gas from wells in certain natural gas producing areas in the Gulf of Mexico, to processing plants or interconnects with other natural gas pipelines.

IV. The Relevant Markets

The Commission’s Complaint alleges that the relevant product market within which to analyze the Merger is natural gas pipeline transportation. Natural gas producers contract with natural gas pipelines to connect to and transport natural gas from wells to processing plants or interconnects with other natural gas pipelines. Even if pipeline transportation rates increased slightly, shippers would continue to use pipelines as no economic or practical alternative to natural gas pipeline transportation exists.

The Commission’s Complaint alleges that the relevant geographic markets within which to analyze the Merger are no broader than the Green Canyon, Walker Ridge, and Keathley Canyon offshore natural gas producing areas in the Gulf of Mexico off the coast of Louisiana (collectively and individually referred to as “Gulf Producing Areas”). Other transportation methods for natural gas in the Gulf Producing Area are significantly more costly, less reliable, and potentially more hazardous than the parties’ pipelines.

V. Market Structure

The Commission's Complaint alleges that Enbridge and Spectra own interests in the two pipelines closest to wells drilled in certain blocks in the Gulf Producing Areas, including blocks that lie between the pipelines. Enbridge, through a wholly owned subsidiary, owns and operates the Walker Ridge Pipeline. Spectra holds an indirect minority ownership interest in the Discovery Pipeline, via its 50-50 joint venture with Phillips (DCP Midstream, LLC ("DCP")), which in turn has an effective 36.1 percent limited partner interest in DCP Midstream Partners, LP ("DPM"). DPM owns a 40 percent interest in the Discovery Pipeline; Williams Partners L.P. owns the majority interest (60 percent) in the Discovery Pipeline and is its operator.

The Commission's Complaint alleges that the length of pipeline needed to connect an existing pipeline to a well is a major factor in determining the overall cost for the pipeline to connect to the well. Thus, more distant pipelines likely face higher costs to connect to wells, resulting in higher natural gas pipeline transportation prices for natural gas producers. Where the Walker Ridge Pipeline and the Discovery Pipeline are a producer's nearest options – as they are for many blocks in the Gulf Producing Areas – they each likely could expand to connect to the producer's well for the lowest costs. As such, the Walker Ridge Pipeline and the Discovery Pipeline are the two pipelines most likely to compete successfully for projects in certain blocks in the Gulf Producing Areas.

VI. Effects of the Merger

While Spectra does not outright own the Discovery Pipeline or hold a majority interest in it (or operate it), through its indirect, minority ownership interest in DPM, Spectra has access to competitively sensitive information of the Discovery Pipeline and significant voting rights. This relationship creates two primary competitive concerns after the Merger. First, Enbridge-appointed directors will vote on the Discovery Pipeline's significant capital expenditures, which likely will include future expansions needed to connect to wells. Enbridge will have the incentive and ability to reduce the competitiveness of Discovery Pipeline bids for projects for which the parties' pipeline are the closest and lowest-cost options.

Second, Enbridge will have access to the Discovery Pipeline's competitively sensitive information. When its Walker Ridge Pipeline competes with the Discovery Pipeline, Enbridge may use this competitively sensitive information to raise transportation costs for natural gas producers. The exchange of information also may increase the likelihood of tacit or explicit coordination between the Walker Ridge Pipeline and the Discovery Pipeline.

VII. Entry Conditions

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Merger. Barriers to entry are significant. Building pipeline underwater is an expensive and lengthy process, often taking several years from the initial proposal to the end of construction.

VIII. The Agreement Containing Consent Order

The proposed Order resolves the anticompetitive concerns described above by requiring that (1) Enbridge erect firewalls to limit its access to non-public information relating to the Discovery Pipeline, and (2) all representatives appointed by Enbridge or Spectra to the DCP or DPM boards of directors recuse themselves from any vote pertaining to the Discovery Pipeline, with two limited exceptions. First, Enbridge's representatives may vote on initiatives to expand the Discovery Pipeline beyond natural gas pipeline services in the Gulf of Mexico. This provision ensures that Enbridge does not have to participate in business ventures unrelated to the Discovery Pipeline's current business. Second, Enbridge's representatives may participate in votes to change DPM's ownership interest in the Discovery Pipeline. The use of firewalls and recusal provisions is appropriate because the competitive concerns arise from a discrete overlap that constitutes a relatively small portion of DCP's and DPM's overall physical footprints and business portfolios.

The proposed Order allows the Commission to appoint a monitor. The Commission has appointed Robert Ogle, who currently is associated with Claro Group LLC. Mr. Ogle will help ensure the effectiveness of the firewall provisions and ongoing compliance with the Order. The Commission routinely appoints monitors for orders involving firewall provisions. Mr. Ogle will serve for a 5-year term, but the Commission may extend or modify the term as appropriate. The Order will have a term of 20 years.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.