**120 FERC ¶ 61,086**
**UNITED STATES OF AMERICA**
**FEDERAL ENERGY REGULATORY COMMISSION**

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Energy Transfer Partners, L.P. — Docket No. IN06-3-002
Energy Transfer Company
ETC Marketing, Ltd.
Houston Pipeline Company
Oasis Pipeline, L.P.
Oasis Pipeline Company Texas, L.P.
ETC Texas Pipeline Ltd., Oasis Division

ORDER TO SHOW CAUSE AND
NOTICE OF PROPOSED PENALTIES

(Issued July 26, 2007)

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1. Pursuant to section 385.209(a)(2) of the Commission's regulations,[1] the Commission directs Energy Transfer Partners, L.P.; Energy Transfer Company (ETC); ETC Marketing Ltd. (ETC Marketing), and Houston Pipeline Company, (collectively, ETP)[2] to show cause no later than thirty days from the date of this order why the Commission should not find that: (1) ETP manipulated markets at Houston Ship Channel (HSC) and Waha, Texas, on dates specified below from December 2003 through December 2005; (2) ETP should pay civil penalties in the amount of $82,000,000 and disgorge $69,866,966, plus interest, in unjust profits resulting from its manipulations; and (3) ETP's blanket certificate to sell gas subject to the Commission's jurisdiction should be revoked.

2. The Commission also directs Oasis Pipeline, L.P.; Oasis Pipeline Company Texas, L.P.; and ETC Texas Pipeline LTD., Oasis Division (collectively, Oasis Pipeline) to show cause why the Commission should not find that Oasis Pipeline: (1) unduly discriminated against non-affiliated shippers and unduly preferred one or more affiliated shippers; (2) charged rates in excess of the maximum lawful rate for service under section

[1] 18 C.F.R. § 385.209(a)(2) (2006).

[2] ETP is a publicly-traded partnership that owns and operates natural gas pipelines and storage facilities in Texas, among other energy-related assets, and conducts natural gas trading operations. *See* www.energytransfer.com/aboutETP.asp.

311 of the Natural Gas Policy Act of 1978 (NGPA); (3) failed to file an amended operating statement; and (4) should pay civil penalties in the amount of $15,500,000 and disgorge $267,122 in unjust profits, plus interest.

3. ETP received multiple opportunities to present its position prior to the issuance of this order, both orally and in writing. Although the Commission is preliminarily of the view that ETP violated the Commission's rules, statutes, and regulations as set forth in this order, ETP is now provided with another chance to respond.[3]

## I. SUMMARY

4. In late September 2005, the Commission staff received a call on its Enforcement Hotline[4] alleging that the market for prompt month (*i.e.,* next month) fixed price gas (*i.e.,* gas the price of which is determined in a bilateral trade or agreement) at HSC, a major trading hub, was manipulated on September 28, 2005. The Office of Enforcement (Enforcement or staff) conducted a formal, non-public investigation of ETP's trading from December 2003 through December 2005 and its operation of its Oasis Pipeline. The investigation concluded that ETP manipulated wholesale natural gas prices at HSC by suppressing them to benefit ETP's financial positions and other physical positions. The investigation also concluded that ETP manipulated daily prices at Waha on December 23, 2005 and December 28, 2005, and that Oasis Pipeline unduly discriminated against non-affiliated shippers, unduly preferred one or more affiliated shippers, charged some interstate customers transportation rates that exceeded the lawful maximum rate, and failed to file an amended Operating Statement.

5. The facts tell the story of ETP's manipulations. ETP set up its financial and

[3] This order constitutes notice of proposed civil penalties. *See Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 7, 12 (2006). Under the applicable rule, 18 C.F.R. § 385.213 (2006), ETP must file an answer that provides a clear and concise statement regarding any disputed factual issues and any law upon which it relies. ETP must also, to the extent practicable, admit or deny, specifically and in detail, each material allegation of this order and set forth every defense relied upon. Upon receipt of ETP's answer, the Commission has many options of how to proceed. It may, with respect to the manipulation issues under the NGA, request briefs or set specified issues for a trial-type hearing, with full discovery, before an administrative law judge, or issue an order on the merits. And with respect to the transportation issues under the NGPA, the Commission may request briefs, set specified issues for a trial-type hearing before an administrative law judge, or issue an order on the merits. Should the Commission enter an order imposing penalties against ETP on the NGPA issues, ETP would have a right to have that order reviewed in a United States district court.

[4] *See* 18 C.F.R. § 1b.21 (2006).

physical portfolio to profit from lower prices at HSC. ETP then sold fixed price gas for prompt month delivery at HSC for less than a competitive price. ETP's HSC manipulations affected the Platts *Inside FERC* (IFERC) HSC index for monthly natural gas. This index is used by market participants to price gas and is critically important to understanding ETP's manipulations. Natural gas for prompt month delivery is commonly traded in the last week of the preceding month, known as bid week, for delivery on each day of the following month at a specified location. Many market participants voluntarily report their fixed price transactions for the sale and purchase of natural gas executed in bid week for prompt month delivery to *Inside FERC*. This industry newsletter, published by The McGraw-Hill Companies, receives reports of fixed price sales and purchases at certain trading points and compiles them to create an index price representative of transactions at those points. *Inside FERC* then publishes these index prices. Many physical and financial contracts are priced by reference to the IFERC index at various locations.

6. ETP dominated sales of fixed-price gas at HSC, often comprising 80 percent or more of total sales. ETP reported its fixed price sales at HSC to *Inside FERC* and thus was able to use its domination of the market to virtually set the IFERC HSC index. In spite of ETP's sales activity at HSC, it was consistently a net buyer of monthly gas priced at the IFERC HSC index, and thus was positioned to benefit from the lower prices it caused in the months it manipulated fixed-price sales at HSC. Under the index contracts ETP entered, ETP agreed that a producer or other market participant would deliver to ETP a certain volume of gas for a given month at a particular location, to be priced at the IFERC HSC index price, plus or minus a certain adjustment. ETP benefited from a lower IFERC HSC index because it nearly always bought more gas priced at IFERC HSC than it sold at suppressed prices in fixed price deals.

7. At the same time, ETP had entered into financial transactions known as basis swaps to leverage its benefit from suppressing monthly physical prices at HSC. A basis swap is a derivative instrument whose value is based on the difference between the New York Mercantile Exchange Natural Gas Futures Contract (NYMEX Contract) settlement price for a given month and the index at a specified location for that same month. The NYMEX Contract is a contract for the future delivery of gas at Henry Hub, a liquid trading point in Louisiana, which usually trades at a higher price than HSC. ETP profited if the difference between prices at HSC and the NYMEX Contract widened, *i.e.*, the price at HSC became lower relative to the higher priced NYMEX Contract. Stated another way, ETP took a "short" position in HSC basis swaps, meaning that it bet that prices at HSC would fall relative to the NYMEX Contract, *i.e.*, that the spread between these two points would widen. Because ETP had the power to suppress price at HSC, this was not really a bet at all, but a manipulation that was spectacularly successful in October 2005 -- ETP realized more than $40,000,000 in unjust profits -- and highly profitable in eight other months from January 2004 through December 2005. Forty million dollars for single day's trading represented a huge return for an asset-based, fee-based business. In

sum, ETP forewent potential profit of its fixed price sales to obtain far larger revenues in both its physical and financial portfolio.

8. On September 28, 2005, ETP's sales of October 2005 delivery of gas -- the trading that triggered the Enforcement Hotline call and hence the first trading that staff examined -- resulted in dramatically lower prices at HSC than existed at other South and East Texas points that historically have traded very close to HSC. For several years preceding ETP's September 28, 2005 manipulation, monthly prices between HSC and nearby points were typically within ten cents of each other. Yet for October 2005, monthly prices at HSC were at least $1.24 per MMBtu lower at HSC than at these other points. In the other eight months in which HSC manipulated fixed price gas at HSC, prices at HSC were still lower, albeit by smaller amounts, than indicated by the longstanding price relationship between HSC and nearby Texas points.

9. ETP's most significant manipulation occurred on September 28, 2005. ETP began selling at $10.25 at 2:11 p.m. (Eastern Time) after the most recent transaction in the market (a minute earlier) indicated that gas at HSC was valued at $11.95. Selling most of its 10 Bcf in sales that afternoon in a thirty minute burst, ETP suppressed prices in the face of significant increases in the NYMEX Contract and pricing points in South and East Texas. While ETP was selling a large amount of fixed price gas at HSC, it was actually a net buyer of 12.9 Bcf that month at the HSC IFERC index. In other words, ETP sold 10 Bcf in fixed price sales of prompt month gas on September 28, 2005 at HSC, but it had agreed to buy a larger volume of gas priced at the IFERC HSC index. In this situation, ETP was a net buyer of gas, despite being the dominant seller of fixed price gas at HSC. Further, ETP was short HSC basis swaps in the amount of 23.8 Bcf, meaning that it made a huge bet that the IFERC HSC index would fall relative to the NYMEX Contract settlement price. Accordingly, by suppressing the price of gas at HSC, ETP benefited enormously from its other physical and financial short basis positions. This was a risk-free, win-win situation for ETP. It knew to a certainty that by suppressing price at HSC, the losses it incurred by selling fixed price gas at less than a competitive price would more than be compensated by profits realized by its net physical long position and its financial positions. ETP's combined unjust profits from this activity were $40,286,727. The Commission proposes that ETP pay $34,000,000 in civil penalties for its manipulation, and to disgorge the unjust profits, plus interest.

10. ETP intended to manipulate market prices at HSC on September 28, 2005. The company officer in charge of trading at HSC, Marshall ("Mackie") McCrea, told at least one of his traders on September 26, 2005 that "as long as we sell as much as we can sell, it ought to push Ship down."[5] McCrea also stated, "You know, it'd be nice to have Ship

[5] Audio digital recording/Wav file of Timothy Small WAV557 (Sept. 26, 2005) (Small, WAV557 (Sept. 26, 2005)); Deposition of Marshall McCrea Exhibit 5 (Apr. 26, 2006) (McCrea Dep. Ex. 5).

kind of spread back out from, uh, both for this month or October, and also for our summer/winter business."[6] In this call, McCrea demonstrates that he intended ETP to "push Ship Down," *i.e.*, to suppress price at HSC, which would widen the price spread at HSC from Henry Hub. Further, ETP-affiliated traders coordinated their trading activities. In the same voice recording, ETP-affiliated traders discussed how they would share profits among the San Antonio, Houston and Dallas trading desks of the company.[7]

11. ETP's manipulative strategy worked. Fixed price gas for October delivery fell at HSC. As noted, prompt month gas at HSC historically traded within pennies or nickels of gas at nearby south and East Texas points.[8] But in this month, the price of gas at HSC traded between $1.29 below Katy and $2.20 below other south Texas points. Neither market fundamentals, nor Hurricane Rita, which hit landfall north of Houston on September 24, 2005, can explain this radical price divergence. ETP had no legitimate business purpose for suppressing the price of fixed price gas at HSC to benefit other positions.

12. ETP's strategy of taking physical and financial positions that benefited from artificially low prices at HSC, flooding the market with offers to suppress price, and then reaping the rewards of its manipulation was most successful in September 2005, but ETP practiced this strategy eight additional times from December 2003 through November 2005. The dates of ETP's additional manipulations are December 29, 2003 (for gas delivered in January 2004); September 24, 2004 and September 27, 2004 (for gas delivered in October 2004); November 23, 2004 and November 24, 2004 (for gas delivered in December 2004); December 28, 2004 (for gas delivered in January 2005); January 27, 28, and 31 (for gas delivered in February 2005); June 28, 2005 (for gas delivered in July 2005); August 29, 2005 (for gas delivered in September 2005); and November 28, 2005 (for gas delivered in December 2005).

13. While the profits that ETP earned from its manipulations varied month to month, ETP's strategy was consistent. In months it selected, ETP traded, usually in the last half-hour before the close of trading in the prompt-month NYMEX Contract, to suppress fixed price gas at HSC for prompt month delivery. ETP set up its portfolio to benefit from a suppressed price at HSC: ETP executed contracts to purchase gas at prices referenced to the IFERC index. Thus, even though ETP was a seller of gas at HSC on the days it executed its manipulations, in all but one of the months it manipulated the market at HSC, ETP was a net buyer of gas priced at the IFERC HSC index, thus benefiting from lower prices. ETP also had short HSC basis swap positions pegged to the IFERC HSC

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[6] *Id.*

[7] *Id.*

[8] *See infra* P 59 and Chart 5.

index that gained when ETP suppressed fixed price gas and the IFERC HSC index. Chart 1, *infra* at P 39, shows the profit that ETP derived from its physical and financial positions by reason of its manipulations to suppress price at HSC. ETP received more than $27,351,689 in unjust profits from its manipulations in these eight additional months. The Commission proposes that ETP disgorge this amount, plus interest, and that it pay $45,000,000 in civil penalties for these manipulations.

