



FEDERAL TRADE COMMISSION

[File No. 161 0215 / Docket No. C-4604]

Petition of Enbridge Inc. to Reopen and Set Aside Order

AGENCY: Federal Trade Commission.

ACTION: Announcement of petition; request for comment.

SUMMARY: Enbridge Inc. (“Enbridge” or “the company”) has requested that the Federal Trade Commission (“FTC” or “Commission”) reopen and set aside the Commission’s Decision and Order entered on March 22, 2017 (the “Order”), concerning ownership interests in competing natural gas pipelines. The company wants the FTC to set aside the Order given changes in the factual conditions that led to its entry almost eight years ago. Publication of the petition from Enbridge is not intended to affect the legal status of the petition or its final disposition.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write: “Enbridge Petition to Reopen; Docket No. C-4604” on your comment and file your comment online at www.regulations.gov by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex E), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Maribeth Petrizzi (202-326-2564), Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(g) of the Federal Trade Commission Act, 15 U.S.C. 46(g), and FTC Rule 2.51, 16 CFR § 2.51, notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and is being placed on the public record for a period of 30 days. After the period for public comments has expired and no later than one hundred and twenty (120) days after the date of the filing of the request, the Commission shall determine whether to reopen the proceeding and modify or set aside the Order as requested. In making its determination, the Commission will consider, among other information, all timely and responsive comments submitted in connection with this notice.

The text of petition is provided below. An electronic copy of the filed petition and the exhibits attached to it can be obtained from the FTC website at this web address:

https://www.ftc.gov/system/files/ftc_gov/pdf/c4604enbridgepetitiontoreopenmodify.pdf.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Enbridge Petition to Reopen; Docket No. C-4604” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the *www.regulations.gov* website.

Because of the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *www.regulations.gov* website. If you prefer to file your comment on paper, write “Enbridge Petition to Reopen; Docket No. C-4604” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex E), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov*, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *www.regulations.gov* – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing this matter. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Authority: 15 U.S.C. 46, 5 U.S.C. 552.

Joel Christie,

Acting Secretary.

Text of Petition of Enbridge Inc. to Reopen and Set Aside the Decision and Order

Under section 5(b) of the Federal Trade Commission Act, 14 U.S.C. 45(b), and § 2.51 of the Federal Trade Commission Rules of Practice, 16 CFR § 2.51, Respondent Enbridge Inc. (“Enbridge”) respectfully requests that the Commission reopen and set aside the Commission’s Decision and Order entered on March 22, 2017, in Docket No. C-4604 (the “Order”) because Enbridge no longer holds an indirect ownership interest in the Discovery Pipeline, which was the indirect ownership interest giving rise to the Order.

The Commission entered the Order to address the potential that the merger of Enbridge and Spectra Energy Corp. (“Spectra”) would reduce competition between two natural gas pipelines in deep offshore gas-producing regions in the Gulf of Mexico: (1) the Walker Ridge Pipeline, which Enbridge owned and operated through a wholly-owned subsidiary, and (2) the Discovery Pipeline. Williams Partners, LP (which is now Williams Companies, Inc. and is referred to in both organizational forms herein as “Williams”) had majority control of the Discovery Pipeline and was the operator; Spectra

had an indirect, minority ownership interest through its interests in DCP Midstream, LLC (“DCP”). Among other things, the Order required Enbridge both (1) to prevent access to, or the disclosure or use of, competitively sensitive information that could facilitate coordination between the Walker Ridge Pipeline and the Discovery Pipeline and (2) to restrict its ability to exercise contractual rights that could diminish the Discovery Pipeline’s ability to compete against the Walker Ridge Pipeline.

On August 1, 2024, Williams acquired the entirety of DCP’s minority interest in the Discovery Pipeline, as reflected in the Assignment and Assumption Agreement between DCP Asset Holdings, LP, and Williams Field Services Group, LLC, attached hereto as Exhibit 1 (and for which confidential treatment is requested). *See also* Williams Companies Inc., Quarterly Report (Form 10Q), at 36 (Aug. 5, 2024), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000107263/000010726324000077/wmb-20240630.htm>. After the acquisition by Williams, Enbridge no longer has an interest in the Discovery Pipeline that would provide access to competitively sensitive information concerning the Discovery Pipeline, or an ability to influence decisions concerning the Discovery Pipeline. In light of these changed circumstances, Enbridge hereby petitions the Commission to reopen and set aside the Order.

I. Background

A. Initial transaction

On September 5, 2016, Enbridge and Spectra entered into a merger agreement. Commission staff raised concerns that the merger 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. Specifically, Commission staff alleged that the merger was likely to reduce competition by facilitating coordination between the Walker Ridge Pipeline and the Discovery Pipeline. As a means of resolving those concerns, Enbridge and Spectra entered into a Consent Agreement in which they agreed to comply with a Decision and

Order. The Commission approved the Decision and Order on March 22, 2017.

