

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney

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| In the Matter of | |) | |
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| ENBRIDGE INC. , | |) | |
| a corporation, | |) | |
| | |) | |
| and | |) | Docket No. G |
| | |) | |
| SPECTRA ENERGY CORP, | |) | |
| a corporation. | |) | |
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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed transaction involving Respondent Enbridge Inc. (“Enbridge”) and Respondent Spectra Energy Corp (“Spectra”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its

Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Enbridge Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its principal executive offices located at 425 – 1st Street S.W., Suite 200, Fifth Avenue Place, Calgary, Alberta, Canada, and its United States address for service of process and the Complaint and Decision and Order as follows: Corporate Secretary, Enbridge, 1100 Louisiana Street, Suite 3300, Houston, TX 77002.
2. Respondent Spectra Energy Corp is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 5400 Westheimer Court, Houston, TX 77056.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Enbridge” means Enbridge Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Enbridge Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Merger, Enbridge shall include Spectra.
- B. “Spectra” means Spectra Energy Corp, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Spectra Energy Corp, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; *provided, however*, that for purposes of this Order, Spectra does not include the Firewalled Entities. After the Merger, Spectra shall be included within Enbridge.
- C. “Respondents” means Enbridge and Spectra, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Board” means any board of directors or board of managers of a specified entity.
- F. “Closing Date” means the date on which the proposed transaction between Respondent Spectra and Respondent Enbridge closes, as defined in the Merger Agreement.

G. “

- iii. Was available, or becomes available, to Respondent Enbridge in the ordinary course of its business (*e.g.*, information shared by a customer during commercial negotiations, information provided by an industry analyst, and other information of the kind that Enbridge used to compete with DPS and DGT before the Merger), but only if, to the knowledge of Respondent Enbridge, the source
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- K. “Discovery Confidential Business Information” means all Confidential Business Information relating to DPS, DGT and the Discovery Pipeline, including, but not limited to, their Natural Gas Pipeline Business.
- L. “Discovery Pipeline” means the natural-gas offshore gathering, transmission, processing, and fractionation system owned by DPS and DGT

- R. “Merger” means the proposed transaction involving Respondent Spectra and Respondent Enbridge as contemplated by and described in the Merger Agreement.
- S. “Merger Agreement” means the Agreement and Plan of Merger among Spectra, Enbridge, and Sand Merger Sub, Inc., dated September 5, 2016, and any amendments, exhibits, or schedules attached thereto.
- T. “Monitor” means any Person appointed pursuant to Paragraph III of this Order.
- U. “Monitor Agreement” means any Monitor Agreement entered into pursuant to Paragraph III of this Order, including the Monitor Agreement attached to this Order as Public Appendix A.
- V. “Natural Gas Pipeline Business” means the business of providing natural gas gathering and transmission services and any related natural gas processing, treatment, fractionation, storage, and pipeline operating services.
- W. “Ownership Interest” means any and all rights, title and interest, present or contingent, to own or hold any of the following: (1) any voting or non-voting stock, share capital, equity, membership interest, general or limited partnership interest, or any other interest(s) in a specified entity; or (2) any notes or options convertible into any voting or non-voting stock in a specified entity.
- X. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondents.
- Y. “Phillips 66” means Phillips 66, a corporation organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at 3010 Briarpark Drive, Houston, TX 77042.
- Z. “Phillips 66 Board Members” means:
1. All Persons appointed by or who otherwise represent Phillips 66 as Directors on any Board of DCP; and
 2. All Persons appointed by or who otherwise represent Phillips 66 as Directors on any Board of DPM.
- AA. “Relevant Gulf Producing Areas” means the Green Canyon, Walker Ridge, and Keathley Canyon offshore natural gas producing areas in the Gulf of Mexico located off the coast of Louisiana.
- BB. “Walker Ridge Pipeline” means that natural-gas offshore gathering and transmission system owned and operated by Respondent Enbridge that extends southward from Ship Shoal 332A into parts of the Ship Shoal, Ewing Banks, Green Canyon, and Walker Ridge protraction areas of the Gulf of Mexico.