14. Contemporaneous voice recordings, in addition to the September 26, 2005 conversation of McCrea, further demonstrate ETP's manipulations. For example, voice recordings in the autumn and early winter of 2004 show that some market participants knew ETP was suppressing price at HSC and that prices at HSC were not the result of "fundamentals." Further, after ETP's huge September 28, 2005 manipulation, an ETP trader boasted that making money at HSC was "like taking candy from a baby."[9] The same trader also said in October of 2005, the company was "swimming in money right now … don't stress over not making money right now 'cause, it's, there's, they're, they're going to have more of a problem with explaining how we made this much money."[10] Another ETP trader that autumn, referencing ETP's trading, compared ETP to Enron.[11]

15. ETP's manipulations had severe adverse consequences for competitive wholesale natural gas markets and the country's natural gas customers. Consumers are harmed when prices are set by manipulation. The harm from an upward manipulation is immediate. Harm from downward manipulation is more long term. Entities that sold physical gas to ETP at the artificially-reduced IFERC HSC index were harmed by ETP's trading manipulations. When producers receive less than the market price for their gas, price signals that would otherwise tend to stimulate production, and thereby benefit gas customers nationwide, are frustrated. Manipulated markets discourage trading, rendering them less efficient and raising costs to consumers. In addition to producers, royalty owners and taxing authorities were harmed by the artificially-reduced prices. Counterparties in the referenced financial basis transactions were also harmed by ETP's manipulations. ETP wrongfully deprived counterparties of revenues they should have received but for ETP's manipulations. Market manipulation is necessarily inconsistent with competitive markets.

16. The Commission directs ETP to show cause why the Commission should not revoke ETP's blanket market certificate authorizing it to sell gas at wholesale in interstate

[9] Small WAV3697 (Oct. 7, 2005).

[10] Small WAV3B4A (Oct. 18, 2005).

[11] Audio digital recording/Wav file of Luke Fletcher WAVC27 (Nov. 30, 2005) (Fletcher WavC27 (Nov. 30, 2005)).

commerce subject to the Commission's jurisdiction. ETP's manipulations were flagrant, as evidenced by analyses of ETP's actual trades, the direction of senior management to commit them, the frequency with which they occurred and the large unjust profits ETP derived from them. They undermined competition in the wholesale interstate gas market at HSC.

17. ETP's market manipulations violated the Commission's anti-manipulation rule, promulgated under authority of the Natural Gas Act (NGA), that was then in effect.[12] Market Behavior Rule 2 prohibited the holder of a blanket certificate from "engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices . . . ." ETP violated Market Behavior Rule 2, discussed *infra* at P 34, when it manipulated physical gas markets by artificially suppressing the IFERC HSC index to derive unjust profits in other physical and financial contracts. Courts and federal agencies have recognized that trading to artificially lower prices in one market in order to derive a financial benefit in the same or in a related market is a form of market manipulation.[13]

18. ETP also manipulated daily prices at Waha and Permian to benefit its short Waha and Permian index swap positions. A party that is short an index swap position profits from a lower *daily* index price, as published in Platts' *Gas Daily*, relative to a *monthly* index price at the same location. By suppressing the daily price at Waha, ETP benefited by realizing an increase in the value of its short index swap position that occurred when the daily index price fell relative to the monthly index price at Waha. ETP received unjust profits of $2,228,550 for this activity. The Commission proposes that ETP pay a civil penalty in connection with this activity in the amount of $3,000,000, and to disgorge the unjust profits, plus interest.

19. In sum, the Commission proposes that ETP disgorge in unjust profits $69,866,966, plus interest, and pay civil penalties in the amount of $82,000,000 for its unlawful market manipulations.

20. ETP also committed violations of Commission requirements under the Natural Gas Policy Act of 1978 (NGPA). ETP owns Oasis Pipeline, a Texas intrastate pipeline

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[12] 18 C.F.R. § 284.403(a) (2005) [hereinafter, Market Behavior Rule 2].

[13] *See, e.g., Crane Co. v. Westinghouse Air Brake Co.*, 419 F.2d 787 (2d Cir. 1969); *Internet Law Library, Inc. v. Southridge Capital Mgmt., LLC*, 223 F. Supp. 2d 474, 487 (S.D.N.Y. 2002) (*Internet Law Library*). A 2001 settlement with the Commodity Futures Trading Commission (CFTC) pertaining to manipulation of an electric power market is also instructive. *In re Avista Energy, Inc. and Michael T. Griswold*, CFTC Docket No. 01-21, 2001 CFTC LEXIS 107 (Aug. 21, 2001) (*Avista*).

that provides interruptible only transportation pursuant to section 311 of the NGPA.[14] Oasis Pipeline violated section 284.9(b) of the Commission's regulations and the provisions of its operating statement, which prohibit undue preferences and undue discrimination, as well as section 284.122(b) of the Commission's regulations, which prohibits intrastate pipelines from charging in excess of the maximum Commission-approved rate for NGPA section 311 transportation. First, Oasis Pipeline refused or discouraged requests for interstate transportation service from similarly-situated non-affiliated shippers, while at the same time it was providing this service to affiliated shippers. Second, Oasis Pipeline charged non-affiliated interstate shippers rates that exceeded the maximum Commission-approved rate of $0.1239 per MMBtu. Third, Oasis Pipeline unduly preferred its affiliate, ETC Marketing, by allowing it to ship interstate gas under a firm intrastate contract.

21. Oasis Pipeline had an economic incentive to discriminate against non-affiliates when the basis differential between Waha and Katy exceeded the maximum lawful rate for interstate transport of $0.1239 (plus fuel). If, for example, gas at Waha could be purchased for $6.00 per MMBtu and sold at Katy for $7.00 per MMBtu, a shipper could purchase interstate gas at Waha for shipment to Katy at the maximum transportation rate of $0.1239 (plus fuel) and pocket the amount above $0.1239. Oasis Pipeline used the three types of illegal practices described above to ensure that these profits stayed within the ETP corporate family, rather than losing them to non-affiliates. Oasis Pipeline's violations were continuous from January 26, 2004 through June 30, 2006. We propose to assess a civil penalty of $15,000,000 and disgorge $267,122 in unjust profits, plus interest.

22. Also, the owner of the Oasis Pipeline system, Oasis Pipeline Company Texas, L.P., violated section 284.123(e) of the Commission's regulations[15] when it failed to timely amend its Operating Statement to reflect a Capacity Lease and Commercial Operations Agreement that changed how it operated the pipeline. Oasis Pipeline's violation of the filing requirements has been continuous from January 26, 2004 to the present. We propose to assess a civil penalty of $500,000.

## II. COMPANY BACKGROUND

### A. ETP Has Substantial Physical Assets in Texas

23. ETP owns, among other entities, ETC, a midstream operating subsidiary. ETP is one of the largest master (*i.e.*, publicly-traded) limited partnerships in the United States by equity market capitalization. For the fiscal year ending August 31, 2006, ETP had

[14] 15 U.S.C. § 3371 (2000).

[15] 18 C.F.R. 284.123(e) (2006).

revenues of approximately $7,900,000,000, of which approximately 87 percent were from its natural gas operations (with the remainder from retail propane distribution).[16] ETP has a current market capitalization of roughly $8.6 billion.[17] ETP owns approximately 12,000 miles of natural gas pipeline systems that link supply areas in West Texas such as Waha with East and South Texas market centers such as Katy, HSC, and Carthage including: (1) the Houston Pipeline Company (HPL), an intrastate pipeline system, which serves the HSC market, and the associated Bammel Gas Storage Facility, one of the largest underground reservoir storage fields in North America with a total working gas capacity of 65 Bcf; (2) Oasis Pipeline, an intrastate natural gas pipeline that runs from the Waha Hub in West Texas to the Katy Hub in South Texas; and (3) the Energy Transfer Fuel, LP (ET Fuel) system, an intrastate pipeline system that extends from the Waha Hub in West Texas and traverses North, Central and East Texas.

### B. ETP Optimizes its Physical Assets By Using Specific Trading Strategies

24. All of ETP's Texas pipelines are intrastate facilities that provide intrastate transportation service at market-based rates (normally a large percentage of the basis differential between the receipt and delivery points), rather than pursuant to a tariff on file with the Commission.[18] ETP optimizes assets such as ET Fuel and Oasis Pipeline by transporting third-party or ETP gas from West Texas supply areas to East/South Texas market centers such as Katy and HSC. It has limited ability to flow gas in the reverse direction from East/South Texas back to Waha. A wide price differential between Waha and East Texas increases the value of ETP's transportation and storage assets. In Autumn 2005, the price of gas at HSC was significantly higher than at Waha. ETP's asset optimization strategy for ET Fuel and Oasis also involves the use of financial contracts for both hedging and speculative purposes.

25. A financial contract that ETP traded in the period examined is the NYMEX Contract (or "look-alike" swaps traded on the Intercontinental Exchange, Inc. (ICE))[19]

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[16] Press Release, Energy Transfer Partners, L.P. Reports Record Year-To-Date Results, Dallas, Texas (November 14, 2006).

[17] http://money.cnn.com/quote/quote.html?symb=ETP.

[18] Oasis Pipeline and ETP Fuel also provide interstate transportation services pursuant to section 311 of the NGPA, 15 U.S.C. § 3371 (2000).

[19] The NYMEX Contract is not a purely financial instrument because it converts at expiration into an obligation to make or take delivery of physical gas. NYMEX "look-alikes" swaps traded on the Intercontinental Exchange, Inc. (ICE), by contrast, are purely financial instruments that operate much like the NYMEX Contract, but settle financially at the close and do not entail delivery.

and "basis swaps." A basis swap is a derivative instrument whose value is based on the difference between the settlement price of the NYMEX Contract for a given month and the index at a specified location for that same month.[20] The buyer pays the seller the settlement price of the NYMEX Contract for a given month, plus or minus a fixed amount (which is the expected, or forward, basis differential between Henry Hub and the index at a specified location, such as the IFERC HSC index). The seller pays the buyer the agreed upon index price and receives the NYMEX Contract settlement price, plus or minus the agreed-upon fixed amount. This fixed amount can be considered to be the price of the basis swap.

26. An illustration of ETP's practices in September 2005 provides useful context. ETP sold a large volume of HSC basis swaps for October at a weighted-average price of ($1.15). As a seller, ETP was required to pay the IFERC HSC index, which was $10.46, and received in return the NYMEX Contract settlement price (which was $13.91). Since the HSC October basis settled at ($3.45) (*i.e.* the difference of $13.91 and $10.46), ETP profited by the difference of the price it had paid and the HSC basis, which is $2.30 in this example. Thus, ETP stood to reap a substantial benefit from the widening of the basis that occurred on September 28, 2005. ETP's leading trader of gas at HSC, Timothy Small, was of course aware of its potential to benefit from falling HSC prices as the following deposition testimony illustrates:

> STAFF: How would your book benefit that day regarding price movement at Ship Channel?
>
> SMALL: The lower Ship is from the NYMEX settle, the more money the basis position would make.
>
> STAFF: Would your sales of fixed-price gas at Ship Channel tend to widen the Ship Channel basis out?
>
> SMALL: At the market where it was trading, yes.
>
> STAFF: Would---by widening it out, would your financial positions with respect to being short Ship Channel benefit?
>
> SMALL: Yes.[21]

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[20] *See generally*, Fletcher J. Sturm, *Trading Natural Gas: A Nontechnical Guide* 55-67 (1997).

[21] Deposition of Timothy Small, 63:3-15 (April 25, 2006) (Small Dep. 63:3-15); ICE Response to Subpoena Request No. 1 (Oct. 27, 2005) (Oct. 27 Subpoena).

27. A common strategy for hedging locational risk, *i.e.*, risk due to changes in prices between two points, is to sell basis swaps at the location where the physical gas will be sold, *e.g.*, HSC, and to purchase an equal volume of basis swaps at the location where the physical gas is purchased, *e.g.*, Waha. This strategy allows a trader to lock in a differential between two points, regardless of the relative prices movements between these points. Any profit or loss on the physical transactions will be offset by an equal and opposite profit or loss on the basis swap contracts. If the actual basis differential turns out to be narrower than the forward basis differential between the two points, *e.g.*, if the difference between the IFERC HSC index and the IFERC Waha index narrows, the reduction in the trader's profit margin on the physical sales will be exactly offset by the gain on the basis swap contract. By suppressing the IFERC HSC index, ETP reduced its profits on physical sales of gas on the referenced dates but more than compensated for these foregone profits because the lower HSC prices increased the value of its basis swaps and it lessened the cost of its IFERC HSC index purchases.

28. ETP's trading strategy was enabled by its ability to influence the IFERC HSC index due to its role as the dominant seller at HSC in this period. For example, in 2005, according to ICE and Platts data, ETP was responsible for over 95 percent of the fixed-price sales at HSC on ICE for October 2005 and December 2005 delivery.[22] The weighted-average of ETP's fixed-price sales on ICE was very close to the IFERC HSC index,[23] as would be expected given that ETP's sales essentially set this index.

29. ETP's ability to influence the IFERC HSC index was important not only because ETP could thereby profit consistently from its short HSC basis swap positions. Suppressing the price of fixed price gas at HSC, and thus the IFERC HSC index, meant that ETP could also profit from its position as a net buyer of physical gas priced at the IFERC HSC index. Industry contracts for the physical sale or purchase of gas at wholesale often have a price term that references the IFERC index price. This practice has gained commercial currency because the IFERC index provides an objective price reference for arms-length transactions that may be reflective of market values.[24] Accordingly, a producer and a market participant, such as a trader, might agree by contract that the producer will sell a certain volume of gas at a certain location, for delivery throughout the relevant month, based on the price for a specified location

[22] ICE Response to Oct. 27 Subpoena Request No. 1.

[23] On September 28, the weighted-average price of ETC's fixed-price sales at HSC was $10.49, and the IFERC HSC index settled at $10.46. On November 28, the weighted-average price of transactions on ICE was $7.82, and the IFERC HSC index settled at $7.88.

[24] *See generally, Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003), *clarification granted*, 105 FERC ¶ 61,282 (2003).

published in *Inside FERC*. Market participants price physical deals on the IFERC index in part because it is understood that neither contracting party can manipulate the HSC IFERC index price on which their contract is based.

