

# **Exhibit C**



2. I am Vice President, Energy at Charles River Associates retained by Defendant/Counter-Plaintiff City of San Antonio, acting by and through its City Public Service Board (“**CPS Energy**”), as an expert witness in the above-titled dispute.

3. I have personal knowledge of the facts stated herein, and they are all true and correct to the best of my personal knowledge and belief. I have been designated as an expert by CPS Energy to prepare two (2) reports and testify at trial, if necessary, regarding the opinions and conclusions contained within my reports and outline in CPS Energy’s expert disclosure.

4. I understand that my role as an expert, both in preparing my report and in giving evidence, is to assist the court to understand the evidence or to determine facts in issue. The opinions expressed in my reports are my own professional opinions.

5. I am making this Affidavit in support of CPS Energy’s Traditional Motion for Partial Summary Judgment on Enterprise Products Operating LLC’s First Affirmative Defense on Force Majeure (the “**Motion**”).

6. Exhibit C-1 is a true and correct copy of excerpts from my Expert Report prepared on behalf of CPS Energy in the matter of *In re: CPS Gas Supplier Litigation, Enterprise Products Operating Company LLC v. CPS Energy*, dated January 11, 2023. Exhibit C-1 also includes a description of the evidence I relied upon to formulate my opinion as well as a description of my qualifications.

7. Exhibit C-2 is a true and correct copy of excerpts from my Rebuttal Report prepared on behalf of CPS Energy in the matter of *In re: CPS Gas Supplier Litigation, Enterprise Products Operating Company LLC v. CPS Energy*, dated November 8, 2023. Exhibit C-2 includes a description of the evidence I relied upon to formulate my opinions.

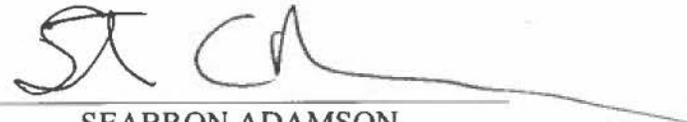
8. I hereby affirm that the statements, methodology and conclusions set forth in both C-1 and C-2 are my own and if called upon to testify at trial, I further affirm that my testimony would be consistent with the statements, methodology and conclusions contained therein.

9. Attached to this Affidavit are true and correct copies of the following exhibits:

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
C-1	Excerpts from Expert Report of Seabron Adamson, dated January 11, 2023
C-2	Excerpts from Rebuttal Report of Seabron Adamson, dated November 8, 2023

I, Seabron Adamson, certify under penalty of perjury that the foregoing is true and correct.

Further affiant sayeth not.”

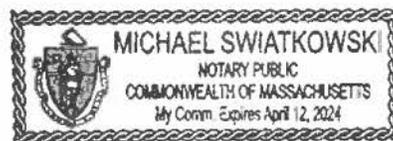
  
SEABRON ADAMSON

SWORN TO AND SUBSCRIBED TO before me, the undersigned notary public, on this the 29<sup>th</sup> of January 2024, to certify which witness my hand and seal of office.

  
NOTARY PUBLIC, COMMONWEALTH OF MASSACHUSETTS

MICHAEL SWIATKOWSKI  
Printed Name of Notary

My Commission Expires: 4/12/24



# **Exhibit C-1**

# Expert Report of Seabron Adamson

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**Prepared on behalf of CPS Energy**

*In re: CPS Gas Supplier Litigation*

*Enterprise Products Operating Company LLC v. CPS  
Energy*

**Case No.: MDL2022CI02879**

**January 11, 2023**

## 1. INTRODUCTION

1. This is the Expert Report of Seabron C. Adamson. I have been retained by defendant and counter-plaintiff the City of San Antonio, acting by and through the City Public Service Board (hereafter referred to as “CPS Energy” or “CPS”). CPS Energy is a municipally owned gas and electric utility serving customers in and around the city of San Antonio, Texas.
2. Plaintiff Enterprise Products Operating LLC (“EPO”) is an indirect wholly owned subsidiary of the Enterprise Products Partners L.P. (the “Enterprise Partnership”), and its consolidated subsidiaries, through which the Enterprise Partnership conducts its business.<sup>1</sup> Enterprise Partnership is a publicly traded Delaware limited partnership listed on the New York Stock Exchange. The Natural Gas Pipelines and Services segment of the business includes pipelines that transport natural gas as well as natural gas marketing services.<sup>2</sup> Enterprise Partnership is a leading North American provider of midstream energy services to producers and consumers of natural gas, natural gas liquids, crude oil, petrochemicals, and refined products.<sup>3</sup>

### 1.1 QUALIFICATIONS

3. I am a Vice President in the energy practice of Charles River Associates (“CRA”), a global economics consulting firm. I also lead the global energy disputes and regulatory segment of CRA’s energy practice. I have more than 25 years of consulting and expert experience in the analysis of the natural gas, electricity and related energy industries in the United States, Canada, the European Union, Latin America, Asia, and other regions. I have been engaged to consult on a wide range of commercial, regulatory, investment, and trading issues in many jurisdictions, including the United States and Canada. This has

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<sup>1</sup> Enterprise Product Partners, L.P., Securities and Exchange Commission Form 10-K for the Fiscal Year Ended December 31, 2021, pdf page 2.

<sup>2</sup> *Id.*, pdf page 160.

<sup>3</sup> Enterprise Product Partners, L.P., Securities and Exchange Commission Form 10-Q for the Quarter Ended June 30, 2022, page 9.

included substantial work related to natural gas markets and infrastructure in Texas and the broader Gulf Coast region. I have also served as an analyst in the gas and power sector for a major alternative investment firm.

4. I have extensive experience in the natural gas industry, both as a consultant and as a natural gas analyst and trader for a major alternative investment firm. I have advised clients in the gas industry on investment, regulatory, trading, and valuation issues. This has included work on advising clients on gas supply contracting issues, and analysis of contracts based on the North American Energy Standards Board (“NAESB”) form contract relevant to this case. This includes advisory work for clients analyzing issues related to gas delivery in regions and/or periods of constrained supply. Because my consulting practice encompasses the oil and gas industry, I remain up to date on important business, regulatory, and related developments impacting the natural gas markets.
5. In addition to my work at CRA, I teach a class on renewable energy project finance (MBA and master’s level) at the Carroll School of Management at Boston College. I am the co-author (with S. Raikar) of the textbook *Renewable Energy Finance: Theory and Practice*, published by the Academic Press (Elsevier) in 2020.
6. I previously have taught classes on energy finance and risk management at the A.B. Freeman School of Business at Tulane University in New Orleans and have served on the advisory board of the Tulane Energy Institute. I am also the co-founder and current chief financial officer of Quantum Diamond Technologies Inc., a technology company in the Boston area.
7. I received B.S. and M.S. degrees in Physics and Applied Physics, respectively, from Georgia Tech and an S.M. degree in Technology and Policy (with an energy focus) from M.I.T. in 1992. In 2007, I received an M.A. degree in Economics from Boston University. I have published a number of articles regarding energy economics and finance in academic publications. My *curriculum vitae* is attached as Exhibit SCA-1.

such a scheduling arrangement did not replace EPO's direct contractual obligation to ensure gas was supplied to CPS Energy.

- EPO claimed on February 22<sup>nd</sup>, 2021, that force majeure conditions may prevent it from delivering some gas to CPS Energy. However, a basic requirement of a force majeure claim is that the events precluding performance are outside of a party's control. In this case the evidence shows EPO could have delivered the gas to CPS Energy, irrespective of the storm, including from storage or other sources available to it. Therefore, from a commercial perspective, the evidence does not support a force majeure event that would excuse EPO from its contractual obligation to CPS Energy.
- EPO also provided its force majeure declaration unreasonably late, and with almost no details, contrary to the requirements of the Base NAESB.
- CPS Energy purchased additional short-term gas supplies during the deal term to replace gas not delivered from EPO Deal #503805, but at higher prices than what EPO guaranteed under the contract. CPS Energy is thus entitled to a payment of \$11,019,724 (excluding any interest) from EPO under the Cover Standard in the Base NAESB.

24. In the following sections I provide the bases for my opinions listed above. I note that my analysis and opinions are based on the information currently available to me. I reserve the right to supplement or modify my analysis if further information becomes available.

