UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Melissa Holyoak

In the Matter of	)	
ENBRIDGE INC., **a corporation,**	)	
and	)	**Docket No. C-4604**
SPECTRA ENERGY CORP, **a corporation.**	)	

ORDER REOPENING AND SETTING ASIDE ORDER

On December 13, 2024, Enbridge, Inc. ("Enbridge") filed a petition seeking to reopen and set aside the Decision and Order ("Order") in *In re Enbridge Inc. and Spectra Energy Corp.,* Docket No. C-4606 ("Petition"). In its Petition, Enbridge states that it no longer holds any ownership interest in the Discovery Pipeline, which was the interest that gave rise to the FTC's Order; thus, the remedial requirements of the Order are no longer necessary. For the reasons stated below, the Commission has determined to grant the Petition and has reopened and set aside the Order.

I. BACKGROUND

This matter arose from Enbridge's acquisition of Spectra Energy Corp. ("Spectra"). Under a September 5, 2016, merger agreement, Spectra merged with and into Sand Merger Sub, Inc., an Enbridge subsidiary, and became a wholly owned entity of Enbridge in a transaction valued at roughly $28 billion. The Commission found that the merger would result in Enbridge having ownership interests in two close competitors and likely the two 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 in certain natural gas producing areas in the Gulf of America. Enbridge owns and operates the Walker Ridge Pipeline. Spectra had an indirect minority ownership interest in the Discovery Pipeline. The Complaint alleged that, as a result of the merger, Enbridge would have had access to competitively sensitive information of its competitor, the Discovery Pipeline, and would have gained voting rights over

the Discovery Pipeline's significant capital expenditures, including expansions needed to connect to new wells. Without adequate guardrails, Enbridge could have misused Discovery's competitively sensitive information and its voting rights, resulting in likely anticompetitive conduct that would have made the Discovery Pipeline a less effective competitor or facilitated coordination in the industry.

Enbridge agreed to resolve the competitive concerns raised by the Commission and on February 16, 2017, the Commission accepted the agreement containing consent order. On March 24, 2017, the Commission issued the final Order requiring Enbridge to erect firewalls to limit its access to non-public information relating to the Discovery Pipeline. Additionally, all board members appointed by Enbridge or Spectra to the boards of directors overseeing the Discovery Pipeline were required to recuse themselves from any vote pertaining to the Discovery Pipeline, with a few limited exceptions.

II. THE PETITION

On December 13, 2024, Enbridge filed the Petition. Enbridge contends that the remedial requirements of the Order are no longer necessary because 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.[1] Specifically, on August 1, 2024, Williams Companies, Inc. ("Williams") acquired the entity that had a minority interest in the Discovery Pipeline and, thus eliminated Enbridge's indirect interest in the pipeline.[2] Williams is now the sole owner of the Discovery Pipeline and, consequently, Enbridge no longer has an interest in the pipeline of its leading competitor.

Enbridge submitted two documents in support of its Petition. First, it submitted the assignment and assumption agreement by which Williams acquired the remaining 40% interest in the Discovery Pipeline ("Discovery Pipeline Assignment Agreement").[3] This agreement shows that Enbridge no longer possesses any ownership interest in the Discovery Pipeline. Second, Enbridge submitted an affidavit from Stephen Neyland, the Vice President of Finance, Gas Transmissions and Midstream at Enbridge attesting that Enbridge has no current intention of acquiring, either directly or indirectly, any interest in the Discovery Pipeline in the future.[4] Thus, the Commission is assured that there will be no future entanglements as between Enbridge and Williams that might raise competitive concerns moving forward.

For the reason stated above, Enbridge argues that the Commission should reopen and set aside the Order.

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[1] Petition at 4-5.