30. For the months in which ETP manipulated the market at HSC, ETP sold HSC basis swaps in amounts more than three times as large as the volume of fixed price gas it sold at HSC. Accordingly, one third, on average, of the volume of HSC basis swaps that ETP sold were necessary to lock in the differential between Waha and HSC, while the remainder of its short position was a "speculative" bet on the direction of the HSC basis, *i.e.*, difference between the IFERC HSC index and the NYMEX Contract settlement price. This bet was not really speculative, however, because ETP was able to determine the outcome of the Platts IFERC HSC index and thus skew the value of its short HSC financial position in its favor. ETP's net short position enabled ETP to reap the unjust profits of any widening of the HSC basis, without any offsetting losses from its physical transactions.

31. The direction in which the manipulative conduct moves the price is immaterial to its legality. Courts routinely find that a downward manipulation violates section 10(b) of the Exchange Act and SEC Rule 10b-5.[25] In such cases, the conduct is manipulative because it "creat[es] a false impression of supply and demand . . . "[26] Courts have emphasized that defendants' "[f]ailure to disclose that market prices are being artificially depressed operates as a deceit on the market place and is an omission of a material fact."[27] Similarly, courts and the CFTC have condemned downward manipulations under the Commodity Exchange Act.[28] The downward manipulation that occurred in *Avista* is

[25] *See, e.g.*, *Internet Law Library, Inc.*, 223 F. Supp. 2d 474; *Compudyne Corp. v. Shane*, 453 F. Supp. 2d 807 (S.D.N.Y. 2006); *HealthExtras, Inc. v. SG Cowen Secs. Corp.*, 02 Civ. 9613, 2004 U.S. Dist. LEXIS 698 (S.D.N.Y. Jan. 20, 2004), *United States v. Regan*, 937 F.2d 823 (2d Cir. 1991); *Nanopierce Techs. v. Southridge Capital Mgmt., LLC*, 02 Civ. 0767, 2002 U.S. Dist. LEXIS 24,049 (S.D.N.Y. Oct. 10, 2002) (*Nanopierce*); *SEC v. Parnes*, 01 Civ. 0763, 2001 U.S. Dist. LEXIS 21722 (S.D.N.Y. Dec. 26, 2001).

[26] *Nanopierce*, 2002 U.S. Dist. LEXIS 24,049 at * 30.

[27] *See, e.g.*, *United States v. Charnay*, 537 F.2d 341, 351 (9th Cir. 1976).

[28] *See, e.g.*, *Strobl v. New York Mercantile Exch.*, 582 F. Supp. 770 (S.D.N.Y. 1984), *aff'd*, 768 F.2d 22 (2d Cir. 1984) (condemning under the Sherman Act and the Commodity Exchange Act a conspiracy by potato processors to artificially reduce the price of potato futures contracts); *Avista*, 2001 CFTC LEXIS 107. *See also In re Anthony J. Diplacido*, Comm. Fut. L. Rep. (CCH) ¶ 29,866 (Sept. 14, 2004); *In re Taylor*, Comm. Fut. L. Rep. (CCH) ¶ 29,594 (Sept. 30, 2003).

of particular relevance to the instant case. There, the CFTC found that Avista Energy engaged in a manipulative scheme to drive down the settlement price of NYMEX electricity futures contracts to increase the value of its positions in over-the-counter (OTC) derivative contracts.[29] The academic literature takes a similar view; making no distinction between the harms resulting from upward or downward manipulations. These harms may include: deadweight losses due to distortions in consumption, production, storage, and transportation, as well as a reduction in hedging effectiveness, and a decline in market liquidity.[30]

## III. LEGAL AUTHORITY

### A. The Commission has Jurisdiction Over ETP's Relevant Sales

32. The Commission has NGA jurisdiction over all sales of domestic natural gas for resale in interstate commerce by intrastate pipelines and their affiliates, other than sales from those pipelines' own production. Such sales are not "first sales" as defined by section 2(21)(A) of the NGPA[31] and thus were not exempted from the Commission's jurisdiction pursuant to the Natural Gas Wellhead Decontrol Act of 1989.[32]

33. The Commission has granted any person who is not an interstate pipeline a "blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the certificate holder to make sales for resale at negotiated rates in interstate commerce of any category of gas that is subject to the Commission's Natural Gas Act jurisdiction."[33] ETP sold gas pursuant to this blanket certificate, which essentially authorizes intrastate pipelines and their affiliates, such as ETP, to make sales of gas subject to the Commission's jurisdiction. ETP's fixed price sales from December 2003 through November 2005 were made for resale in interstate commerce. For example, ETP made sales to interstate marketers and buyers, including Cinergy Marketing & Trading LP; ConocoPhillips Company; Duke Energy Field Services Marketing LP; ONEOK Energy Services Company L.P.; Coral Energy Resources L.P.;

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[29] *Avista*, 2001 CFTC LEXIS at *5-6.

[30] Stephen Craig Pirrong, *Manipulation of Cash-Settled Futures Contracts*, 74 J. BUS. 221 (2001).

[31] 15 U.S.C. § 3301(21) (2000).

[32] *See* Order No. 644, *Amendments to Blanket Sales Certificates*, FERC Stats. & Regs., Regulations Preambles ¶ 31,153, at P 14-15 (2003); *Reporting of Natural Gas Sales to the California Market*, 95 FERC ¶ 61,262, at 61,929 (2001).

[33] 18 C.F.R. § 284.402(a) (2005).

and others.[34] ETP also has an off-system strategy to market gas out-of-state that results in sales to out-of-state customers.[35]

### B. Market Behavior Rule 2

34. Market Behavior Rule 2 proscribed ETP's manipulations at HSC and Waha.[36] Market Behavior Rule 2 stated in pertinent part as follows:

> Any person making natural gas sales for resale in interstate commerce pursuant to § 284.402 is prohibited from engaging in actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for natural gas.[[37]]

35. ETP violated Market Behavior Rule 2. ETP made sales in interstate commerce pursuant to section 284.402 (*i.e.*, its blanket certificate authority). ETP engaged in actions or transactions that were without a legitimate business purpose because there is no legitimate reason to suppress price in a market to benefit other positions. ETP's actions were intended to, or at a minimum foreseeably could have, manipulated prices because they were repeated and resulted in large unjust profits to ETP's other positions,

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[34] ICE Response to Oct. 27 Subpoena Request No. 1.

[35] Deposition of Douglas Ray, 69:5-74:19 (April 18, 2006) (discussing Exhibit 2) (Ray Dep. 69:5-74:19); ICE Response to Oct. 27 Subpoena Request No. 1.

[36] The conduct of ETC at issue occurred before January 26, 2006, the effective date of new anti-manipulation regulations approved in Order No. 670, *Prohibition of Energy Market Manipulation*, III FERC Stats. & Regs., Regulation Preambles ¶ 31,202 (2006). In Order No. 670, the Commission amended its regulations to implement Section 4A of the Natural Gas Act and Section 22 of the Federal Power Act, that had recently been enacted as part of the Energy Policy Act of 2005 (EPAct 2005), prohibiting the employment of manipulative or deceptive devices or contrivances. The amended regulations became effective January 26, 2006 and appear at Part 1c of the Commission's regulations, 18 C.F.R. Part 1c (2006). Prior to this date, and at all times relevant to ETP's manipulations discussed in this order, Market Behavior Rule 2 was in effect. While Market behavior Rule 2 was enacted before EPAct 2005, all violations of Market Behavior Rule 2 that occurred after the August 8, 2005 enactment date of EPAct 2005 are subject to the maximum civil penalty provisions of section 314 of EPAct 2005, which are $1,000,000 per day per violation.

[37] 18 C.F.R. § 284.403(a) (2005).

and because the senior executive in charge of trading authorized the manipulation in September 2005. ETP manipulated prices by using its market power, and trading in such a way, as to artificially suppress prices for prompt month gas at HSC and daily gas at Waha on the noted dates that resulted in prices other than would have resulted if the forces of supply and demand had prevailed absent ETP's conduct at issue.

### C. The Commission's Civil Penalty Authority

36. The Energy Policy Act of 2005 (EPAct 2005) amended the NGA to provide that any person who violates the NGA, "or any rule, regulation, restriction, condition or order made or imposed by the Commission thereunder, shall be subject to a civil penalty of not more than $1,000,000 per day per violation for as long as the violation continues."[38] Market Behavior Rule 2 was a regulation issued under the NGA. Accordingly, violations of Market Behavior Rule 2 that occurred on or after the August 8, 2005 enactment date of EPAct 2005 are subject to this civil penalty authority.

37. EPAct 2005 also amended the NGPA to increase the maximum civil penalty to $1,000,000 for any one violation, with each day constituting a separate violation in the case of a continuing violation.[39] Violations of Commission requirements under authority of the NGPA that occurred before the enactment date of EPAct 2005 are subject to a civil penalty in the amount of $5,500 per violation and violations that occurred on or after the enactment date of EPAct 2005 are subject to a civil penalty of $1,000,000 per violation.

## IV. DISCUSSION

38. ETP committed three types of violations: (1) monthly manipulations at HSC; (2) daily manipulations at Waha; and (3) different types of transportation related violations by its Oasis Pipeline. These violations are discussed in turn.

### A. ETP Manipulated the Price of Fixed-Price Natural Gas at HSC on Nine Occasions from December 2003 through November 2005

39. Chart 1 demonstrates the breadth and detail of ETP's manipulations of fixed price gas at HSC for prompt month delivery. This table also sets forth the unjust profits ETP derived from its manipulation based on a portfolio perspective. To calculate unjust profits, the Commission sums the short basis swap positions and the net IFERC HSC physical purchases and multiples this sum by ETP's effect on the market. This amount is

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[38] 15 U.S.C. § 717t-1, *added by* EPAct 2005, Pub. L. No. 109-58, § 314(b)(1)(B), 119 Stat. 594, 691 (2005).

[39] 15 U.S.C. § 3414 (2000), *amended by* EPAct 2005, §§ 314(a)(2) and 314(b)(2), 119 Stat. 594, 690-91 (2005).

then netted for ETP's fixed price sales at HSC.

**Chart 1**

| Month | Physical Gas @ IFHSC (MMBtu) | Financial Basis Position HSC (MMBtu) | Effect on HSC Basis | ICE % | Comparison to Texas Points | Gross Unjust Profits | Net Unjust Profits |
|---|---|---|---|---|---|---|---|
| Jan 04 | (3,937,542) | (10,462,500) | ($0.14) | 100% | ($0.19) | $913,494 | $618,374 |
| Oct 04 | 3,255,057 | (29,527,500) | ($0.05) | 91% | ($0.37) | $1,639,128 | $1,207,003 |
| Dec 04 | 7,017,860 | (14,074,000) | ($0.10) | 88% | ($0.81) | $2,109,186 | $1,132,886 |
| Jan 05 | 21,617,611 | (4,805,000) | ($0.07) | 100% | ($0.03) | $1,849,583 | $1,636,783 |
| Feb 05 | 27,533,997 | (19,457,428) | ($0.05) | 55% | ($0.10) | $2,349,571 | $2,062,386 |
| Jul 05 | 9,510,831 | (22,610,848) | ($0.06) | 81% | ($0.03) | $1,766,692 | $1,039,086 |
| Sep 05 | 5,081,797 | (7,241,520) | ($0.46) | 100% | ($0.49) | $5,668,726 | $3,894,368 |
| Oct 05 | 12,881,684 | (23,835,153) | ($1.55) | 97% | ($2.07) | $56,911,097 | $40,286,727 |
| Dec 05 | 16,382,361 | (45,181,360) | ($0.30) | 96% | ($0.37) | $18,469,116 | $15,760,802 |
| Total | 99,343,656 | (177,195,309) | | | | $91,676,594 | $67,638,416 |

40. A brief explanation of the column headings in Chart 1 will be helpful.

- The first column on Chart 1 sets forth the month for delivery of gas at HSC that ETP manipulated.
- The second column sets forth ETP's net physical position priced at IFERC HSC.
- The third column sets forth ETP's net financial basis position priced at IFERC HSC.
- The fourth column sets forth the effect ETP's manipulative trading had on HSC basis.
- The fifth column sets forth ETP's sales of prompt month gas at HSC on ICE as a percentage of all such sales.

- The sixth column sets forth the difference in dollars between prices for prompt month gas at HSC and a weighted average of prices at a basket of other South and East Texas points as compared to the historical price difference among these points prior to ETP's market manipulations.

- The final columns set forth gross and net unjust profits ETP derived from its trading activity.

41. Before embarking on the discussion of ETP's trading, it is important to emphasize that the Commission does not consider high volume trading during a short period of time alone to be illegal or manipulative. Nor is it illegal, *per se*, to possess a large share of trading activity or to engage in speculation. However, where a firm uses some combination of market power and trading activity, against its economic interest in one market, in order to benefit its position in another market by artificially moving the market price, the firm likely crosses the line into the realm of manipulation. Our preliminary conclusion here is based on all of the facts and circumstances of the case, including, as discussed more fully below, the fact that ETP traded in a manner that had the effect of driving down the IFERC HSC index price; ETP's long physical position tied to the IFERC HSC index price and short HSC basis swap position, both of which benefited from a lower IFERC HSC index price; and ETP's manifested intent to manipulate. The Commission also considered ETP's repeated pattern, going back to December 2003, of suppressing the price of fixed price gas at HSC and positioning itself to benefit from a lower IFERC HSC index price.