## **2. EPO DID NOT DELIVER THE REQUIRED QUANTITIES OF GAS**

25. EPO and CPS Energy agreed to the Base NAESB in 2008. The Base NAESB is a fairly standardized contract between wholesale gas market participants for the buying and selling of natural gas. The Base NAESB allows buyers and sellers to pick between some options in detailed terms (such as calculation of damages, as discussed below). Importantly, the base contract is only a framework contract. Individual transactions for the purchase and sale of natural gas are executed using "transaction confirmations" that incorporate the terms of the base contract and include the key terms for each transaction relating to

quantity, price, delivery obligation (i.e. firm or interruptible), delivery point, and duration.

## 2.1 THE TRANSACTION CONFIRMATION

26. The Transaction Confirmation at issue here provides the following relevant information about the deal between EPO and CPS Energy (Deal #503805 in this case):<sup>22</sup>

- The firm nature of the transaction
- The date the trade was made (February 12, 2021).
- The period of gas deliveries (February 13<sup>th</sup> to 16<sup>th</sup>, 2021).
- The delivery point (West Texas or “WTX” MAP Point)
- The contract quantity (40,000 MMBtu per day or 160,000 MMBtu in total)
- Contract pricing (based on the Waha hub index price plus \$1.00/MMBtu).<sup>23</sup>

In this case, the trade was agreed to on Friday the 12<sup>th</sup> with deliveries to occur over the successive four days. Monday, February 15<sup>th</sup>, 2021 was the President’s Day holiday which extended the normal weekend trading calendar.

## 2.2 EPO DELIVERED LESS GAS TO CPS ENERGY THAN REQUIRED

27. In the delivery period, EPO delivered less than the contracted for quantity of gas. Table 1 below shows the shortfalls in gas deliveries to CPS Energy, based on CPS Energy transaction data.

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<sup>22</sup> Information for this deal can also be found in CPSE\_MDL\_000000481 Transaction Confirmation for Immediate Delivery between Seller Enterprise Products Operating LLC and Buyer City of San Antonio City Public Service Board, dated February 12, 2021, CPS Trade #62074.

<sup>23</sup> Transaction Confirmation.

Table 1: EPO contracted and delivered quantities under Deal #503805<sup>24</sup>

Date	Counterparty	Receipt Point	Nominated Quantity (MMBtu)	Scheduled Quantity (MMBtu)	Shortfall (MMBtu)	Supply Price	But-for Cost
[a]	[b]	[c]	[d]	[e]	[f]	[g]	[h]
2/13/2021	Enterprise Products	West Texas Map Point	17,200	17,200	0	154.6150	0
2/13/2021	Enterprise Products	West Texas Map Point	7,800	7,800	0	154.6150	0
2/13/2021	Enterprise Products	West Texas Map Point	3,000	3,000	0	154.6150	0
2/13/2021	Enterprise Products	West Texas Map Point	12,000	12,000	0	154.6150	0
2/14/2021	Enterprise Products	West Texas Map Point	17,200	17,200	0	154.6150	0
2/14/2021	Enterprise Products	West Texas Map Point	7,800	526	7,274	154.6150	1,124,670
2/14/2021	Enterprise Products	West Texas Map Point	3,000	3,000	0	154.6150	0
2/14/2021	Enterprise Products	West Texas Map Point	12,000	12,000	0	154.6150	0
2/15/2021	Enterprise Products	West Texas Map Point	17,200	0	17,200	154.6150	2,659,378
2/15/2021	Enterprise Products	West Texas Map Point	7,800	1,200	6,600	154.6150	1,020,459
2/15/2021	Enterprise Products	West Texas Map Point	3,000	3,000	0	154.6150	0
2/15/2021	Enterprise Products	West Texas Map Point	12,000	4,108	7,892	154.6150	1,220,222
2/16/2021	Enterprise Products	West Texas Map Point	17,200	0	17,200	154.6150	2,659,378
2/16/2021	Enterprise Products	West Texas Map Point	7,800	526	7,274	154.6150	1,124,670
2/16/2021	Enterprise Products	West Texas Map Point	3,000	3,000	0	154.6150	0
2/16/2021	Enterprise Products	West Texas Map Point	12,000	4,108	7,892	154.6150	1,220,222
<b>Total</b>			<b>160,000</b>	<b>88,668</b>	<b>71,332</b>	<b>154.6150</b>	<b>11,028,997</b>

28. As shown in Table 1, although EPO was required to deliver 160,000 MMBtu, only 88,668 MMBtu was scheduled and delivered, leaving a shortfall of 71,332 MMBtu in gas contracted for but not received.<sup>25</sup>

### 3. EPO'S SHORTFALLS WERE NOT OUTSIDE OF ITS CONTROL

29. EPO provided notice of a potential force majeure event on February 22<sup>nd</sup>, 2021, after the storm had abated and over a week after CPS Energy had experienced the shortfalls in gas supplies from EPO.<sup>26</sup> I have seen no evidence showing that EPO communicated any potential shortfalls in gas deliveries (whether from

<sup>24</sup> The "But-for Cost" calculated in column [h] reflects the cost CPS Energy would have incurred had the shortfall gas been delivered at the agreed rate. Detailed calculations and sources can be found in Exhibit SCA-3.

<sup>25</sup> I do note that CPS Energy's data shows a slightly higher volume of gas scheduled and delivered than EPO's invoice indicates. The EPO invoice shows a volume of 88,142 MMBtu. Using this amount would have created a slightly larger shortfall (by 526 MMBtu) and hence slightly larger damages owed to CPS Energy. To be conservative, I have used the higher CPS Energy volume, which leads to a smaller shortfall and damages. Much of the other key information provided in CPS Energy's transaction data is consistent with EPO's subsequent invoice to CPS Energy dated March 23, 2021. CPSE-MDL\_000001542 CPS Transaction Summary, February 2021; CPSE-MDL\_000012555 Invoice #432242 from Enterprise Products Operating LLC to City of San Antonio Public Service Board, dated March 23, 2021.

<sup>26</sup> EPO\_00001695 Notice of Event of Force Majeure under the Base Contract for the Sale and Purchase of Natural Gas between City of San Antonio City Public Service Board and Enterprise Products Operating LLC, dated February 22, 2021.

Chevron or other suppliers) to CPS Energy prior to EPO's February 22<sup>nd</sup> notice of a potential force majeure event.

30. In this section, I explain the practical and commercial context for a Force Majeure provision and explain how it is defined in the Base NAESB between EPO and CPS Energy. I then look at the evidence available to assess whether EPO's delivery shortfalls were in fact outside of its control, as required by the contractual standard.
31. While the terms of the NAESB contract are important, I focus my analysis on the business factors that relate to the under deliveries of gas. In particular, I focus on two core issues: (i) whether an identified force majeure event precluded delivery and (ii) whether the party claiming the force majeure had commercially reasonable alternatives to deliver the gas. Here I see no evidence that a force majeure event precluded full delivery of the gas quantities in question. As addressed below, EPO had reasonable alternatives to delivery the total quantity promised to CPS Energy.

### **3.1 DEFINITION OF FORCE MAJEURE**

32. In simple practical terms, "force majeure" takes place when a cause outside of the control of the party obligated to perform under a contract arises unexpectedly which precludes and excuses that performance. In this case, EPO is the party claiming force majeure to excuse its non-performance of its contractual obligations to deliver 160,000 MMBtus of natural gas to CPS Energy over the specified period.
33. This force majeure concept is described in Section 11.1 of the Base NAESB. This section states:

*Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein*

### **3.1.1 Weather events and Force Majeure**

36. The definition of Force Majeure in Section 11.2 includes “weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe.”

37. However, it is important to focus on the fact that a party is only excused from performing a Firm obligation “to the extent such failure was caused by Force Majeure.”<sup>29</sup> As a result, a party’s obligation to perform a Firm obligation will not be excused simply because there is an extreme weather event. An extreme weather event only excuses a party’s failure to perform if such extreme weather event actually caused such failure. In this case, I have seen no evidence presented that Winter Storm Uri prevented EPO from delivering the full 40,000 MMBtu per day to CPS Energy.