B. The Order

The Order imposes restrictions to ensure that competitively sensitive information related to Williams or the Discovery Pipeline is not made available to, or used by, Enbridge employees associated with the Walker Ridge Pipeline. Provision II.C restricts those Enbridge employees from influencing operational decisions pertaining to the Discovery Pipeline. Provision II.B of the Order also restricts the disclosure of competitively sensitive information concerning the Walker Ridge Pipeline to entities with an interest in the Discovery Pipeline.

Under Provision II.D of the Order, Enbridge is responsible for ensuring compliance with the terms of the Order, and is directed to distribute information and training regarding the Order on an annual basis. Additionally, a monitor was in place for five years following the closing of the merger.

C. Enbridge's compliance with the Order

Enbridge filed compliance reports with the Commission on March 29, 2017, May 23, 2017, February 15, 2018, February 14, 2019, February 10, 2020, February 11, 2021, February 8, 2022, February 16, 2023, and February 15, 2024. In accordance with its responsibilities under the Order, Enbridge put in place policies and procedures to ensure that those involved in the Discovery Pipeline, as well as employees and contractors who become involved in Enbridge's offshore operations, received training as part of a standardized onboarding process on the information restrictions put in place. Moreover, Enbridge circulated an annual training guidance to (i) its representatives involved in the oversight of the Discovery Pipeline as well as those assisting them in their duties, (ii) the entities through which Enbridge had indirect ownership of the Discovery Pipeline, and (iii) all employees and contractors involved in Enbridge's offshore operations. Since the entry of the Order, no remedial actions have been necessary to address breaches of the

information restrictions imposed by the Commission.

D. Elimination of Enbridge's interest in the Discovery Pipeline

On August 1, 2024, Williams acquired DCP's interest in Discovery Producer Services, LLC. The acquisition eliminated Enbridge's indirect interest in the Discovery Pipeline, and, as set forth in the declaration attached hereto as Exhibit 2, Enbridge has no current intention of acquiring any further interest in the Discovery Pipeline in the future, either directly or indirectly.

II. The Commission should reopen and set aside the Order in view of the changed conditions of fact and the public interest

A. Changed conditions of fact

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), and § 2.51(b) of the Commission's Rules of Practice, 16 CFR 2.51(b), provide that the Commission may reopen and modify an order if the respondent makes a satisfactory showing that changed conditions of fact or law require the order to be altered, modified, or set aside, or that the public interest so requires. The Commission has stated that a "satisfactory showing sufficient to require reopening is made when a request identified significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition." *Eli Lilly & Co.*, Dkt. No. C-3594, Order Reopening and Setting Aside Order, at 2 (May 13, 1999).

In cases such as this, where the Respondent has no ownership interest in the business covered by the Order, the Commission has recognized that "the factual premise underlying the concerns that led to entry of the Order" has substantially changed, and setting aside the Order is justified. *Entergy Corp.*, Dkt. No. C-3998, Order Reopening and Setting Aside Order, at 3 (July 1, 2005); *see also Johnson & Johnson*, Dkt. No. C-4154, Order Reopening and Setting Aside Order (May 25, 2006), at 4 (finding that "there is no reason to keep the Order in place" where there is no longer any reason to be

concerned about the potential harm to competition that formed the “basic premise of the Order”).

The elimination of Enbridge’s indirect ownership interest in the Discovery Pipeline constitutes a changed condition of fact that justifies the Commission to set aside the Order. The Order was entered to ensure that, after its merger with Spectra, Enbridge’s indirect interest in the Discovery Pipeline would not reduce competition between the Discovery Pipeline and the Walker Ridge Pipeline. Enbridge no longer has an interest in the Discovery Pipeline. Thus, the need for an Order to restrict the conduct of Enbridge and its employees is no longer necessary to ensure the independent operation of, and competition between, the Discovery Pipeline and the Walker Ridge Pipeline.

B. Public interest

Because changed circumstances warrant reopening and setting aside the order here, it is not necessary for the Commission to consider whether setting aside the Order would serve the public interest. *See Entergy Corp.*, Order Reopening and Setting Aside Order, at 3 (“[W]e do not need to assess the sufficiency of Entergy’s and EKLP’s public interest showing because the Commission has determined that Entergy and EKLP have made the requisite satisfactory showing that changed conditions of fact require the Order to be reopened and set aside.”). However, should the Commission deem it necessary to assess the public interest in setting aside the Order, it would be in the public interest.

Enbridge meets the public interest requirement of § 2.51(b) because, among other reasons, “the order in whole or in part is no longer needed.” Requests to Reopen, 65 FR 50,636, 50,637 (Aug. 21, 2000) (amending 16 CFR 2.51(b)). As a result of Williams’s acquisition, Enbridge no longer has an interest in the Discovery Pipeline, and thus, the public interest is no longer served by the Order. At the same time, setting aside the Order would eliminate the unnecessary costs and burdens to Enbridge and the Commission during the remainder of the term of the Order.

III. Conclusion

Enbridge respectfully requests that the Commission reopen and set aside the Order. Setting aside the Order is justified by changed conditions of fact and is consistent with the public interest.

Dated: December 13, 2024

Respectfully submitted,

s/ Joseph Matelis

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