42. The Commission now sets forth the specific activities ETP undertook to manipulate the price of fixed price gas at HSC for prompt month delivery. These activities show that ETP traded with the purpose and effect to manipulate physical gas prices at HSC.

### 1. October 2005

#### a. ETP Manipulated Fixed Price Gas at HSC to Benefit Other Physical and Financial Positions.

43. We begin with ETP's September 28, 2005 manipulation of October 2005 gas at HSC because it was the initial focus of staff's investigation and because it was the largest of ETP's manipulations of monthly gas at HSC. ETP's sales activity on this date suppressed the IFERC HSC index and thereby widened the HSC basis. The price of gas traded on ICE for prompt-month delivery at HSC dropped a total of $1.55 on that date as estimated based on a financial basis trade at ($1.90), when the NYMEX Contract price was $13.85, that occurred less than one minute prior to ETP's first, fixed price transaction at $10.25. ETP began selling fixed price gas on ICE at $10.25 per MMBtu, which was $1.70 below a trade that occurred just one minute before. ETP manipulated

the market by hitting a low bid that did not reflect market value and continued to sell gas in that range for the remainder of the day. This radical leap down to $10.25 shows that ETP intended to suppress price at HSC that day.

44. A review of the chronology of relevant trades on September 28, 2005 demonstrates how ETP manipulated fixed price gas at HSC for prompt month delivery, and thereby manipulated the HSC IFERC index. Between 2:11 p.m. and 5:32 p.m. (EST) on September 28, ETP engaged in 34 sales transactions on ICE for 288,900 MMBtu/d, or 8.96 Bcf, fixed-price gas at HSC for October delivery.[40] At 1:23 p.m., ETP sold fixed-price gas through a broker at $10.72. ETP, by hitting a bid at $10.72, potentially signaled that it would be a heavy seller as the value imputed from a basis trade, also through the broker market, roughly twenty minutes earlier had been $11.15.

45. Although there was weakening in value of HSC basis in the broker market with a trade at an implied price of $10.50 at 1:31 p.m., the market recovered such that at 2:10 p.m. and 2:11 p.m., financial basis traded on ICE at ($1.90) and ($2.00),[41] respectively, implying HSC pricing of $11.95 and $11.90. By implied price we simply mean a proxy for the value of fixed price gas that is the NYMEX Contract price (or the ICE swap) minus the HSC basis swap price. Because the then-current price of the NYMEX Contract was $13.85, an HSC-NYMEX basis trade of $1.90 at 2:10 p.m. indicated that the current value of gas at HSC was $11.95, *i.e*, $13.85 less $1.90 equals $11.95. Implying the value of gas at HSC from the prices of the NYMEX Contract and the basis swap contract is a valid and accurate means to determine actual, real value at HSC. As one accomplished trader has noted:

> Given the current futures price for a particular month at a point in time, and by adjusting that price by the current basis differential for a location which has a corresponding index published for it, the fixed price value of gas at that location can be determined for that particular month at that point in time.[[42]]

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[40] ETP Response to Request No. 1.

[41] ETP traders watched basis closely at HSC. In a conversation on September 15, 2005, two ETC traders (Bob Bourne and Luke Fletcher) discuss HSC basis fundamentals. Bourne, after some explanation from Fletcher, asks “oh well, then it’ll get back to the, to the numbers we need, right?” Fletcher WAV7CE (Sept. 15, 2005).

[42] Sturm, *Trading Natural Gas, supra* note 21, at 57. The methodology that Platts uses to determine index prices published in its IFERC Index is based on the same understanding. Platts states that when points are illiquid, it will “make an assessment if adequate alternative market information is available on which to base an assessment[,]” which includes “implied physical values derived from financial swaps.” Platts Methodology and Specifications Guide North American Natural Gas Latest Update:

In other words, the fixed price value of gas at a location can be determined from the basis differential, *i.e.*, a basis trade, the current futures price, in this case, at Henry Hub. This approach is a recognized and appropriate way to determine the value of gas at HSC immediately prior to ETP's trading that began at 2:11 p.m.

46. ETP's trading did not instantly cause prices to decline, resulting in a classic downward sloping price curve, but its manipulation was no less effective. ETP began at 2:09 p.m. with an offer to sell at $11.00 and at 2:10 p.m. offered to sell at $10.75. A minute later, a bid was made on ICE at the extraordinarily low price of $10.25, and ETP hit this bid. The $10.25 bid did not reflect market value because of the basis trades that valued gas at HSC one minute before at $11.95. ETP's hitting of the $10.25 bid thus is a significant step it took to suppress price. At $10.25, significant buyer demand emerged and the price rose to $10.75, falling to $10.70 at 2:32 p.m. During this time, the NYMEX Contract traded at $13.80 at 2:00 p.m. and rose to $14.60 at 2:30 p.m. While gas fell at HSC from a value of $11.95 at HSC to $10.70, the NYMEX Contract rose by $0.80. ETP continued to suppress price, and in a number of transactions executed after the NYMEX closed at 2:30 p.m., ETP sold the market down to $10.00. During the time that ETP manipulated the market, bids to buy were posted at prices even lower than the prices at which ETP was transacting. These bids merely show that traders will test the market and seek the lowest possible price, even when that price is already below the price that would exist if the forces of supply and demand prevailed.

47. Chart 2 summarizes prompt month gas trading at HSC and Henry Hub on September 28, 2005 and helps demonstrate why price fell dramatically at HSC. Chart 2 is a graph of NYMEX versus either fixed price or in the case of basis trades, implied price (NYMEX Contract price minus the basis swap price) for September 28, 2005. The data is sourced from ICE, Bloomberg and broker calls. ETP's fixed price sales (circles are fixed price while squares are prices calculated from basis trades) represent a distinct change in valuation for HSC, decoupling from the increasing NYMEX and moving downward in value.

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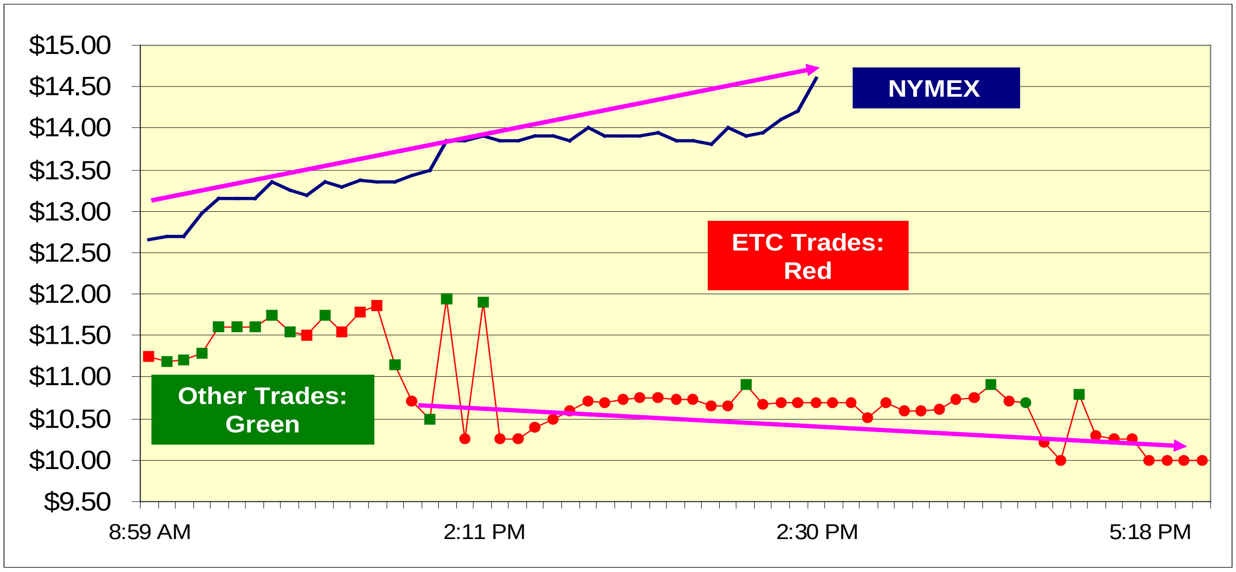
February 2007, http://www.platts.com/Natural%20Gas/Resources/Methodology%20&%20Specifications/na_gas_methodology.pdf?S=n.

**Chart 2**
**ETC CAUSED HSC VALUATIONS ON SEPT. 28 TO DECOUPLE FROM NYMEX**




48. Chart 2 shows that gas valuations rose at HSC in tandem with the NYMEX Contract until ETP began selling fixed price gas. ETP's sales caused the price of gas at HSC to decouple from that of the NYMEX Contract. When ETP began selling fixed price gas at HSC, the HSC basis, as traded on ICE, was still relatively stable at ($1.90), implying HSC prices of almost $12.00, keeping pace with NYMEX Contract which had increased to $13.80. Once ETP began selling fixed price gas, however, the basis widened, *i.e.*, the difference in price between the NYMEX Contract and HSC increased. ETP's trading was the cause of this widening.

49. Other market participants were trying to sell fixed-price gas for prompt month delivery at HSC that afternoon at prices above the bids that ETP was hitting but they were unsuccessful. For example, one seller made offers of $11.50 at 2:14 p.m. and 2:16 p.m. These prices were similar to where the market would have been trading absent ETP's conduct, and consistent with the valuation of HSC gas implied by the HSC basis swap trades that occurred at 2:10 p.m. and 2:11 p.m.[43] However, with ETP offering gas at lower prices, these higher offers were, of course, not accepted. Chart 3 provides a more detailed picture of trading activity at HSC on ICE on September 28, 2005, showing all financial and physical offers, both consummated (squares are financial and circles are fixed price) and unconsummated. Chart 3 shows that ETP entered the fixed price market by posting an offer of $11.00, which was well below previous offers or trades, and then hit an even lower bid at $10.25. ETP's trading activity "framed" the market in a price

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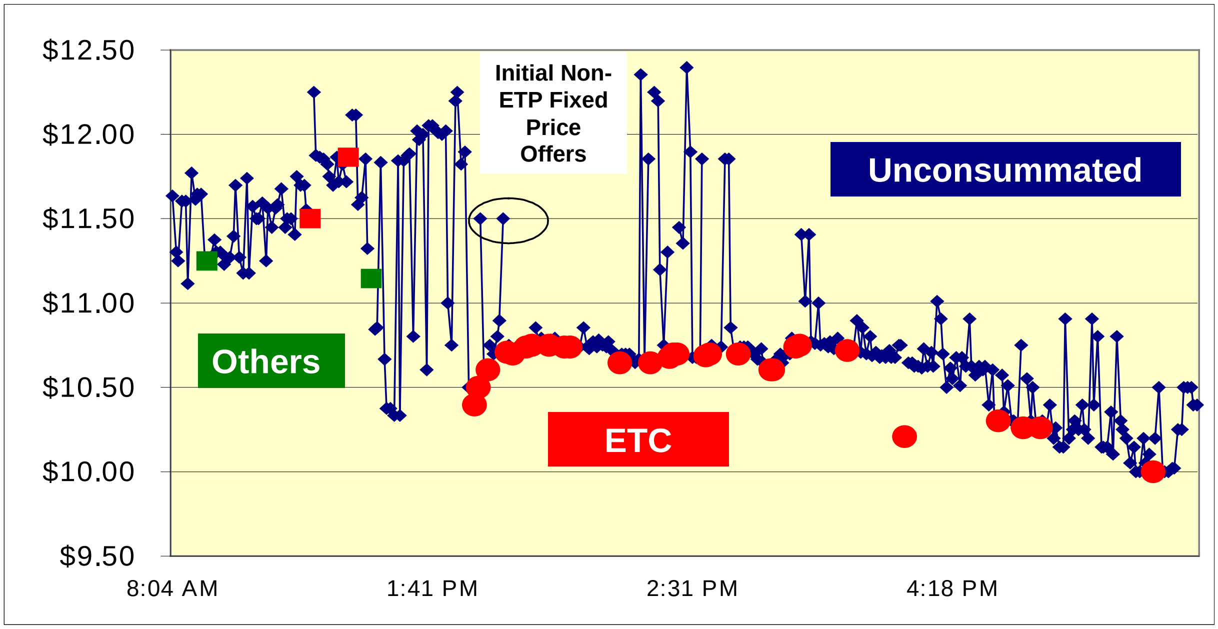
[43] ICE Response to Oct. 27 Subpoena Request Nos. 1 and 2; ETP Response to Request No. 20.

range much lower than that prevailing earlier in the day, based on where the NYMEX Contract and HSC basis swaps had traded. ETP then traded in a manner to prevent prices for fixed price gas at HSC from running up along with the NYMEX and with other nearby South Texas Points.

**Chart 3**




50. One reason for ETP's dominance is that it was selling at such low levels that few if any other market participants would sell in that market. Even ETP's own affiliate, Houston Pipe Line Company (HPL), refused a suggestion that it sell in this market. In a conversation at 3:58 p.m. on September 28, 2005, John Hymel, a trader at HPL, was asked by a trader identified only as "Louis" to sell 3,000 MMBtu at Bammel, a large HPL storage facility near Houston. Hymel refused to sell, stating that the price was low. Hymel stated, "Those numbers that I'm looking at there . . . I wouldn't even touch that or index. You know? That's nuts." Upon being pressed by Louis, Hymel says he would sell gas at the Gas Daily (not the fixed price for monthly gas) plus five cents. Louis persists: "You don't want to do a fixed price?" Hymel answers that he does not.[44] This conversation shows that even an affiliate of ETP recognized that the HSC monthly price was "nuts," *i.e.*, artificially low.