### **3.1.2 Transportation impacts**

38. Section 11.3 of the Base NAESB provides some additional limitations on claiming Force Majeure, specifically related to pipeline transportation and economic hardship. This section states:

*Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller’s ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer’s ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this*

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<sup>29</sup> *Ibid.*

*Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.<sup>30</sup>*

39. The reference to transportation by pipelines is relevant in this context. As was previously explained, under the contract, CPS Energy was to purchase the gas at the West Texas MAP point. The Base NAESB and the relevant transaction confirmation do not specify either the source of the gas (who owned the wells where the gas was coming from) or how it was to be delivered to CPS Energy. I have seen no evidence presented that a transportation impact prevented EPO from delivering the full 40,000 MMBtu per day to CPS Energy. In fact, as described in Section 3.5, EPO could have delivered the full 40,000 MMBtu per day to CPS Energy.

### **3.2 THE BACK-TO-BACK DELIVERY ARRANGEMENT DID NOT RELIEVE EPO OF ITS RESPONSIBILITIES**

40. EPO entered deal #503805 with CPS Energy on February 12, 2021, under the terms of the Base NAESB. Under this deal, EPO had the firm obligation to deliver 160,000 MMBtu of natural gas to CPS Energy over the four days from February 13<sup>th</sup> to February 16<sup>th</sup>, 2021.<sup>31</sup>

41. EPO was responsible for scheduling the delivery of gas supplies to CPS Energy and making the requisite nominations to the pipeline transporting the gas. The deal terms with CPS Energy did not depend on, nor were they tied to, a particular supply contracted for by EPO, but rather obligated EPO to access any and all supply available to it to meet its obligation to CPS Energy. Indeed,

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<sup>30</sup> *Ibid.*

<sup>31</sup> Transaction Confirmation.

neither the Base NAESB nor the Transaction Confirmation permits EPO to neglect its delivery commitments by assigning that obligation to a third party.

42. On the weekend of February 13<sup>th</sup>, EPO opted into a “back-to-back” supply contract with two of its suppliers, Chevron and WTG, rather than serve as the intermediary managing the physical movement of gas between the suppliers and CPS Energy.<sup>32</sup> This structure was set up to “avoid cuts instead of the daisy chain... of custody going from Chevron and West Texas Gas to EPO [Enterprise] and then to... a common pool and then on to CPS ... EPO stepped out of the middle.”<sup>33</sup> From my review of the ICE Chats between Stephanie Brown of EPO and Amber Irving of CPS Energy, I do not see any indication that CPS Energy was made aware of this back-to-back structure.<sup>34</sup> As a result, I understand that Chevron and WTG were nominating directly to CPS Energy’s transportation account.

### **3.3 CHEVRON’S SHORTFALLS DID NOT EXCUSE EPO’S SHORTFALLS**

43. While this arrangement may have been convenient for EPO in terms of scheduling and nominating the deliveries of gas, it did not relieve EPO of its firm obligations to deliver gas to CPS Energy if Chevron and WTG did not deliver under this back-to-back scheduling arrangement. From CPS Energy’s perspective, Deal # 503805 was with EPO, not with Chevron and WTG. Chevron and WTG are not mentioned in the relevant Transaction Confirmation documents.<sup>35</sup>

44. During the period of the contracted deliveries under Deal # 503805, (February 13<sup>th</sup> through 16<sup>th</sup>, 2021), Chevron’s natural gas drilling operations in West Texas were impacted by the severe weather in the region. EPO was made

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<sup>32</sup> Deposition of Sean Lloyd, pages 242:21 – 243:20.

<sup>33</sup> Deposition of Sean Lloyd, pages 241:18 – 242:1.

<sup>34</sup> CPSE-MDL\_000009326 ICE Chat between Stephanie Brown of EPO and Amber Irving of CPS Energy.

<sup>35</sup> Transaction Confirmation.

### **3.4 EPO APPARENTLY MADE NO EFFORT TO MONITOR OR AMELIORATE THE SHORTFALLS IN DELIVERIES**

46. EPO seems not to have been aware of the shortfalls in gas supply when they started to occur.<sup>38</sup> Having set up the scheduling arrangement with Chevron, EPO does not seem to have made any effort to ensure that its contracted quantities were being delivered to CPS Energy. I have not seen any evidence, including among the text messages and chat transcripts produced, that EPO had made any effort to assure that gas supplies would be delivered to CPS Energy as required. This is especially surprising given the State of Texas Emergency Declaration and the Texas RRC Order, which made these deliveries an absolute priority due to the impact on human health and safety. In fact, Stephanie Brown, an EPO gas scheduler, inquired about shortfalls in deliveries to CPS Energy on March 2, 2021 – weeks after EPO's delivery shortfalls under Deal #503805.<sup>39</sup>
47. I also note that I have seen no evidence that EPO made any effort to secure alternative supplies of gas to meet its CPS Energy obligation after Chevron provided its force majeure notice to EPO on February 15<sup>th</sup>.<sup>40</sup> This too seems surprising given the emergency conditions prevailing across Texas at this time.

### **3.5 EPO HAD OTHER GAS AVAILABLE TO DELIVER TO CPS ENERGY HAD IT CHOSEN TO DO SO**

48. As I explained above, EPO's contractual obligations to CPS Energy were not tied to Chevron, WTG, or any other specific source and were therefore not excused by the failure of its suppliers to deliver gas if EPO had other gas available. In this section, I review the available evidence which demonstrates

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<sup>38</sup> Deposition of Sean Lloyd, pages 241:11 – 242:10; CPSE-MDL\_000009326 ICE Chat between Stephanie Brown of EPO and Amber Irving of CPS Energy.

<sup>39</sup> CPSE-MDL\_000009326 ICE Chat between Stephanie Brown of EPO and Amber Irving of CPS Energy.

<sup>40</sup> EPO\_00007937 Notice of Force Majeure between Chevron Natural Gas and Enterprise Products Operating LLC, dated February 15, 2021; Deposition of Sean Lloyd, pages 239:10 – 13.

EPO did in fact have other gas available, and that this gas could have been used to meet its obligations to CPS Energy.

49. EPO's gas marketing group, which was making sales to CPS Energy under the Base NAESB, purchased gas from a range of EPO affiliates during Winter Storm Uri, as confirmed by EPO gas trader Sean Lloyd.<sup>41</sup>
50. On February 11<sup>th</sup>, before the Transaction Confirmation, CPS Energy reached out to EPO looking for additional gas. EPO gas trader Stanton Brown confirmed that at that time, he was able to supply some additional gas, in the amount of 10,000 MMBtu of gas from his supply.<sup>42</sup>

### ***3.5.1 EPO had gas in storage which could have been used***

51. One potential source of gas from EPO was from storage. Stanton Brown of EPO confirmed that EPO had supplies of gas in storage in South Texas and that it was able to withdraw gas from the Wilson storage facility.<sup>43</sup> The Wilson facility is an underground salt-cavern gas storage facility in Texas.<sup>44</sup>
52. On February 16<sup>th</sup>, the last day of the delivery period, by which time EPO was significantly underdelivering against its firm obligations to CPS Energy, EPO and CPS Energy began discussing the sale of additional storage gas to CPS Energy, which ultimately culminated in two large (totalling 500,000 MMBtu, more than five times larger than the shortfalls at issue here) in-ground storage transfers.<sup>45</sup> This gas was owned by EPO in the Wilson storage facility and was transferred to CPS Energy's storage account.<sup>46</sup> Mr. Brown acknowledged that this gas was likely being held in storage to meet future needs at another

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<sup>41</sup> Deposition of Sean Lloyd, pages 154:3 – 11.

<sup>42</sup> Cause No. MDL 2022CI02879 Before the Designated Pretrial Court in Re CPS Energy Gas Supplier Litigation, Deposition of Stanton Brown, dated August 29, 2022 (hereafter "Deposition of Stanton Brown"), pages 163:9 – 19.

<sup>43</sup> Deposition of Stanton Brown, pages 213:23 – 214:17.

<sup>44</sup> Enterprise Product Partners, L.P., Securities and Exchange Commission Form 10-K for the Fiscal Year Ended December 31, 2021, page 17.

<sup>45</sup> CPSE-MDL\_000012555 Invoice #432242 from Enterprise Products Operating LLC to City of San Antonio Public Service Board, dated March 23, 2021.

<sup>46</sup> Deposition of Stanton Brown, pages 310:5 – 311:1.

