

Concurring Statement of Christine S. Wilson

In the Matter of DTE Energy Co., Enbridge Inc.,

and NEXUS Gas Transmission LLC

File No. 191-0068

September 12, 2019

The proposed consent order settles the Commission's allegation that the proposed acquisition of Generation Pipeline LLC by NEXUS Gas Transmission LLC may substantially lessen competition in the market for natural gas pipeline transportation in the Toledo, Ohio area. Pursuant to the consent agreement, the parties will strike an overly broad non-compete clause between the buyer (NEXUS) and the seller (North Coast Gas Transmission LLC, or NCGT) in the purchase agreement. Both NEXUS and NCGT will continue to compete for natural gas sales in the Toledo area after the transaction closes.

I voted to accept the proposed consent agreement because I believe that this particular non-compete was broader than necessary to protect the legitimate interests of the parties. I write separately to reiterate, however, that many non-compete clauses are lawful and enforceable.

“[M]ost modern courts will uphold a covenant [not to compete] to the extent that a breach of the covenant has occurred within a reasonable geographic area and time period, and, where applicable, with respect to a product reasonably related to the legitimate purpose of the restraint.”¹ And it has long been so. In 1898, then-Judge (and future President and Chief Justice) William Howard Taft explained that “