**b. ETP Intended to Manipulate HSC Prices**

51. Senior management at ETP was aware of and directed ETP's manipulative

[44] Audio digital recording/Wav file of John Hymel WAV218 (Sept. 28, 2005) (Hymel WAV218 (Sept. 28, 2005)).

strategy to suppress fixed price gas at HSC. On September 26, 2005, McCrea, ETP's senior executive responsible for commercial operations,[45] instructed at least one ETP trader that:

> [A]s long as we sell as much as we can sell, it ought to push ship down . . . . You know, it'd be nice to have Ship kind of spread back out from, uh, both for this month or October, and also for our summer/winter business.[[46]]

Douglas Ray, an HPL trader on the telephone conversation, responded, "Exactly."[47]

52. In this conversation, McCrea stated that if ETP sold as much as it could sell, it would reduce price at HSC, *i.e.*, "push Ship down." By stating that "it'll be nice to have Ship kind of spread back from . . . October," McCrea explicitly stated that he wanted HSC prices to be lower for October. "[S]pread back out from" is a reference to the price at HSC widening from the NYMEX Contract price. McCrea's reference to "summer/winter business" suggests that ETP intended to purchase some of the gas at a suppressed price, inject it into storage and withdraw it during the winter. This conversation indicates that McCrea intended ETP to trade to lower prices at HSC and thereby widen the HSC basis for October. At deposition, staff gave McCrea the opportunity to explain his conversation. McCrea was at a loss to explain his words. He simply testified that "I don't know why that statement was made, and I thought about it."[48] By trading to "push Ship down," ETP could execute its win-win, risk-free trading strategy to forego profits in its sales of fixed price gas at HSC on September 28, 2005, to gain outsized profits on its other physical and financial positions.

53. In addition, McCrea told Ray in the same conversation that "it probably makes a lot of sense to come out hard today for tomorrow" because of "where Hub's . . . trading sits, where HPL sits, where storage sits." Ray did indeed sell daily, fixed price gas at HSC on the Monday morning of September 26, 2005 for the next day at prices $2.50 less than market levels prior to the weekend.[49] This comment and the subsequent activity

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[45] McCrea's title, as of February 2006 was President of La Grange Acquisition, LP, the midstream and natural gas transportation and storage operating partnership of Energy Transfer Partners, L.P. and its subsidiaries. Affidavit of Marshall McCrea, 1 (Feb. 28, 2006) (McCrea Aff. 1).

[46] Small WAV557 (Sept. 26, 2005).

[47] *Id.*

[48] Deposition of Marshall McCrea, 142:6-8 (May 1, 2006) (McCrea Dep. 142:6-8).

[49] ETP Response to Data Request No. 62 (as revised on Dec. 27, 2006).

shows that McCrea knew that selling at HSC would benefit a range of ETP's positions and that his instructions were followed.

54. ETP's trading desks in San Antonio, Houston, and Dallas coordinated their activities to assure that losses one desk took to help execute manipulations would be compensated by profits realized by another desk. In a conversation on September 26, 2005, prior to ETP's manipulation of HSC on September 28, 2005, Ray speaks as follows to Small, [50] another ETP trader:

> [L]et me toss something out I know Mackie's [McCrea] gonna probably want to get involved in this, but as far as how we're going to split this up … just say split it in thirds. You take a third, he'll take a third, and we'll take a third, how does that sound to you?[[51]]

In deposition testimony, Small stated that this conversation concerned the appropriate way to split profit and loss between the Houston and San Antonio trading desks regardless of how successful each desk was individually.[52] Other recordings reviewed by staff evince a pattern of coordination and profit-sharing between the various trading desks.[53] These recordings make clear that the traders at ETP's various business units (*i.e.*, traders for HPL, ET Fuel, Oasis Pipeline, ETC Marketing) acted in concert and considered the benefit to the ETP corporate

[50] Ray was responsible for the Houston/Dallas trading desk, which managed the operations of ET Fuel and HPL. Small was responsible for the San Antonio desk, and was responsible for the Oasis Pipeline, the vast majority of purchases at Waha and sales at HSC, as well as financial products for both speculation and hedging, including NYMEX Contracts and basis swaps.

[51] Small, WAV557 (Sept. 26, 2005).

[52] Small Dep. 111:5-112:1.

[53] In the following portion of a conversation between McCrea and Small that took place on November 28, 2005, McCrea advised Small on how to divide the profits from a transaction involving another ETP business unit:

> Hey after I got off, I wanted to come over. I, I was going to deal with you on the phone but I thought maybe. Uh, let me ask you something from a, kind of uh, from a political standpoint. It'd probably be helpful to the company if you could sell him gas back cheaper. And when you're looking, if if [sic] it's not hurting what you're trying to . . . .

Small WAV10E4 (Nov. 28, 2005).

family as a whole, rather than the benefit to their individual trading books considered in isolation. Thus, most or all the ETP traders would have been aware of ETP's net positions.

### c. ETP Had Power to Suppress Price At HSC

55. ETP had a dominant position in the market at HSC. ETP owns three of the major pipelines in the HSC/Katy market area (HPL, Oasis Pipeline, ET Fuel) and the major storage facility (Bammel) in the area. ETP has captive producers who ship on its multiple gathering systems in South and East Texas, and it is responsible for bringing local production to the HSC/Katy market area on HPL and from West Texas/Waha production areas through Oasis, and from North Texas on ET Fuel.

56. ETP knew that by virtue of its position as the dominant seller, which was enabled by its control of substantial physical assets and contracts with captive producers, that it could move prices at HSC and nearby points. McCrea acknowledged in sworn testimony that ETP "move[d] enough volume" to affect prices at HSC.[54] Moreover, Small stated during his deposition that ETP has the ability to exert significant influence on prices at nearby points such as Katy and, by reversing the direction of flow on its Oasis Pipeline, it can reverse the basis differential between Waha and Katy.[55]

57. ETP's dominance of the market for monthly sales at HSC of ICE gave ETP the ability to suppress price. ETP comprised 34 out of 35 sales of monthly gas at HSC on ICE on September 28, 2005.[56] ETP's market power is shown by its power to effectively determine the market price at HSC on September 28, 2005. The volume-weighted average of ETP's fixed price sales at HSC on September 28 was $10.49,[57] while the IFERC HSC index settled at $10.46.

### d. The HSC Price Radically Decoupled From Nearby Prices As a Result of ETP's Trading

58. Prompt month prices at HSC have a long historical relationship with prices at nearby pricing points in South and East Texas. As Chart 4 shows, this relationship was broken by trading on September 28, 2005 for October deliveries of gas at HSC.

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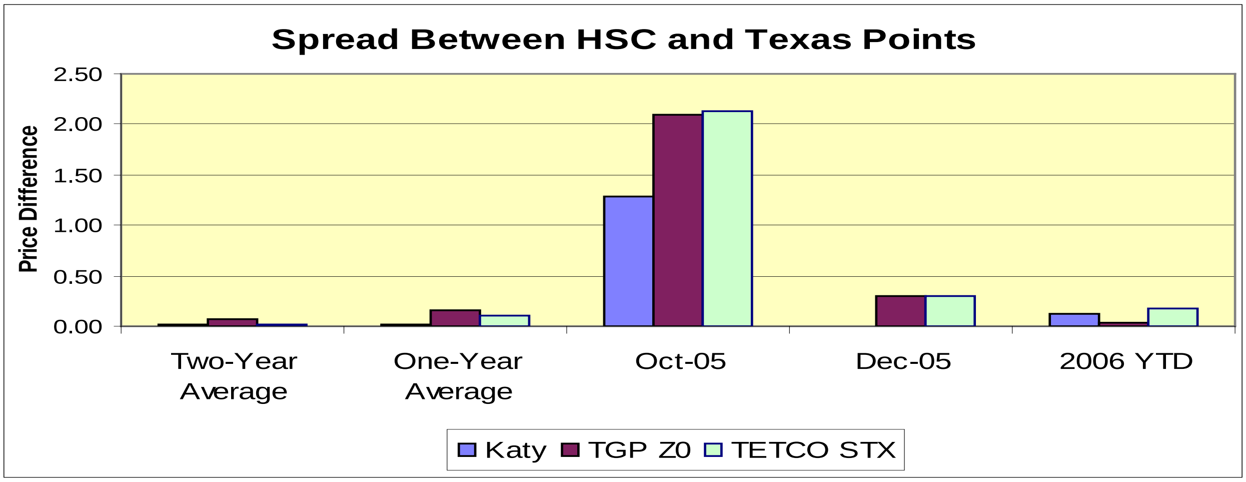
[54] McCrea Dep. 188:14-16.

[55] Small Dep. 118:3-22.

[56] ICE Response to Oct. 27 Subpoena Request No. 1.

[57] ETP's Response to Request No. 1.

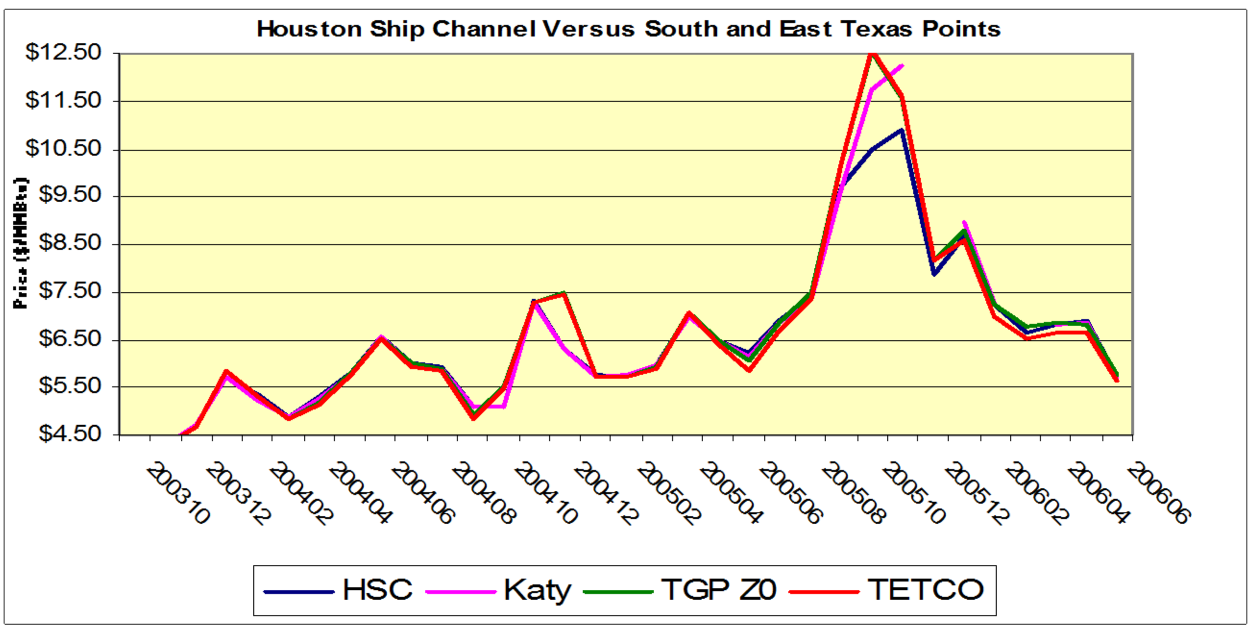
**Chart 4**




Source: Platts

59. Chart 5 provides a monthly perspective on the decoupling of price at HSC in October 2005 relative to the same comparable pricing points.

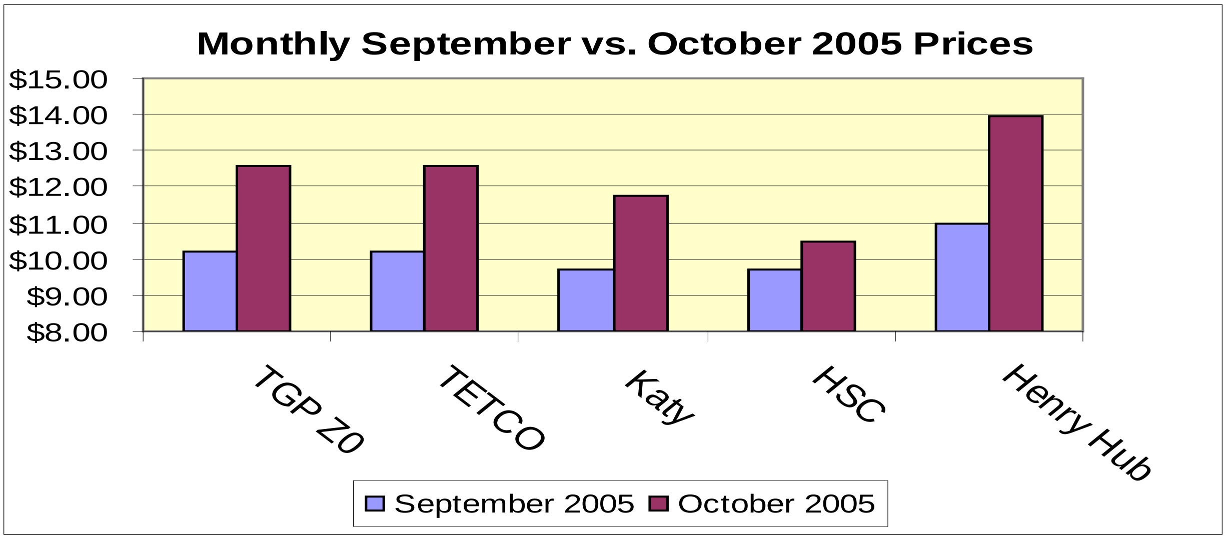
**Chart 5**




Source: Platts

60. Chart 6 shows that while Houston Ship Channel traded reasonably close to other South Texas points in September, it radically decoupled from these points in October.