Enterprise Partnership facility and was not immediately needed by EPO for any other purpose.<sup>47</sup>

### ***3.5.2 EPO was worried about having excess gas over the weekend***

53. On February 13<sup>th</sup>, the first day of under-deliveries to CPS Energy, Mr. Brown confirmed that other than one 13,000 MMBtu transaction, he had no buyers.<sup>48</sup> It also appears that he was looking at additional sales volumes from storage for larger quantities.<sup>49</sup>
54. In its internal communications, EPO traders were concerned that they might be oversupplied with gas over this period.<sup>50</sup> In the context of managing his trading book, Mr. Brown testified that regarding this weekend “I don’t know if there was anyone pressuring me, but we were long in the system and we were trying to keep gas from building up on the system.”<sup>51</sup> Going into the morning of the 17<sup>th</sup>, he testified he was probably long as he was selling gas on that morning.<sup>52</sup> Mr. Lloyd also testified that he had held back on selling some gas in anticipation of some cuts in supplies.<sup>53</sup>
55. Being substantially long on gas had a potential financial implication for EPO, in that it could have been subject to imbalance charges.<sup>54</sup> In the current context, however, it also implies that EPO had already purchased additional gas which

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<sup>47</sup> Deposition of Stanton Brown, pages 328:21 – 329:16; Deposition of Sean Lloyd, pages 162:19 – 163:3. EPO may also have had other gas available due to the shutdown of other Enterprise Partners facilities in Texas, see EPO\_00010276 Enterprise Reports First Quarter 2021 Earnings, May 3, 2021, pages 3 – 4.

<sup>48</sup> Deposition of Stanton Brown, page 252:5 – 11.

<sup>49</sup> *Id.*, at pages 252:22 – 253:11.

<sup>50</sup> In trading parlance, this is often referred to as being “long” on gas.

<sup>51</sup> Deposition of Stanton Brown, page 269:17 – 21.

<sup>52</sup> *Id.*, page 282:14 – 19.

<sup>53</sup> Deposition of Sean Lloyd, pages 286:12 – 25.

<sup>54</sup> Broadly speaking, imbalance charges or penalties may be levied by a pipeline when a shipper has a net imbalance in a shipper’s deliveries into and re-deliveries from a pipeline. If EPO was long on gas this might have triggered such charges or penalties.

could have been used to manage the CPS Energy shortfalls had it taken action to do so.

### ***3.5.3 The gas could have been delivered to CPS Energy***

56. EPO had gas in South Texas available, which could have been used to supply CPS Energy. The question that arises is whether this gas could have been delivered to West Texas where it was to be sold to CPS Energy. The testimony of EPO witness Mr. Brown confirmed that deliveries at West Texas instead of South Texas were possible.<sup>55</sup> Mr. Lloyd also testified that EPO could have used gas it had in storage to deliver to CPS Energy.<sup>56</sup>

57. Mr. Lloyd further confirmed that the EPO gas trading group had not heard about cuts on the Enterprise Partnership pipeline.<sup>57</sup> Overall, EPO's trades do not seem to have been significantly affected by pipeline interruptions.<sup>58</sup> In my review of the materials produced in discovery, I have not seen any evidence suggesting that a transfer of gas from South Texas to West Texas was not possible. I also note that CPS Energy itself purchased gas at South Texas so it too might have been able to make such a transfer of gas in South Texas work, had EPO made such an offer to deliver the obligated gas to South Texas.<sup>59</sup>

### ***3.5.4 EPO was making additional interruptible sales in the same period at higher prices***

58. In addition, during the period of under deliveries on its firm deal with CPS Energy, EPO appears to have been entering into new interruptible sales transactions with other parties. This included intraday sales to gas marketing

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<sup>55</sup> Deposition of Stanton Brown, pages 261:17 – 262:8.

<sup>56</sup> Deposition of Sean Lloyd, pages 245:1 – 246:4.

<sup>57</sup> *Id.*, page 285:2 – 6.

<sup>58</sup> *Id.*, page 285:17 – 25.

<sup>59</sup> EPO\_00016906 Enterprise February 2021 Asset Summary, tab "STX."

group Twin Eagle on February 14th.<sup>60</sup> Interruptible transactions in general should have a lower priority than firm transactions.

59. On February 16<sup>th</sup>, EPO sold a significant quantity of interruptible gas for delivery on the same day (intraday):<sup>61</sup>

- Deal #503910 (Trade date 2/16/2021): 30,000 MMBtu for \$200/MMBtu to CPS Energy for delivery on 2/16/2021
- Deal #503907 (Trade date 2/16/2021): 9,000 MMBtu for \$250/MMBtu to Southwest Energy for delivery on 2/16/2021

60. These deals are summarized in Table 2 below.

*Table 2: Summary of Intraday Interruptible Sales from EPO to Other Counterparties, February 14-16, 2021<sup>62</sup>*

Deal Tracking Number	Counterparty	Trade Date	Start Date	Service Type	Total Quantity (MMBtu)	Rate (\$/MMBtu)
[a]	[b]	[c]	[d]	[e]	[f]	[g]
503830	Twin Eagle	2/14/2021	2/14/2021	Interruptible	7,000	180
503836	Twin Eagle	2/14/2021	2/14/2021	Interruptible	4,000	185
503907	Southwest Energy	2/16/2021	2/16/2021	Interruptible	9,000	250
503910	CPS Energy	2/16/2021	2/16/2021	Interruptible	30,000	200

61. It appears both consequential and inconsistent for EPO to offer interruptible sales to the market when it was not fully meeting its firm obligation with CPS Energy. I note that the sales prices on these interruptible sales were substantially higher than pricing on the original CPS Energy deal (\$154.6150/MMBtu) in dispute here.

### 3.6 CONCLUSIONS ON FORCE MAJEURE CLAIM

62. The basic concept of force majeure is simple: force majeure is only a legitimate excuse for not performing a contractual obligation if: (i) the event itself prevents performance and (ii) the event is outside of a party's control.

63. As noted above, I have seen no evidence to support the view that the winter storm precluded EPO from delivering the full volume of 160,000 MMBtu to CPS Energy. The fact that EPO had arranged with Chevron and WTG to directly

<sup>60</sup> EPO\_00010468 Enterprise Deal Tracker Spreadsheet.

<sup>61</sup> *Ibid.*

<sup>62</sup> Detailed calculations and sources can be found in Exhibit SCA-4.

schedule the gas supplies to meet the CPS Energy requirement does not negate EPO's obligation to deliver gas under Deal #503805, regardless of whether Chevron declared force majeure on EPO. The Base NAESB and the Transaction Confirm never mention Chevron, WTG, or any other supplier. Such a scheduling arrangement did not alter the fact that EPO was the party obligated to supply the gas. The contract never lists the availability of gas from Chevron, WTG, or any other particular party as being critical to the supply promised. Hence, any cut in supplies by a supplier would only excuse performance by EPO if there was truly no other gas available.

64. While there is no doubt that there was a major storm occurring over the delivery period of February 13-16<sup>th</sup>, it is clear from the testimony of EPO traders that EPO did in fact have other gas available. Moreover, EPO had gas in storage, which it could have delivered or transferred to CPS Energy to meet its contractual requirements. EPO could (and was obligated to if it could not find other gas) to seek to purchase replacement supplies in the market. There is no evidence it did so.

65. In summary, the evidence that I have seen confirms that shortfalls in deliveries were, in fact, under the control of EPO, and that it was responsible for ensuring that the volumes were delivered. EPO may not have been aware of shortfalls, but that is not an excuse, especially in a declared emergency. Based on this evidence, a claim of force majeure by EPO appears unsupported as EPO did have the ability to deliver the gas it owed to CPS Energy over this period from alternate supplies.

#### **4. EPO ALSO FAILED TO ADEQUATELY NOTIFY CPS ENERGY OF ITS FORCE MAJEURE CLAIM**

66. In this section of my report, I examine whether EPO promptly and adequately notified CPS Energy of any delivery shortfalls or problems attributable to force majeure, as required under the Base NAESB.

##### **4.1 NOTIFICATION REQUIREMENTS IN THE BASE NAESB**

67. Section 11.5 of the Base NAESB requires:

*The party whose performance is prevented by Force Majeure must provide Notice to the other party. **Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible.** Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.*<sup>63</sup>

68. Despite the Section 11.5 requirement that written Notice “with reasonably full particulars of the event or occurrence is required as soon as reasonably possible,” EPO did not provide written notice until February 22<sup>nd</sup>, 2021, approximately one week after delivery shortfalls had started.<sup>64</sup>

69. I have seen no evidence that EPO provided any force majeure notice orally either. In fact, as late as March 2<sup>nd</sup>, 2021, Stephanie Brown, an EPO gas scheduler, was communicating with Amber Irving of CPS Energy via the ICE Chat system to determine if there had been any cuts, and the corresponding days and amounts. Ms. Brown made no mention of force majeure or otherwise provided any explanation to Ms. Irving for EPO’s shortfalls.<sup>65</sup> This is not a reasonable period, especially given the emergency prevailing in Texas.