[2] *See* Williams Companies Inc., Quarterly Report (Form 10Q), at 36 (Aug. 5, 2024), at https://www.sec.gov/ix?doc=/Archives/edgar/data/0000107263/000010726324000063/wmb-20240331.htm

[3] Petition Exhibit 1. Assignment and Assumption Agreement by and between DCP Assets Holding, LP, and Williams Field Services Group, LLC, dated August 1, 2024.

[4] Petition Exhibit 2. Declaration of Stephen Neyland in support of Petition of Enbridge Inc. to reopen and set aside Decision and Order.

III. STANDARD FOR REOPENING AND MODIFYING A FINAL ORDER

The Order may be reopened and modified on the grounds set forth in § 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b). First, Section 5(b) provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require.[5] A satisfactory showing sufficient to require reopening is made when a request to reopen identifies 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.[6]

If the petitioner is unable to satisfactorily show changed conditions of law or fact, Section 5(b) provides that the Commission may also reopen and modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.[7] In the case of "public interest" requests, FTC Rule of Practice 2.51(b) requires an initial "satisfactory showing" of how modification would serve the public interest before the Commission determines whether to reopen an order and consider all the reasons for and against its modification.

A "satisfactory showing" requires, with respect to public interest requests, that the requester make a *prima facie* showing of a legitimate public interest reason or reasons justifying relief. A request to reopen and modify will not contain a "satisfactory showing" if it is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the reasons why the public interest would be served by the modification.[8] This showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief. In addition, this showing must be supported by evidence that is credible and reliable.

In this matter, the petitioner was able to satisfy the requirement that conditions of fact have changed and, thus, is not required to show that setting aside the order is in the public interest. Nonetheless, in its petition, Enbridge argued that maintaining an Order when the underlying purpose of the order no longer exists is not in the public interest.

If, after determining that the requester has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all the reasons for

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[5] *See Supplementary Information, Amendment to* 16 C.F.R. 2.51(b), announced August 15, 2001, ("Amendment").
[6] S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter"). *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the Order. Reopening may occur even where the petition itself does not plead facts requiring modification.").
[7] Hart Letter at 5; 16 C.F.R. § 2.51.
[8] 16 C.F.R. § 2.51.

and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,[9] and the burden remains on the requester in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.[10] All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.[11]

IV. THE ORDER WILL BE REOPENED AND SET ASIDE

The Commission has determined that (i) a changed of fact requires that the Order be reopened and (ii) the Order should be set aside as requested by Enbridge.[12] The Order was premised on the concern that Enbridge had ownership rights to two competing pipelines and could, therefore, act in a manner that would reduce the competitiveness of the Discovery Pipeline. Enbridge has submitted the Discovery Pipeline Assignment Agreement whereby it sold its indirect ownership interest in the Discovery Pipeline to Williams, the current pipeline operator. Based on this agreement, we conclude that Enbridge no longer has access to, and no longer can potentially misuse, the Discovery Pipeline's competitively sensitive information; nor can it otherwise influence the Discovery Pipeline's operations because it no longer has representation on the Discovery Pipeline's board.

Moreover, there are still 12 years remaining to the term of the Order, and costs associated with the continuance of the Order. Specifically, Enbridge must still file annual compliance reports and maintain an internal training program within Enbridge to comply with the requirements of the Order. Because Enbridge no longer has an indirect ownership interest in the Discovery Pipeline and also because there is no need to maintain annual training and reporting on a remedy that no longer serves a purpose because of changed facts, we conclude that this Order should be reopened and set aside.

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[9] *See United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

[10] *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

[11] 16 C.F.R. §2.51(b).

[12] Enbridge has asserted both changed conditions of fact and public interest grounds in support of its petition. Because the Commission has determined that Enbridge has demonstrated changed conditions of fact that support reopening and setting aside the Order, the Commission need not consider whether the public interest also justifies doing so.

V. CONCLUSION

For the reasons explained above, the Commission has determined to reopen and set aside the Order.

Accordingly, **IT IS ORDERED** that this matter be, and it hereby is, reopened and set aside.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: April 8, 2025