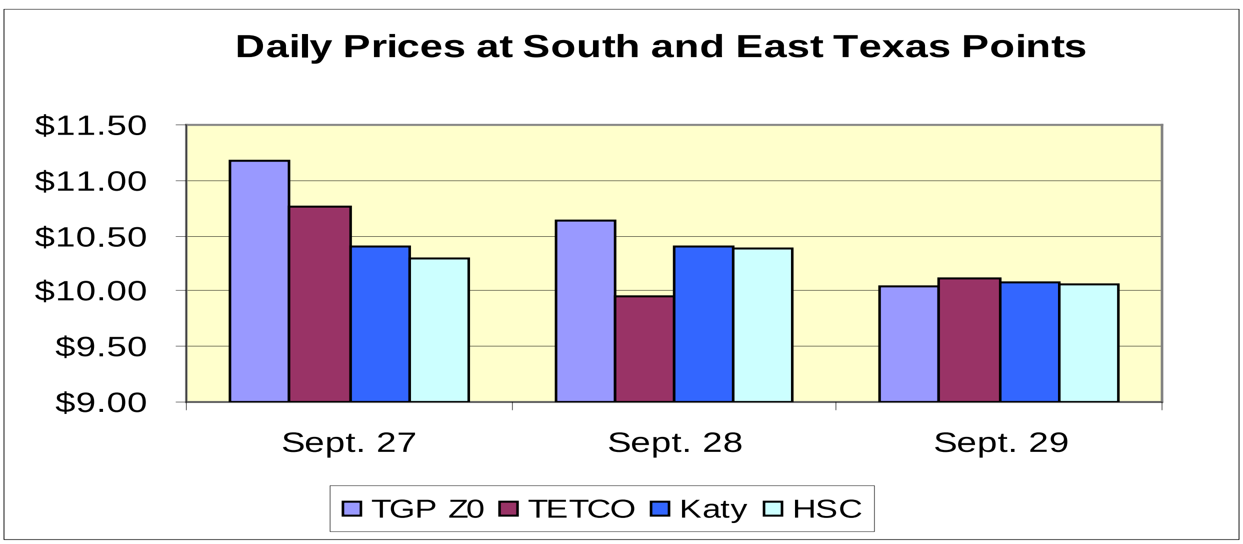
**Chart 6**




Source: Platts

61. Chart 7 shows that the divergence in prices observed in the monthly markets was not observed in the daily markets, where prices between the four referenced points converged. If fundamental factors had caused monthly prices to separate at HSC from other nearby points, the separation should also have been experienced in the daily markets.

**Chart 7**

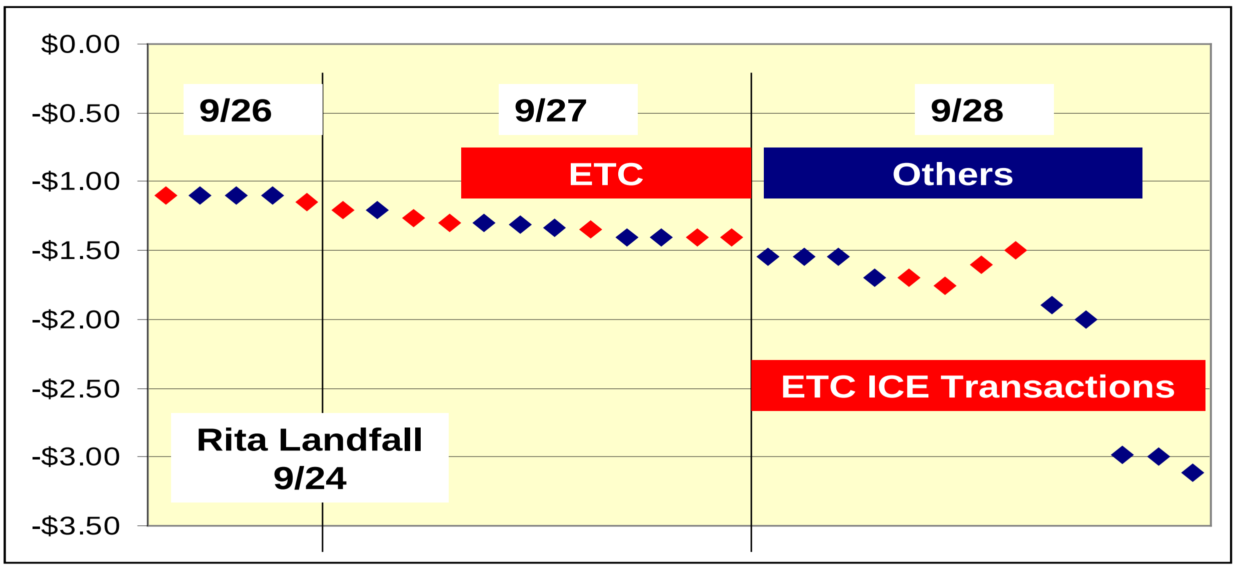



Source: GasDaily

62. ETP suppressed prices at HSC on September 28, 2005. Although Hurricane Rita made landfall at Port Arthur and Beaumont near the Texas-Louisiana border on September 24, 2005, the hurricane did not cause the low prices at HSC relative to nearby south Texas points. Had the hurricane been responsible for the price drop observed

starting at 2:10 p.m. on September 28, 2005 at HSC, prices at nearby south Texas points would also have been affected. Basis swaps at Tennessee Zone 0 traded up with the NYMEX Contract on September 28 before ETP began trading fixed price gas at HSC on that date. Although no October fixed price gas traded at HSC until September 28, on September 26 and September 27 after Hurricane Rita, HSC basis did trade and was relatively flat. The extreme volatility in basis did not occur until ETP sold fixed price the afternoon of September 28. As fixed price was not trading at HSC immediately after Hurricane Rita, the basis trades serve as a proxy in Chart 8.

**Chart 8**
**Basis Trading Was Stable Until September 28th**




Source: ICE

**e. ETP Executed a Trading Strategy to Manipulate Monthly Prices at HSC**

63. ETP's trading activity can be characterized as "open market manipulation." In an open market manipulation, a trader manipulates a market by buying or selling with other market participants.[58] ETP executed nominally legitimate sales transaction with sophisticated buyers, which ETP rendered manipulative by its intent and actions to manipulate the IFERC HSC index. The deceptive manner in which it concealed its role as a large net purchaser contributed to its ability to manipulate the market. In October 2005, ETP was a net purchaser at HSC (rather than a net seller, as it would appear based solely on its fixed-price sales), primarily due to the need to inject gas into storage. ETP

[58] *See, e.g.*, *Internet Law Library*, 223 F. Supp. 2d 474; *Nanopierce*, 2002 U.S. Dist. LEXIS 24049.

had a large contract to supply Centerpoint, a Houston-area utility, with gas.[59] ETP could have simply transported the gas purchased at Waha on its Oasis Pipeline to its Bammel storage facilities. ETP instead engaged in a circuitous process of first selling the gas at a fixed price to suppress the IFERC HSC index and then buying the gas back at the reduced price levels. ETP made net purchases at IFERC HSC of almost 13 Bcf in October 2005.[60] ETP's fixed-price sales artificially inflated the trading volume at HSC, falsely conveying the message to the market that HSC had excess supplies of gas. ETP's repeated sales of what amounted to the same gas set the IFERC HSC index at a price that did not reflect the true levels of supply and demand.

64. ETP established a short HSC basis swap position in excess of what it needed to hedge its sales. ETP sold HSC basis swaps in the amount of 24.1 Bcf for October 2005.[61] ETP's open short basis position (*i.e.,* the amount over and above what was necessary for hedging purpose), was substantially greater than it needed to hedge its 10 Bcf of sales at HSC. Further, ETP's short basis position for this month exceeded its average short basis swap position of 11.7 Bcf going back to December 2003.[62] ETP's short basis swap position was not merely one it had established well in advance of its trading on September 28, 2005. ETP increased its short basis position in the September 2005 bid week.[63] ETP's continued purchases during bid week significantly increased its open short basis position, in effect leveraging its existing speculative position and multiplying the returns it would receive from further widening of the HSC basis.

65. Courts have addressed this type of open market manipulation under the Securities Exchange Act. For example, in *Crane Co. v. Westinghouse Air Brake Co.,*[64] the court found that the defendant (Standard) had engaged in a manipulative scheme to artificially inflate the price of Westinghouse Air Brake's (Air Brake) stock to defeat Crane's tender offer for Air Brake. Specifically, Standard purchased, in a very large number of open market transactions, a substantial quantity of Air Brake's stock (representing 170,000 out of a total of 460,000 outstanding shares) on the day that Crane's tender offer was set to expire, pushing the stock's price from $45 to over $50, which was the maximum price for

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[59] McCrea Aff. 2.

[60] ETP Responses to Request Nos. 19 and 35.

[61] ETP response to Request No. 19.

[62] ETP Response to Request No. 63 (as revised on Dec. 27, 2006).

[63] ETP response to Request No. 1; ICE Response to Oct. 27 Subpoena Request No. 1.

[64] 419 F.2d 787.

the tender offer, in a single day. The court found that "[t]he net result of this buying was to represent to the public, whose primary source of information is the tape, that there was a great demand for Air Brake at an increased value."[65] The court further noted that only 50,000 of the 170,000 shares represented an actual increase in Standard's holding in Air Brake because Standard had simultaneously and secretly sold 120,000 shares. The court concluded that Standard's action, in concealing from the public and the Air Brake stockholders "the true situation as to the market it was making in Air Brake stock resulted in violations of sections 9(a)(2) and 10(b) of the [Securities and Exchange] Act."[66]

66. Trading similar to ETP's is often referred to as "marking the close" and has been found to be manipulative.[67] A trader marks the close when he or she trades at the end of the trading period with the purpose and effect of substantially affecting the closing price. ETP made the large majority of its sales on September 28, 2005 within 30 minutes of the NYMEX settlement. ETP's trading undermined market integrity and the integrity of the IFERC HSC index, which other traders rely on as a reference price, while reaping significant unjust profits both for transactions in the same market (*i.e*. October purchases priced at the IFERC HSC index) and its financial position in HSC basis swaps.

67. ETP's fixed-price sales at HSC were at a higher price than its fixed-price purchases at Waha. However, ETP had hedged these transactions to lock in the basis

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[65] *Id*. at 792-93.

[66] *Crane*, 419 F.2d at 793. More recently, courts have found that such open market manipulation occurred in connection with the short selling of so-called "toxic convertibles" or "death spiral financing" schemes involving short-selling convertible preferred securities. The mechanics of such a scheme are described in *Internet Law Library*, 223 F. Supp. 2d 474 (holding plaintiffs satisfied the burden for pleading scienter by demonstrating that defendants stood to profit from short sales "on account of their ability to cheaply obtain additional shares of common stock upon conversion with which to cover their short positions").

[67] "Marking the close" conveys false information to the market as to the value of and the demand for the stock free of manipulative influences. The SEC considers such manipulation of the closing price particularly harmful to market integrity because the closing price is the basis on which analysts chart trading patterns, investors plan strategies, accountants evaluate portfolios, and broker-dealers compute customers' margin requirements and their own net capital. *See In re Kocherhans*, Admin. Proc. File No. 3-8611, 1995 SEC LEXIS 3308, 52 SEC 528, 530-31 (Dec. 6, 1995). *See also SEC v. Schiffer*, 97 Civ. 5853, 1998 U.S. Dist. LEXIS 8,579, Fed. Sec. L. Rep. (CCH) ¶ 90,247 (S.D.N.Y. 1998); *In re Pack*, 1993 SEC LEXIS 1,364, Exchange Act Release No. 32,374 (May 27, 1993); *In re Schultz Investment Advisors, Inc. and Scott Schultz*, 2005 SEC LEXIS 3331, Exchange Act Release No. 53,029 (Dec. 28, 2005).

differential between Waha and HSC.[68] Accordingly, the profit ETP would receive for its sales at HSC on September 28, 2005 was determined in advance and did not depend on the actual sales price ETP received at HSC. If ETP had acquired basis swaps purely for hedging (*i.e.*, if the volume of Waha and HSC basis swaps equaled the amount of its fixed-price Waha purchases and HSC sales), ETP would have been completely indifferent regarding whether prices at, or the basis differential between, Waha and HSC rose or fell. This was not the case. ETP leveraged its position at HSC, selling HSC basis swaps in an amount more than twice as large as that necessary for hedging. Accordingly, ETP had an incentive to drive down the fixed price and index at HSC.

68. ETP traders acknowledged unjust profits the company received from its September 28, 2005 trading. For example, in a conversation occurring on October 18, 2005, Small told Brent Ratliff, a Dallas office trader, that Small was "just trying to lay low" and that the company was "really swimming in money right now."[69] Small explained that ETP management was "going to have more of a problem with explaining how we made this much money. . . ."[70]

**f. ETP Should Pay Civil Penalties and Disgorge its Unjust Profits**

69. Under section 22 of the NGA,[71] as amended by the EPAct 2005, any person that violates the NGA or any requirement promulgated thereunder shall be subject to a civil penalty of not more than $1,000,000 per day per violation for as long as the violation continues.[72] Each sale of gas that ETP made, after the August 8, 2005 effective date of EPAct 2005, as part of its manipulation of fixed price gas at HSC constitutes a separate violation. ETP made 34 such sales on ICE on September 28, 2005, and thus is subject to a maximum civil penalty of $34,000,000 for its manipulations on this date. ETP also realized $40,286,727 in unjust profits, plus interest from its manipulations.[73]

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[68] ETP Response to Request Nos. 2 and 19.