#### **4.2 EPO DID NOT PROVIDE THE REQUIRED FORCE MAJEURE DETAILS**

70. EPO also did not provide “reasonably full particulars of the event or occurrence” as required in Section 11.5. EPO provided CPS Energy with a purported force majeure declaration on February 22<sup>nd</sup>, 2021 relating to contract number 9780 – the foundational contract between EPO and CPS Energy

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<sup>63</sup> Base NAESB, page 7 (bold emphasis added).

<sup>64</sup> “Notice” is defined in Section 9 of the Base NAESB.

<sup>65</sup> EPO\_00031281 ICE Chat conversation between Stephanie Brown of EPO and Amber Irving of CPS Energy.

(“Enterprise FM Declaration”).<sup>66</sup> The entire force majeure declaration language, signed by Justin Kleiderer, Vice President of Hydrocarbon Marketing at EPO, states:

*To Whom It May Concern:*

*Enterprise is hereby providing notice that it may be required to partially suspend its performance under the Agreement(s) due to an event of Force Majeure. As you are likely already aware, since Sunday February 14, 2021, we have been experiencing a severe weather event that has affected our entire geographic region. The resulting low temperatures have caused freezing and a disruption of our ability to deliver certain quantities of Product under the affected Agreement(s).*

*We are performing all of our obligations to the extent that we are able to do so and are taking reasonable efforts to resolve this event. We will let you know as soon as we are able to fully overcome this disruption.*

*Do not hesitate to contact us should you have any questions or concerns.*

71. The Enterprise FM Declaration is deficient with respect to the requirements of Section 11.5. EPO provided no details as to why it could not deliver gas to CPS Energy other than quoting region-wide weather events. EPO does not identify which (if any) suppliers were unable to produce gas, whether it had other existing sources of gas available (or any ability to purchase gas in the market), or whether there were pipelines that were out of service. EPO does not even explicitly claim force majeure impeded its deliveries as the Enterprise FM Declaration states that EPO “may be required to partially suspend its performance.” Since the deal between EPO and CPS Energy was not tied to any specific source of gas, the ability to supply CPS Energy from other sources is clearly critical. However, the Enterprise FM Declaration provides no details.

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<sup>66</sup> EPO\_00001695 Notice of Event of Force Majeure under the Base Contract for the Sale and Purchase of Natural Gas between City of San Antonio City Public Service Board and Enterprise Products Operating LLC, dated February 22, 2021.

#### **4.3 PROMPT AND DETAILED NOTIFICATION IS ALSO IMPORTANT FOR ECONOMIC AND OPERATIONAL REASONS**

72. Beyond the requirements in the Base NAESB, prompt and full notification of force majeure conditions is also critical for economic and operational reasons. First, the sooner the seller informs the gas buyer of a force majeure event and expected or actual shortfalls, the sooner the buyer can start making additional purchases to cover the shortfall. This is especially critical in an emergency such Winter Storm Uri, where lack of gas supply by CPS Energy directly impacted human needs. EPO, by failing to ensure delivery of gas to CPS Energy, may have contributed to making an already bad situation worse.
73. Second, in a period of very high prices, a buyer is often concerned that a seller may cut its deliveries under a contract to sell the gas (to them or other purchasers) at even higher prices – a prospect sometimes referred to (half-seriously) as “price majeure.” Of course, in the current case such pricing behavior would be specifically prohibited under Section 11 of the Base NAESB, but in general a utility gas buyer like CPS Energy would naturally seek assurance that its firm contractual deliveries were interrupted only for valid reasons outside of the seller’s control, to protect its interests and those of its utility customers.

#### **4.4 EPO DID NOT MEET ITS NOTICE REQUIREMENTS**

74. In summary, I conclude that EPO did not meet the notification requirements of the Base NAESB. Oral notice does not seem to have been provided, and written notice was provided a week after the shortfalls. When the written notice was provided, it did not meet the amount of detail required in the Base NAESB. Even if oral notice was previously provided, which it does not appear to have been, EPO’s nonspecific late written notice was still deficient. As a result, EPO did not meet its Section 11.5 obligations to CPS Energy.

### **5. DAMAGES TO CPS ENERGY**

75. In this section, I discuss the calculation of damages owed to CPS Energy by EPO related to its shortfalls in gas deliveries over the period of February 13<sup>th</sup> through February 16<sup>th</sup>, 2021.

**Exhibit SCA-1**  
**Curriculum Vitae of Seabron Adamson**

## SEABRON C. ADAMSON

Seabron Adamson is a Vice President at Charles River Associates, where he focuses on the energy sector and currently leads the global energy disputes and regulatory segment. He was previously with the energy and commodities group of Tudor Investment Corporation, where he focused on the North American natural gas market.

Mr. Adamson was previously a Vice President of Charles River Associates and co-Head of the firm's Energy and Environment practice from 2006 to 2008. In this role he led a team of 15-20 professionals in the Enterprise and Asset Investment group, focusing on the quantitative analysis of energy markets to support commercial, regulatory and investment decisions in the energy sector.

Mr. Adamson also has significance experience in energy regulation and litigation matters, in North America, the European Union and other countries. Seabron has testified in international arbitration proceedings regarding energy sector disputes in Europe, Latin America, Canada and other countries. He has provided expert testimony and reports before the Federal Energy Regulatory Commission, the Ontario Energy Board, and a state public utility commission, as well as in Federal and State court proceedings. A significant fraction of his disputes, regulatory and commercial advisory work has been related to the natural gas industry.

Prior to joining CRA, he was a Director of Tabors Caramanis & Associates. Mr. Adamson was a co-founder of the Frontier Economics Group, an international economics consulting group. He previously founded the U.S. practice of London Economics and managed the American office until the company's sale in 1999. He was a consultant with London Economics, based in the U.K. from 1992 to 1996.

Mr. Adamson has served as an adjunct lecturer at the A.B Freeman School of Business at Tulane University, where he has taught classes on energy trading, risk and portfolio management. He currently teaches a class in the finance department of the Carroll School of Management at Boston College on renewable energy investment and project finance. He is the co-author of a textbook (with S. Raikar) on renewable energy project finance titled *Renewable Energy Project Finance: Theory and Practice* from the Academic Press, published in 2020.

### Education

Boston University	M.A., Economics
M.I.T.	S.M., Technology and Policy
Georgia Tech	M.S., Applied Physics

Georgia Tech

B.S., Physics

**Experience Highlights**

- 2010 - Present Vice President (previously Senior Consultant), Charles River Associates.
- 2008 - 2010 Gas and Power Analyst, Tudor Investment Corporation, Boston, MA/London UK. Senior gas and power analyst for a major US alternative investment firm. Analyzed gas and power markets as part of the energy and commodities trading group, focusing on gas trading.
- 2004 - 2008 Vice President (and Co-Head, Energy and Environment Practice), Charles River Associates, Boston, MA. Led a wide range of major consulting projects in the energy sector, especially focusing on investment valuation, due diligence and market analysis, as well as regulatory matters.
- 2003 - 2004 Director, Tabors Caramanis & Associates. Managed projects on economic analysis of energy markets and energy sector asset valuations and regulatory issues.
- 1999 - 2003 Founder and President, Frontier Economics Inc. Co-founder of Frontier Economics Group, an international economics consulting firm with offices in Cambridge, MA, London, UK and Melbourne, Australia. Managed major client assignments regarding litigation and energy market analysis.
- 1996 -1999 President, London Economics Inc. Started US subsidiary of major European economics consulting firm. Advised major energy sector clients on market development, restructuring, retail competition, and mergers and acquisitions. Advised clients on significant M&A transactions.
- 1992 – 1996 Consultant, Senior Consultant and Managing Consultant, London Economics Ltd. (UK). Provided economic and strategic advice to major UK and international energy clients operating in the natural gas and electricity markets.
- 1990 – 1992 Research Assistant, Massachusetts Institute of Technology. Research on carbon reduction strategies for the US power industry sponsored by U.S. EPA and EPRI.
- 1988 –1990 Research engineer, Itek Optical Systems. Developed and implemented interferometry techniques for fabrication of the primary of the Keck 10-meter telescope, the world's largest optical telescope.