- CC. “Walker Ridge Pipeline Confidential Business Information” means all Confidential Business Information relating to the Walker Ridge Pipeline, including, but not limited to, its Natural Gas Pipeline Business.
- DD. “Williams” means Williams Partners L.P., a limited partnership, organized, existing and doing business under, and by virtue of, the laws of the State of Delaware, with its executive offices and principal place of business located at One Williams Center, Tulsa, OK 74172. Williams includes, among other things, DGT and DPS.
- EE. “Williams Confidential Business Information” means all Confidential Business Information that (1) Williams has shared or will share with DPM in connection with the operation of DPS and is not otherwise known to Respondents (*e.g.*, through other collaborations with Williams) and (2) relates to Williams’ Natural Gas Pipeline Business in the Relevant Gulf Producing Areas.

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- ii. Associated with the Walker Ridge Pipeline or Respondent Enbridge's Natural Gas Pipeline Business are prohibited from soliciting, obtaining, accessing, disclosing, or using any Discovery Confidential Business Information or Williams Confidential Business Information in violation of the provisions of this Order;

provided, however, that: (i) with respect to any action by the Board of DPM or the Board of DCP pertaining to the Discovery Pipeline that requires the vote of one or more of the Firewalled Individuals, then such Firewalled Individual(s) shall cast their votes in an amount and manner proportional to all of the votes cast by the Phillips 66 Board Members (*e.g.*, in the same way as the majority of the Phillips 66 Board Members have cast their votes); and (ii) the Firewalled Individuals are permitted to receive information about, advocate on behalf of, and participate in voting and cast their vote in connection with: (a) actions relating to an expansion of services by DGT, DPS, or the Discovery Pipeline, completely outside the Natural Gas Pipeline Business in the Gulf of Mexico; and (b) any change in DPM's Ownership Interest in DPS or any material change in the ownership of its underlying assets.

D. As part of the procedures and requirements described in Paragraph II.C. of this Order, Respondents shall:

- 1. Within ten (10) days after the Closing Date, require all Respondents' employees who have access to Discovery Confidential Business Information or Williams Confidential Business Information, including the Firewalled Individuals, to sign an appropriate non-disclosure agreement agreeing to comply with the prohibitions and confidentiality requirements of this Order; *provided, however,* for

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Information or Williams Confidential Business Information in violation of this Order;

4. Distribute information and provide training regarding the procedures to all relevant employees referenced in Paragraph II.D.1 of this Order, at least annually; and
 5. Institute all necessary information technology procedures, authorizations, protocols, and any other controls necessary to comply with the Order's prohibitions and requirements.
- E. No later than thirty (30) days after the Closing Date, Respondents shall submit to the Commission a copy of written procedures and guidelines that will be instituted by Respondents pursuant to Paragraph II.C. of this Order.
- F. The purpose of Paragraph II of this Order is to ensure that the Discovery Pipeline and the Walker Ridge Pipeline continue to be operated independently of, and in competition with, each other, and to remedy the lessening of competition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order. The Commission hereby appoints Robert E. Ogle ("Mr. Ogle") as the Monitor and approves the Monitor Agreement between Mr. Ogle and Respondents, attached to this Order as Public Appendix A.
- B. Not later than ten (10) days after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to this Order, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of this Order in a manner consistent with the purposes of the Order.
- C. The Monitor shall serve for a period of five (5) years after the

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the requirements of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission or Commission staff, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order; and
 - b. Assuring that Discovery Confidential Business Information or Williams Confidential Business Information is not obtained, disclosed, or used by Respondents, except as permitted by this Order.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by

the Monitor. For purposes of this Paragraph III, the term “Monitor” shall include all Persons retained by the Monitor pursuant to Paragraph III.D.5 of this Order.

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents’ obligations under this Order.
 8. Within thirty (30) days from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents’ of their obligations under this Order.
 9. Respondents may require the Monitor and each of the Monitor’s consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor’s consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor’s duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.
- G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, inclu-2(oppos)-1(l(oni)-2(t)-2(or)]TJ 25.02 0 Td (’)Tj

IV.

3. One (1) year from the date this Order is issued and annually thereafter until this Order terminates; and
4. At such other times as the Commission may request.

VI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that , for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on [insert date 20 years after the date of issuance].

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

PUBLIC APPENDIX A
MONITOR AGREEMENT