[69] Small WAV3B4A (Oct. 18, 2005).

[70] *Id.*

[71] 15 U.S.C. § 717t-1.

[72] *See supra* at P 39.

[73] As noted above, the total civil penalties that the Commission proposes ETP should pay is $82,000,000 for its manipulations and the total amount of unjust profits that the Commission proposes ETP should disgorge is $69,866,966, plus interest. These amounts are for all of ETP's manipulations discussed in this order, including its

70. In the Commission's *Policy Statement on Enforcement*,[74] the Commission set forth the criteria we would apply to determine appropriate civil penalties to impose pursuant to the authority the Congress granted the Commission in EPAct 2005. The Commission began by noting that, as mandated by section 22 of the NGA, the seriousness of the offense is the first consideration in determining appropriate penalties.[75] The Commission noted a number of factors to be considered in judging the seriousness of the offense. These include the harm caused by the violation; whether the violation was the result of manipulation, fraud or deceit; whether the action was willful; whether the violation is a repeat offense and was the problem systematic or persistent and whether it lasted a long time; was senior management involved in the wrongdoing; how the wrongdoing came to light and whether senior management impeded the investigation; and what effect potential penalties would have on the financial viability of the company that committed the wrongdoing.[76]

71. The Commission noted in the *Policy Statement on Enforcement* that section 22 of the NGA also requires the Commission to take into account any effort the company made to remedy the violation in a timely manner. This consideration involves steps taken by the wrongdoer to prevent, monitor, and immediately stop misconduct, to report violations to the Commission, and to cooperate with the Commission's enforcement actions.[77] The Commission went on to state that internal compliance, which it defined at some length, and self-reporting are integral to considering the effort the company made to remedy the violation in a timely manner.[78]

72. In the *Policy Statement on Enforcement*, we stated that we expect cooperation with investigations – indeed, the NGA requires regulated entities to open their books and records to the Commission and its staff[79] -- but that we will give consideration to

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manipulations of prices at HSC for months other than October 2005 and its daily price manipulations at Waha. A discussion of the reasons for the Commission's proposed civil penalties with respect to these other violations is set forth below.

[74] *Enforcement of Statutes, Orders, Rules, and Regulation*s, 113 FERC ¶ 61,068 (2005) (*Policy Statement on Enforcement*).

[75] *Id.* at P 20.

[76] *Id.*

[77] *Id.* at P 21.

[78] *Id*. at P 22-25.

[79] 15 U.S.C. § 717g(b) (2000).

exemplary cooperation, that is, cooperation which quickly ends wrongful conduct, determines the facts, and corrects a problem.[80] We stated that cooperation must come early in the process and continue, and that no credit will be given if a company does no more than the minimum or delays cooperation, or engages in conduct that impedes the investigation.[81]

73. Application of these principles to ETP and its conduct dictates the maximum civil penalty. ETP's violations were serious. Market manipulation is harmful and inconsistent with free markets. One of the Commission's most important responsibilities is to exercise regulatory oversight to assure that wholesale energy markets are free, open and fair, where supply and demand may freely meet at prices uninfluenced by manipulation. Part of this exercise involves the determination in appropriate circumstances of whether facts show that a market participant manipulated wholesale energy prices subject to our jurisdiction and, upon making such a finding, the civil penalties that the wrongdoer should pay. In concluding that the maximum civil penalty is warranted, the Commission considered the following facts.

- ETP's violations caused harm. ETP harmed sellers of gas, including producers, royalty owners and taxing authorities, who received a percentage of the IFERC HSC index. ETP harmed counterparties of financial basis swap contracts. ETP also undermined the integrity of the wholesale gas market at HSC.

- ETP's violations were the result of manipulation, fraud or deceit. ETP manipulated market prices on September 28, 2005 by suppressing fixed price gas at HSC for prompt month delivery while being a net buyer of October gas priced at the IFERC HSC index. By suppressing price through large volume sales, ETP defrauded the market. ETP deceived the market by misrepresenting its position in the market as a net seller when it was really a net buyer of physical gas at HSC.

- ETP's actions were willful. As the September 26, 2005 conversation in which McCrea tells his trader that ETP's strategy "ought to push Ship down" demonstrates, ETP intended to suppress fixed price gas at HSC on September 28, 2005 and it took actions to execute that intent.

- Senior management was not only involved in the wrongdoing, senior management, in the person of McCrea, directed it.

[80] *Policy Statement on Enforcement*, 113 FERC ¶ 61,068 at P 26.

[81] *Id*.

- The wrongdoing was not self-reported. It came to light by a Hotline call that alerted staff to the trading activity at HSC on September 28, 2005 that was not driven by fundamental factors in the market.

- ETP is one of the largest publicly traded master limited partnerships in the country, with a market capitalization of approximately $8.6 billion. ETP, which reported $516,000,000 in net income for its fiscal year ending August 31, 2006,[82] is able to pay appropriate civil penalties warranted by its violations in this matter.

- ETP did not take steps to remedy its violations in a timely manner. In fact, it manipulated the market for fixed price gas at HSC in November 2005. The reason ETP's manipulations appear to have stopped is that ETP learned about staff's investigation of its trading practices in late November 2005.

- ETP's cooperation has not been exemplary and thus ETP is not entitled to a reduction in civil penalties based on its conduct in the investigation pertaining to its trading on September 28, 2005. ETP has not extended itself in a way that would merit a discount in the civil penalty or cooperated above the minimum level required by law.

74. Based on consideration of the foregoing factors, we believe that imposition of the full civil penalty authority of the Commission is appropriate. ETP's manipulation caused serious harm, involved fraud and deceit, was willful, involved senior management and was not self-reported. Accordingly, the Commission directs ETP to show cause why it should not pay civil penalties in the amount of $34,000,000 for its trading activity at HSC on September 28, 2005.

75. The Commission also directs ETP to show cause why it should not disgorge unjust profits. ETP realized $40,286,727 in unjust profits by reason of its violations. The amount disgorged must also include interest.[83]

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[82] *See* http://money.cnn.com/quote/snapshot/snapshot.html?symb=ETP; Energy Transfer Partners L.P., Annual Report (10-K), at 1 (Nov. 13, 2006).

[83] 18 C.F.R. § 154.501(d) (2006). The Commission posts the rate of interest applicable to funds to be returned to customers on its website.

### 2. ETP's Manipulated Fixed Price Gas at HSC in Eight Months From December 2003 Through November 2005: Summary and Overview

76. The Commission now turns to the relevant trade data that show that as early as December 2003, ETP suppressed monthly price at HSC to influence the IFERC HSC index to benefit the company's financial and physical positions in eight months. These manipulations were not as successful as ETP's manipulation on September 28, 2005. Nonetheless, these manipulations violated Market Behavior Rule 2, were significant in terms of the dollars involved and impacts on the market, and warrant the imposition of civil penalties and disgorgement of unjust profits.

77. For the period from December 2003 through November 2005, ETP suppressed fixed price gas at HSC for prompt month delivery on eight occasions in addition to the manipulation on September 28, 2005. The dates of ETP's additional manipulations are December 29, 2003 (for gas delivery in January 2004); September 24, 2004 and September 27, 2004 (for gas delivered in October 2004); November 23, 2004 and November 24, 2004 (for gas delivered in December 2004); December 28, 2004 (for gas delivered in January 2004); January 27, 28, and 31, 2005 (for gas delivered in February 2005); June 28, 2005 (for gas delivered in July 2005); August 29, 2005 (for gas delivered in September 2005); and November 28, 2005 (for gas delivered in December 2005). In other months in the December 2003 through November 2005 period, there is no current evidence that ETP manipulated monthly prices at HSC. ETP's total unjust profits from its manipulative activity at HSC, not counting its manipulative activity on September 28, 2005, discussed above, is $27,351,689. Chart 1 sets forth summary data regarding these violations. *See supra* at P 39.

#### a. ETP Suppressed Fixed Price Gas at HSC by a Consistent Strategy of Selling Gas at Low Prices

78. ETP manipulated fixed price gas at HSC in the eight relevant months using the same strategy that it employed on September 28, 2005. ETP would generally establish or frame a lower price by placing low price offers and often bids at HSC during bid week, frequently on the day the NYMEX Contract expired. ETP often placed fixed price bids, even though it did not buy fixed price gas on ICE. Instead, ETP used bids to establish or frame lower prices. A seller seeking to suppress price posts lower bids to induce traders to believe that the suppressed transactions prices are competitive, at least relative to outstanding bids. Further, during most of the eight remaining months that ETP manipulated the market, ETP's trades were concentrated during the last half hour of trading for the NYMEX Contract. This enabled ETP to ensure that the IFERC HSC index would settle lower relative to the settlement price of the NYMEX Contract. As ETP was always short HSC basis swaps, it traded to suppress prices. Typically for a market in which the NYMEX Contract was increasing, ETP would cap prices at HSC

such that the basis widened more from rising NYMEX Contract prices than declining prices at HSC.

79. ETP's manipulative trading varied slightly in October and December of 2004. In those months, ETP sold earlier in bid week and then reentered the market offering HSC down in conjunction with falling NYMEX prices, thereby preserving the basis differential. Bidding activity shows that at least a portion of the HSC market became accustomed to ETP's strategy because bids were placed at low levels in anticipation of the ETP's well offered gas, *i.e.*, gas offered at a relatively low price. The specific actions that ETP took to suppress fixed price gas at HSC are discussed in detail below.

80. For the eight relevant months ETP lowered the HSC IFERC index price by an estimated 15 cents per month. Fifteen cents represents a small percent of commodity prices that often hovered near seven dollars per MMBtu, but it was a significant portion of the monthly HSC basis, the median value of which was $0.57 for the eight relevant months. ETP received unjust profits from these manipulations of $27,351,689.[84]

**b. ETP Intended to Manipulate Fixed Price Gas at HSC**

81. ETP intended to manipulate the price of prompt month fixed price gas at HSC for the eight relevant months. ETP sold gas at prices below levels suggested by objective reference points, such as HSC-Henry Hub basis at the time ETP began its offers and trades and prices at nearby pricing points. ETP consistently positioned its trading book to benefit from lower monthly prices at HSC and consistently profited from lower prices at HSC. ETP used a similar strategy in the relevant months to suppress price. ETP knew the actions it was taking would suppress fixed price gas at HSC to benefit its positions in the physical and financial markets.

**c. ETP Had Power to Suppress Price at HSC**

82. ETP dominated sales on ICE for prompt month, fixed price gas at HSC for the relevant months. As Chart 1 indicates, ETP comprised 100 percent of all such sales in two months, more than 90 percent of such sales in three others, more than 80 percent of such sales in two others and 55 percent of all such sales in one month. Month after month, ETP had the ability to suppress price by offering low and transacting at relatively low prices. Other potential sellers had little reason to actively sell gas in this suppressed market and bidders had no incentive to buy from sellers who were offering gas at higher prices. ETP's dominant position at HSC was enabled by its ownership of physical assets, namely, three major pipelines (HPL, ET Fuel, and Oasis Pipeline) and the Bammel

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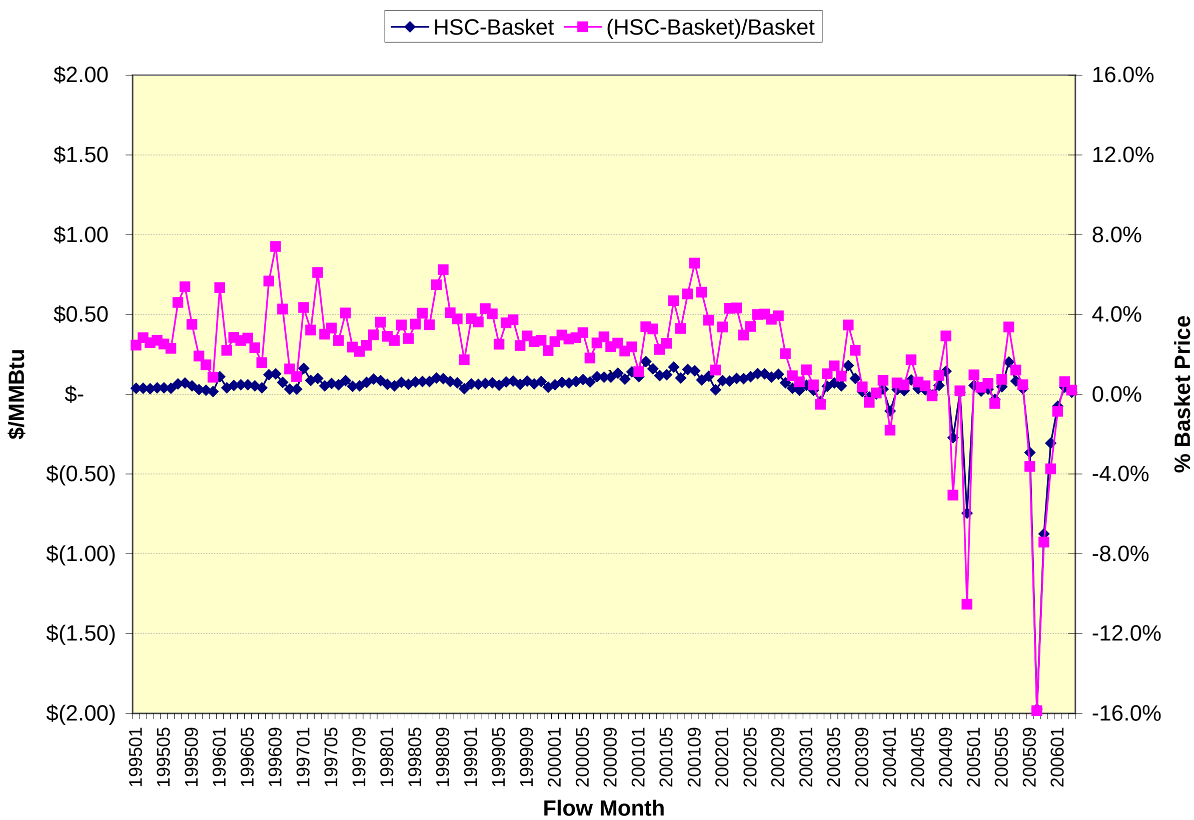
[84] ETP's manipulations in these eight months also place in context its manipulation on September 28, 2005, in which it lowered the HSC IFERC index by well over one dollar and ETP thereby unjustly realized $40,286,727.

storage facility, as well as its contractual relations with captive producers.