## **Fields of Expertise**

Energy Economics

Energy Markets Design and Analysis

Financial Analysis of Energy Sector Investments and Transactions

Renewable Energy Finance and Economics

## **Professional Affiliations**

International Association for Energy Economics

American Economic Association

Academic reviewer for *The Energy Journal*, *Energy Policy*, *Ecological Economics* and other journals.

## **Publications and Teaching**

### **Book**

S. Raikar and S. Adamson, *Renewable Energy Finance: Theory and Practice*, Academic Press - Elsevier, 2020.

### **Book Chapters**

S, Adamson, D. Hernandez and H. Rakebrand, "The coordination of gas and electricity network investment decisions", in *Transmission Network Investment in Liberalized Power Markets*, M. R. Hesamzadeh, J. Rosellón and I. Vogelsang, eds., Springer, forthcoming 2020.

S. Adamson and G Parker, "Participation and Efficiency in the New York Financial Transmission Rights Markets", chapter in *Financial Transmission Rights: Analysis, Experience and Prospects*, J. Rosellón and T. Kristiansen, eds., Springer, 2013.

S. Adamson, R. Laslett, R. Bates and A. Pototschnig, *Market-Based Control of Air Pollution in Krakow, Poland: Can Economic Incentives Help?* World Bank Technical Paper Series (No. 308), 1994.

### **Academic Publications**

S. Raikar and S. Adamson, "Tax Equity Structures for Wind Energy Projects", published in Section Report of the Oil, Gas and Energy Resources Law Section of the State Bar of Texas, Volume 44, Number 3, September 2020.

S. Adamson, "Renewable Energy Disputes in the Americas: Potential Future Developments", published in *The Arbitration Review of the Americas 2022*, Global Arbitration Review. 2021. Update published by GAR in July 2022.

S. Adamson, "Comparing Interstate Regulation and Investment in US Electric and Gas Transmission", *Economics of Energy and Environmental Policy*, Volume 7, No. 1, 2018.

S. Adamson, T. Noe and G. Parker, "Efficiency of Financial Transmission Rights Markets in Centrally Coordinated Periodic Auctions", *Energy Economics*, Vol. 32, No. 4, 2010.

S. Adamson and R. Tabors, "Pricing Short-term Gas Availability in Power Markets", *Growing Concerns, Possible Solutions: The Interdependency of Natural Gas and Electricity Systems*, MIT Energy Initiative, April 2013.

S. Adamson and S. Englander, "Efficiency of New York Transmission Congestion Contract Auctions", *Proceedings of the 38<sup>th</sup> Annual Hawaii International Conference on System Sciences*, 2005.

R. Tabors and S. Adamson, "Price Discrimination in Organized/Centralized Electric Power Markets", *Proceedings of the 39<sup>th</sup> Annual Hawaii International Conference on System Sciences*, 2006

R. Stoddard and S. Adamson, "Comparing Capacity Market and Payment Designs for Ensuring Supply Adequacy", *Proceedings of the 42<sup>th</sup> Annual Hawaii International Conference on System Sciences*, 2009.

S. Adamson and A. Sagar, "Managing Climate Risks through a Tradable Contingent Securities Approach", *Energy Policy*, January 2002.

S. Adamson and A.J. Goulding, "The ABCs of Market Power Mitigation: Use of Auctioned Biddable Contracts to Enhance Competition in Generation Markets", *The Electricity Journal*, December, 1998.

S. Schnittger and S. Adamson, "Retail Competition in Electricity – Market Prices Revisited", *The Electricity Journal*, July 2001.

### **Major Academic Conference Papers/Presentations**

S. Adamson, Plenary Session Presentation, International Association for Energy Economics Annual Conference, Singapore, 2017.

R. Green, S. Adamson and S. Littlechild, "Competitive Benchmarks in Electricity Markets", paper presented at the IDEI Conference "Competition and Coordination in the Electricity Industry, Toulouse 2004.

S. Adamson and K. Wellenius, "Determination of Horizontal Market Power Abuse in Wholesale Electricity Markets", paper presented at the POWER conference, University of California at Berkeley, 2000.

S. Adamson and G. Parker, "Productivity and Technological Change in Shale Gas Production: An Econometric Analysis of Well Data from the Haynesville

Shale", paper presented at the International Association of Energy Economics international conference, Stockholm, June 2011.

***Classes Taught***

*Renewable Energy Investments*, Course taught at the Carroll School of Management, Boston College (Master's level)

*Energy Portfolio Management II and Advanced Energy Trading and Finance*, both courses taught at the A.B. Freeman School of Business, Tulane University (Master's level)

Short course instructor, Sloan School of Management, Massachusetts Institute of Technology (2021-22).

***Trade Press Publication***

Seabron Adamson, "Industry Structures and Market Mechanisms", *Public Utilities Fortnightly*, April 1995.

***Selected Expert Testimony and Reports (Last 4 Years)***

Prepared testimony before the Federal Energy Regulatory Commission in Dockets ER20-2441-002 *et. al.* (Basin Electric Power Cooperative) (2022).

Expert reports and deposition testimony (with Derya Eryilmaz, Ph.D.) in Susanna Mirkin and Boris Mirkin, Individually and on Behalf of All Others Similarly Situated v. Xoom Energy, LLC, and XOOM Energy New York, LLC, No: 18 Civ. 2949 (ARR) (RER)

Lead energy industry expert in *In re: Columbia Pipeline Group, Inc Merger Litigation.*, Cons. C.A. No. 2018-0484-JTL, Court of Chancery of the State of Delaware (2022).

Expert in *Shady Hills Energy Center LLC et al. v. Seminole Electric Cooperative Inc.*, Federal District Court for the Middle District of Florida (Tampa Division), Case No. 8:20-CV-0081-WFJ-JSS. (2022).

Expert in confidential JAMS arbitration on behalf of investors in a renewable energy company (2020-21).

Expert in ICC Arbitration between a U.S. project developer and an Asian state agency with respect to a power project and contract termination.

Affidavit of David Hunger and Seabron Adamson before the Federal Energy Regulatory Commission, Docket No. ER21-2282-000. 2021. Also later Supplemental Affidavit in same matter.

Liability and damages expert on behalf of Bank Santander in *Punta Lima, LLC and Punta Lima Wind Farm LLC vs. Punta Lima Development Company, LLC*, Case No: 3:19-cv-01673-SCC and 3:19-cv-01800-SCC. Federal District Court for the District of Puerto Rico, (2019-20)

Damages expert in *Cypress Creek Renewables Development, LLC vs. SunShare, LLC et al.* Case No: 27-CV-18-14955. State of Minnesota District Court, 2019.

Lead energy industry expert in *In re: Appraisal of Columbia Pipeline Group, Inc.*, Cons. C.A. No. 12736-VCL, Court of Chancery of the State of Delaware (2018).

Damages expert on behalf of plaintiff in *Elmrock Master Opportunity Fund I, L.P. v. Citicorp North America, Inc., ESSL 2 Inc. and Citigroup, Inc.*, Supreme Court of the State of New York, County of New York, 2017-18.

Economic expert in dispute regarding an oil, gas and products services and logistics company (*LCT Capital LLC v. NGL Energy LP and NGL Energy Holdings LLC*), Delaware Superior Court, 2017-18. Case continuing.

Damages expert in a major international arbitration dispute between a Middle Eastern national natural gas company and an international energy company regarding damages in the natural gas and LNG sector, Cairo Regional Center for International Arbitration, 2018.

## **Exhibit SCA-2**

### **Documents Relied Upon**

**Documents Produced in Litigation**

- CPSE-MDL\_000013849 Railroad Commission of Texas, Emergency Order, dated February 12, 2021.
- Cause No. MDL 2022CI02879 Before the Designated Pretrial Court in Re CPS Energy Gas Supplier Litigation, Deposition of Sean Lloyd, dated August 30, 2022.
- CPSE-MDL\_000006256 Physical Transaction Confirmation for Immediate Delivery between Seller Enterprise Products Operating LLC and Buyer City of San Antonio City Public Service Board, dated February 12, 2021, Deal #503805.
- CPS\_EPO\_00000583 Base Contract for Sale and Purchase of Natural Gas, signed May 1, 2008.
- CPSE\_MDL\_000000481 Transaction Confirmation for Immediate Delivery between Seller Enterprise Products Operating LLC and Buyer City of San Antonio City Public Service Board, dated February 12, 2021, CPS Trade #62074.
- CPSE-MDL\_000001542 CPS Transaction Summary, February 2021.
- CPSE-MDL\_000012555 Invoice #432242 from Enterprise Products Operating LLC to City of San Antonio Public Service Board, dated March 23, 2021.
- EPO\_00001695 Notice of Event of Force Majeure under the Base Contract for the Sale and Purchase of Natural Gas between City of San Antonio City Public Service Board and Enterprise Products Operating LLC, dated February 22, 2021.
- CPSE-MDL\_000009326 ICE Chat between Stephanie Brown of EPO and Amber Irving of CPS Energy.
- EPO\_00007937 Notice of Force Majeure between Chevron Natural Gas and Enterprise Products Operating LLC, dated February 15, 2021.
- Cause No. MDL 2022CI02879 Before the Designated Pretrial Court in Re CPS Energy Gas Supplier Litigation, Deposition of Stanton Brown, dated August 29, 2022.
- EPO\_00010276 Enterprise Reports First Quarter 2021 Earnings, May 3, 2021.
- EPO\_00016906 Enterprise February 2021 Asset Summary.
- EPO\_00010468 Enterprise Deal Tracker Spreadsheet.
- EPO\_00031281 ICE Chat conversation between Stephanie Brown of Enterprise and Amber Irving of CPS Energy, sent on March 2, 2021.
- CPSE-MDL\_000012561 Energy Transfer Invoice Detail for Contract Holder City Public Service Board of San Antonio.
- CPSE-MDL\_000006364 Physical Transaction Confirmation for Immediate Delivery between Seller Enterprise Products Operating LLC

and Buyer City of San Antonio City Public Service Board, dated February 16, 2021, Deal #503910.

- CPSE-MDL\_000021621 Transaction Confirmation Notice for Immediate Delivery between Seller Castleton Commodities Merchant Trading L.P and Buyer City of San Antonio, Texas, dated February 16, 2021, Trade #8608010.

### Public Documents

- Enterprise Product Partners, L.P., Securities and Exchange Commission Form 10-K for the Fiscal Year Ended December 31, 2021.
- Enterprise Product Partners, L.P., Securities and Exchange Commission Form 10-Q for the Quarter Ended June 30, 2022.
- CPS Energy, "Who We Are." Available at: <https://www.cpsenergy.com/en/about-us/who-we-are.html>
- CPS Energy, "Service Area Map." Available at: [https://www.cpsenergy.com/content/dam/corporate/en/Documents/service\\_area\\_map\\_2011.pdf](https://www.cpsenergy.com/content/dam/corporate/en/Documents/service_area_map_2011.pdf)
- Texas Comptroller, October 2021, *Winter Storm Uri 2021, The Economic Impact of the Storm*. Available at: <https://comptroller.texas.gov/economy/fiscal-notes/2021/oct/winter-storm-impact.php>
- Office of Texas Governor, Greg Abbott, Disaster Declaration. Available at: <https://gov.texas.gov/news/post/governor-abbott-issues-disaster-declaration-in-response-to-severe-winter-weather-in-texas>
- Railroad Commission website. Available at: <https://www.rrc.texas.gov/oil-and-gas/>
- CPS Energy, *Natural Gas*. Available at: <https://www.cpsenergy.com/en/about-us/programs-services/energy-generation/natural-gas.html>

# **Exhibit C-2**

# Rebuttal Report of Seabron Adamson

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**Prepared on behalf of CPS Energy**

*In re: CPS Gas Supplier Litigation*

*Enterprise Products Operating Company LLC v. CPS  
Energy*

**Case No.: MDL2022CI02879**

**November 8, 2023**

**CONFIDENTIAL**

## 1. INTRODUCTION

1. I have been asked by counsel to review and assess the analysis and conclusions made by EPO's expert Aaron Stai in his rebuttal report.<sup>1</sup>
2. Full details regarding the dispute and my background were provided in Section 1 of my expert report.<sup>2</sup> Unless otherwise noted, defined terms used here shall have the same meaning as ascribed to them in my expert report. I have provided a list of documents I relied upon when forming my opinion in this rebuttal report in Exhibit SCA Rebuttal-1.

## 2. MR. STAI'S ANALYSIS OF THE FIRM TRANSACTION

3. As I state in my expert report, EPO entered Deal #503805 with CPS Energy on February 12, 2021. Under this deal, EPO had the firm obligation to deliver 160,000 MMBtu of natural gas to CPS Energy over the four days from February 13 to February 16, 2021.<sup>3</sup>
4. As Mr. Stai acknowledges, "Firm" is defined in the NAESB, agreed to between CPS Energy and EPO, such that "either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure[.]"<sup>4</sup>
5. Whether the Force Majeure declaration sent by EPO on February 22, 2021 is valid is a legal question, on which I do not opine. I do note from a commercial perspective, it makes sense that if a seller is able to source natural gas elsewhere or make the customer whole, even during a storm, the seller must do so to fulfill its delivery obligations. Allowing a seller to avoid its delivery obligations even though it could make deliveries defeats the commercial purpose of contracting for firm deliveries. Allowing sellers to avoid firm delivery

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<sup>1</sup> Rebuttal Expert Report of Aaron J. Stai (hereafter referred to as: "Stai Rebuttal Report").

<sup>2</sup> Expert Report of Seabron Adamson (hereafter referred to as: "Adamson Expert Report").

<sup>3</sup> Adamson Expert Report, p. 15.

<sup>4</sup> Stai Rebuttal Report, p. 3, emphasis added.

obligations when gas supplies are available to honor those obligations would act to undermine efficient and reliable gas market operations.

6. In his rebuttal report, Mr. Stai discusses EPO's February 22, 2021 letter, which he describes as a declaration of Force Majeure.<sup>5</sup> He also references the extreme weather events in the region and the fact that EPO had created a "back-to-back" transaction with Chevron, under which Chevron failed to supply gas to EPO.<sup>6</sup>

## 2.1 EXTREME WEATHER AND FORCE MAJEURE EVENTS

7. Addressing the broader regional events first, it is easy to see why Mr. Stai's concept of Force Majeure, which could effectively excuse all delivery obligations in an entire region affected by a cold weather event (without regard to available supplies of natural gas) makes little economic sense.
8. If the mere presence of a major storm was the trigger for Force Majeure, rather than specific events affecting deliveries under each individual contract, then every supplier in a region affected by such a storm could claim Force Majeure – regardless of whether their natural gas supply was impacted – and no gas would need to be delivered at all. If the price for natural gas increases during such a weather event, Mr. Stai's concept of force majeure creates highly perverse incentives for sellers who can, in fact, fulfill their firm delivery obligation with available supplies of natural gas to declare force majeure under lower priced firm contracts in order to sell their available gas supplies at higher prices during the weather event.<sup>7</sup>
9. Unless a Force Majeure declaration is specifically tied to an event that precludes the seller from selling gas, sellers would be disincentivized to meet

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<sup>5</sup> I have previously outlined my understanding of why this letter is not a valid declaration of a force majeure, see: Adamson Expert Report, pp. 24-25; Stai Rebuttal Report p. 5.

<sup>6</sup> Stai Rebuttal Report, p. 4-5.

<sup>7</sup> I understand that Section 11.3(iii) of the NAESB agreed to between CPS Energy and EPO specifically restricts the use of Force Majeure in a situation where the seller could sell gas at a "more advantageous price than the Contract Price." CPS\_EPO\_00000583 (Hereafter: "Base NAESB"), Section 11.3, p. 7.

the terms of their preexisting contracts. Making contracts dependent on the *ex-post* incentives of sellers would tend to undermine forward contracting in the gas market and economists have long noted the importance of forward contracts in commodity markets.<sup>8</sup>

10. This is particularly important when dealing with an extensive and integrated midstream energy services entity, like Enterprise, who due to its expansive commercial operations in the natural gas sector, may have had access to a significant amount of gas in storage that could be utilized to cover any supply issues.

## 2.2 “BACK-TO-BACK” TRANSACTIONS AND FORCE MAJEURE

11. Mr. Stai also discusses the “back-to-back” transaction that Enterprise had internally set up wherein Chevron was an upstream supplier of natural gas for Deal #503805.<sup>9</sup> However as I noted in my initial report, CPS Energy did not contract with Chevron, nor is Chevron a party to Deal #503805. Rather, CPS Energy contracted directly with EPO. Neither of the traders for the parties discussed limiting EPO’s firm delivery obligations to its supplies from Chevron or any other upstream supplier.<sup>10</sup> EPO’s firm delivery obligation under its transaction confirmation with CPS Energy did not specify Chevron, or any other supplier, as a limited source of supply for EPO’s delivery obligations.<sup>11</sup>
12. From a business standpoint, allowing any failure of a back-to-back supply transaction to automatically trigger a Force Majeure, even if other sources of gas were available to the seller, disincentivizes the seller from contracting with reliable sources of supply. That is, if a seller can avoid honoring a firm transaction simply because a single source of supply fails, then a seller with a back-to-back contract and access to gas from the market or other sources

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<sup>8</sup> See, for example: Jha, A. and Wolak, F., May 2023, “Can Forward Commodity Markets Improve Spot Market Performance? Evidence from Wholesale Electricity,” *American Economic Journal: Economic Policy*, URL: [https://web.stanford.edu/group/fwolak/cgi-bin/sites/default/files/jha\\_and\\_wolak.pdf](https://web.stanford.edu/group/fwolak/cgi-bin/sites/default/files/jha_and_wolak.pdf)

<sup>9</sup> Stai Rebuttal Report at p. 5.

<sup>10</sup> CPSE-MDL\_000009574; CPSE-MDL\_000009247

<sup>11</sup> CPSE-MDL\_000006256

could be better off if the supplier under the back-to-back contract fails. In this case, when gas prices rise, the seller, freed of its firm obligation to the buyer due to the failure of the back-to-back arrangement, would be able to sell its other sources of gas to the buyer at a higher price. Again, these perverse economic incentives would undermine contracting in the gas market and affect market efficiency.

### **2.3 ECONOMIC IMPLICATIONS OF FORCE MAJEURE AND NON-DELIVERY**

13. Mr. Stai is silent on the economic and practical consequences of allowing sellers, such as EPO, to escape their firm delivery obligations due to regionwide weather events that do not prevent the seller from delivering natural gas or failure of a back-to-back transaction, even if the seller has other gas supplies available.
14. As I noted in my initial report, EPO had gas available to serve CPS Energy's demand. During the periods of its under deliveries, EPO was entering into intraday transactions with numerous counterparties at prices higher than that agreed to with CPS Energy under Deal #503805.<sup>12</sup> In fact, CPS Energy was one of the counterparties with which EPO entered into an intraday transaction during the deal period.<sup>13</sup>
15. I find it noteworthy that Mr. Stai does not rebut the analysis in my initial report which showed that EPO had other gas available to supply CPS Energy. He also does not comment on the fact that EPO sold gas to CPS Energy, during its period of under delivery under Deal #503805, in a separate transaction at a higher price.<sup>14</sup>

### **3. CPS ENERGY COVERED EPO SHORTFALLS UNDER DEAL #503805**

16. Mr. Stai discusses the Cost-to-Cover methodology in his report, detailing the various remedy situations discussed in the NAESB signed between CPS

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<sup>12</sup> Adamson Expert Report, p. 22.

<sup>13</sup> See for reference: CPSE-MDL\_000006364

<sup>14</sup> *Ibid*; CPSE-MDL\_000001542, Tab: Transaction Data

*Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s)*<sup>17</sup>

19. Mr. Stai's concept of requiring each cover trade to be made on a corresponding daily basis ignores how the gas market works in practice, especially over weekend/holiday periods when there is no individual daily market. In these periods, gas trades in blocks over multiple days for delivery over each day. Covering each day's volume independently on an intraday basis is likely to be impractical or uneconomic in thin intraday markets over a weekend. In fact, doing so would probably be disadvantageous to non-performing sellers such as EPO, as the cover costs would be higher in these thin markets.

20. Mr. Stai also appears to ignore the economic requirements on cover transactions in Section 2.10 of the NAESB, which states that the performing party (CPS Energy) should use commercially reasonable efforts to obtain gas:

*... at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.*<sup>18</sup>

21. In my opinion, in this case these factors support the commercial reasonableness of CPS Energy's actions. On February 22, 2021, EPO sent CPS Energy a letter stating that it may suspend performance due to an event of Force Majeure.<sup>19</sup> I understand from counsel that EPO did not provide notice of a potential Force Majeure event before the February 22, 2021 letter, nor any subsequent notice definitively claiming Force Majeure. Further, CPS Energy clearly had an immediate need for gas to meet human needs obligations in the

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<sup>17</sup> Base NAESB, Section 3.2, p. 3.

<sup>18</sup> Base NAESB, Section 2.10, p. 2.

<sup>19</sup> EPO\_00001695, pdf p. 2.

middle of a major crisis. The quantities EPO failed to deliver on the later days of the period were quite large and occurred over a holiday weekend during a period when demand was extremely high. It appears commercially reasonable to me that CPS Energy did not attempt to cover EPO's shortfalls on a day-by-day basis.

### 3.2 USE OF ALTERNATE DELIVERY POINTS

22. Mr. Stai attempts to argue that there were no replacement transactions at West Texas Map to account for EPO's under deliveries. As a result of this, Mr. Stai argues the cost-to-cover calculations should be completed "utilizing the agreed published Spot Price[.]"<sup>20</sup>

23. Mr. Stai fails to point to any requirement in the NAESB that replacement transactions needed to have been made at West Texas Map. In fact, I understand that the Cover Standard language in the NAESB specifically states that the purchase price paid for cover transactions must be "adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s)[.]"<sup>21</sup> I understand that this provision allows for adjustments to the amounts recoverable under the Cover Standard if cover gas is to be delivered to a delivery point other than the one contemplated in the original transaction. In my commercial experience, it is not uncommon for parties to seek cover gas at different delivery points.

24. I note that, in fact, the NAESB allows for cover transactions by a Buyer, like CPS Energy, that are not even in the form of natural gas, and hence would necessarily *not* be delivered to the original Delivery Point. Section 2.10 of the NAESB states:

*"Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (I) if Buyer is the performing*

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<sup>20</sup> Stai Rebuttal Report, p. 18.

<sup>21</sup> Base NAESB, Section 3.2, p. 3.

# Exhibit SCA Rebuttal-1

## Documents Relied Upon

### Documents Produced in Litigation

- Rebuttal Expert Report of Aaron J. Stai, dated March 15, 2023.
- Expert Report of Seabron Adamson, dated January 11, 2023.
- CPS\_EPO\_00000583 Base Contract for Sale and Purchase of Natural Gas, signed May 1, 2008.
- CPSE-MDL\_000009574 ICE Chat conversation between Stanton Brown of Enterprise and Ken Skaer of CPS Energy, dated February 4, 2021.
- CPSE-MDL\_000009247 ICE Chat conversation between Sean Lloyd of Enterprise and Ken Skaer of CPS Energy, dated February 11, 2021.
- CPSE-MDL\_000006256 CPS Transaction Confirmation for Immediate Delivery between Seller Enterprise Products Operating LLC and Buyer City of San Antonio City Public Service Board, dated February 12, 2021, CPS Trade #503805.
- CPSE-MDL\_000006364 CPS Transaction Confirmation for Immediate Delivery between Seller Enterprise Products Operating LLC and Buyer City of San Antonio City Public Service Board, dated February 16, 2021, CPS Trade #503910.
- CPSE-MDL\_000001542 CPS Transaction Summary, February 2021.
- EPO\_00001695 Notice of Event of Force Majeure under the Base Contract for the Sale and Purchase of Natural Gas between City of San Antonio City Public Service Board and Enterprise Products Operating LLC, dated February 22, 2021.
- CPSE-MDL\_000006362 CPS Transaction Confirmation for Immediate Delivery between Seller Castleton Commodities Merchant Trading L.P. and Buyer City of San Antonio City Public Service Board, dated February 23, 2021, CPS Trade #62304

### Public Documents

- Jha, A. and Wolak, F., May 2023, "Can Forward Commodity Markets Improve Spot Market Performance? Evidence from Wholesale Electricity," *American Economic Journal: Economic Policy*, URL: [https://web.stanford.edu/group/fwolak/cgi-bin/sites/default/files/jha\\_and\\_wolak.pdf](https://web.stanford.edu/group/fwolak/cgi-bin/sites/default/files/jha_and_wolak.pdf)