### d. In the Eight Months, ETP's Manipulations Drove HSC Prices Lower Than the Historical Relationship of Nearby Prices

83. As noted above, prices at HSC long bore a stable relationship with prices at nearby South and East Texas points. This relationship, and the departure from it, is depicted in Chart 9, which compares the difference in monthly prices between HSC, on the one hand, and nearby pricing points (Katy, TENN Z0, TETCO-STX and NGPL-STX), on the other hand.

**Chart 9**
**Basis Between HSC and Regional Basket**




Source: Platts IFERC Monthly Index

### e. ETP's Manipulations Were Known to at Least Some Knowledgeable Market Participants

84. At least some knowledgeable market participants were aware that ETP's common practice was to begin trading at an artificially low price to establish a lower index price.

This group would not necessarily have included producers, who in any event, may have had little or no choice but to engage in transactions priced at the IFERC HSC index. In an October 26, 2004 conversation between Elsa Villareal, an HPL employee, and an unidentified trader, who was a buyer at HSC, Villareal told him, "You got a gift last month," referring to ETP's suppression of prices at HSC for October 2004 delivery. The unidentified trader responded that "ETC didn't get out and get the prices set early, like last month." The unidentified trader further stated "there hasn't been any, anybody to jump out there like ETP normally j-, I shouldn't have said that, like whoever is that jumps out there and gets it set, you know, starting yesterday, that hasn't happened this month."[85] The trader was referring to bid week trading for November 2004 as compared to October 2004.

85. A December 30, 2004 conversation between Ray at HPL and a trader identified as "Dan" further supports this conclusion. This conversation occurred before ETP's January 2005 acquisition of HPL. Dan noted prices at HSC, referring to prompt trading earlier in bid week. He asked whether those prices were due to "fundamental" factors. Ray replied as follows:

> RAY: No, no, it's, people -- there's a couple of players out there, in our opinion, I don't want to say their names on a recorded line 'cause it's probably not an appropriate thing to do, but some of the big players out there in Ship Channel, um, our opinion, our system has been that they swing pretty good wood on paper and, and they get out there doing fixed price things to, uh, support the position that they've got.
>
> DAN: Yeah, okay.
>
> RAY: Uh, now, we can't prove that, um, but it -- there have been months where's there's -- that kind of appearance --. The fact that there was so little fixed price trading this month means maybe they didn't do it. But, uh, I think the settle will be a lot closer to market's expectation than it was, say, last month, when we had that big run-up.[ [86]]

When Ray states that they "swing pretty good wood on paper," he refers to large physical

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[85] Audio digital recording/Wav file of Elsa Villareal WAV179 (Oct. 26, 2004) (Villareal WAV179 (Oct. 26, 2004)).

[86] Audio digital recording/Wav file of Douglas Ray WAV302 (Dec. 30, 2004) (Ray WAV302 (Dec. 30, 2004)) (provided to Commission staff by ETP, the current owner of HPL).

trades, *i.e.*, "swing[ing] pretty good wood," affecting financial positions, or "paper." He then says "and they get out there doing fixed price things to, uh, support the position that they've got." This was indeed ETP's manipulative strategy.

86. In another October 2004 conversation about October 2004, an HPL employee, John Peyton, is told by a second trader named "Danny," "I mean, hell, Ship Channel is about as quiet as it could possibly be. … The guys that were selling the fixed price early on last month just obviously aren't doing it now." After Peyton agrees, Danny adds, "They definitely, uh, jumped out of the game a little bit." Peyton replies, "Yeah. So they must not have been too happy with it or maybe they made so much money they are all playing golf." Danny responds, "If they, uh, if that's who I think it is, then everybody knows who it was and they did what they have been doing for every month for the last year then yeah they hit a home run last month."[87]

87. In a November 22, 2004 conversation between Villareal and a trader identified as "Morgan," Morgan states, "[Y]ou know that Ship things tend to get skewed at the end."[88] ETP's manipulative strategy was to suppress price at HSC in the last half hour of trading on the day of the expiration of the NYMEX contract.

88. In a December 1, 2004 conversation between Gary Hanks, an HPL trader, and a trader identified only as "Chris,"[89] Chris observes that "I think overwhelmingly the trend in the last 18 months has been where Ship Channel has been a dog. If you sold the basis I think you made money probably 14 out of 16 months." ETP consistently sold HSC basis during this period and those positions benefited from its suppression of prices at HSC, prices that were "a dog." Hanks replied, "I think you are probably right. Of course you know we, we ahh buy all our gas pretty much on a Ship Channel basis and sell it to the interstates but we hedge it all." Chris agreed that "You lock in the spreads." Hanks told him, "Yeah, it doesn't do anything for me."[90] As this conversation reveals, market participants often hedged their positions at HSC. For this reason, ETP could be on the profitable side of short basis positions at HSC month after month; its counterparties had hedged their positions, at least in some instances, and thus were indifferent to price

[87] Audio digital recording/Wav file of John Peyton WAV103 (Oct. 26, 2004) (Peyton WAV103 (Oct. 26, 2004)).

[88] Villareal WAV31 (Nov. 22, 2004) (provided to Commission staff by ETP, the current owner of HPL).

[89] Audio digital recording/Wav file of Gary Hanks, WAV82 (Dec. 1, 2004) (Hanks WAV82 (Dec. 1, 2004) (provided to Commission staff by ETP, the current owner of HPL).

[90] *Id.*

outcomes at HSC. Chris observed, however, that "these producers they're going to hate it[,]" referring to producers who sell gas at prices determined by the HSC IFERC and who accordingly suffer losses from price suppression at HSC. The last comments of Hanks – "You know, cause so one of the guys was telling me that one of his, his people, his consumers had said 'How do I protest this and who do I sue?' And I said well I guess you better call IFERC or Platts. I don't know 'cause it has nothing to do with us." – underscores the view in the marketplace in the autumn and early winter of 2004 that natural gas trading at HSC was manipulated.[91]

#### f. ETP Manipulated Monthly Gas at HSC for Eight Months From December 2003 through November 2005

89. The Commission now presents an analysis of ETP's monthly trade activity at HSC for the eight months at issue. This analysis demonstrates how ETP manipulated price and what it gained from that manipulation.[92]

##### i. January 2004

90. On December 29, 2003, the NYMEX Contract expiration day, ETP sold approximately 2.1 Bcf of fixed-price gas for January 2004 deliveries. The sales were made on and off ICE. ICE sales were between 2:28 p.m. and 3:10 p.m., ET at a weighted average price of $5.71 within a range of $5.65 to $5.74. ETP's sales on ICE represented 100 percent of monthly volumes for the platform. ETP was short index gas of 4.0 Bcf, mitigating unjust profits somewhat. The IFERC HSC index for January 2004 was $5.71.

91. During ETP's sales, ICE swap[93] prices were approximately $6.15. This implies an

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[91] *Id.*

[92] The analysis in this section is based on ETP's Responses to Request Nos. 62-65 (as revised on Dec. 27, 2006) and Request No. 76, as well *Platts Inside FERC Gas Monthly Index* and historical data from ICE, *available at*: https://www.theice.com/marketdata/naNaturalGas/naNatGasHistory.jsp.

[93] ICE swaps are also referred to as "NYMEX "look alikes." The ICE swap is a financial product traded on ICE that is largely identical to the NYMEX Contract, except that the ICE swap does not require the parties to make or take physical delivery of gas. The settlement price of the ICE swap is equal to the settlement price of the NYMEX Contract. *See* ICE, "Product Details for Natural Gas Swap, Fixed for NYMEX LD1," https://www.theice.com/naturalgas.jhtml. As such, the ICE swap trades at nearly the same price as the NYMEX Contract. Staff used these instruments in the analysis, as opposed to NYMEX Contracts because ETP generally trades ICE swaps instead of NYMEX Contracts, and the ICE data is more readily available.

HSC basis of ($0.44) when compared to ETP's average weighted price. On December 24, ETP sold HSC basis swaps at ($0.30). There were basis bids on December 29, just prior to ETP's fixed price sales of ($0.30). Accordingly, staff estimates ETP's activity widened the HSC basis by $0.14, the difference between the IFERC HSC index price of $5.71 and the $5.85 price implied by the difference between the ICE swap price of $6.15 and the price at which ETP sold HSC financial basis of ($0.30).

92. Additional evidence of the effect of ETP's trading is the decoupling that occurred between the IFERC HSC index and Katy, TENN ZO, TETCO-STX and NGPL STX, ("Benchmark Prices"). For January 2004, the price difference between the IFERC HSC index and the average of the Benchmark Prices compared to the long term difference was ($0.19).

93. ETP unjustly profited by $913,494 or $618,374 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for January 2004 was (10,462,500) MMBtus. As noted, staff estimates that ETP sales activity suppressed the IFERC HSC index by at least $0.14. A reasonable measure of ETP's unjust profits from its HSC basis swaps is the product of 10.5 Bcf and $0.14 or $1,464,750. This figure nets to $1,169,630. Offsetting this gain would be a loss of $551,256 equal to the short physical position multiplied by $0.14.

**ii. October 2004**

94. ETP sold next-month gas at HSC on two dates in October 2004. On September, 24 2004, ETP sold approximately 1.86 Bcf of fixed price gas for October 2004 deliveries. The sales were made on ICE from 8:57 a.m. to 11:15 a.m., ET at a weighted average price of $5.27.

95. On September 27, the NYMEX expiration date, ETP sold an additional 5.8 Bcf of fixed-price gas for October deliveries. The sales were made on ICE from 8:34 a.m. to 2:26 p.m., ET at a weighted average price of $5.06. ETP's trades on these days represented 91 percent of volumes on ICE for October 2004.

96. The volume-weighted average price of all ETP sales was 8.6 Bcf and $5.12, respectively. ETP was long physical gas, primarily GasDaily hedged to IFERC HSC with index swaps in the amount of 3.3 Bcf. The IFERC HSC index for October 2004 was $5.11 and based on a volume of 14.1 Bcf.

97. When ETP sold on multiple days it is difficult to use the IFERC HSC price as a benchmark, and staff instead used a weighted average for the two days. During ETP's sales on September 24th, ICE swap prices ranged from approximately $5.33 to $5.39. The last basis trade on ICE prior to ETP's sales was on the 23rd and at ($0.12). Further, ETP sold 3.9 Bcf of basis on the 23$^{rd}$ at ($0.11). The NYMEX average price of $5.35 and the basis values imply an implicit HSC price of $5.24 on average. Thus ETP's fixed

price sales on the 24th at $5.27 did not contribute to the basis widening.

98. On September 27, ICE swap prices were approximately $5.25 from 8:34 a.m. to 11:15 a.m., ET. Adding the basis value of ($0.12) produces an implied HSC price of $5.13. Thus ETP's sales on September 27 at $5.06 contributed to the widening of the basis by $0.07. ETP's weighted average effect on the HSC price was ($0.05). For October 2004 the price difference between the IFERC HSC index and the average of Benchmark Prices was ($0.37).

99. ETP unjustly received $1,639,128 or $1,207,003 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for October 2004 was (29,527,500) MMBtus. As noted, ETP suppressed the IFERC HSC index by $0.05. ETP's unjust profits from its HSC basis swaps is the product of 29.5 Bcf and $0.05 which is $1,476,375. This figure netted for fixed price sales is $1,044,250. Similarly, multiplying ETP's long physical position of 3.3 Bcf by $0.05 produces an additional gain of $162,753.

**iii. December 2004**

100. ETP sold next-month gas at HSC in December 2004 on two dates. On November 23, 2004, ETP sold on ICE approximately 4.03 Bcf of fixed price gas for December deliveries from 1:58 p.m. to 3:48 p.m., ET with a price range of $6.45 to $6.28 and at a weighted average price of $6.40.

101. On November 24, 2003, the NYMEX expiration day, ETP sold on ICE approximately 6.82 Bcf of fixed-price gas for December deliveries at prices ranging from $6.28 to $6.16. 1.86 Bcf of these sales were on ICE from 8:11 a.m. to 11:17 a.m. at a weighted average price of $6.24.

102. ETP's total sales for the two days were 10.85 Bcf at a weighted average price of $6.28. ETP's sales represented 88 percent of sales on ICE. ETP was long physical gas priced at IFERC HSC, including volumes hedged at GasDaily with index swaps, of 7,017,860 MMBtu. The Platts IFERC HSC index and volume for December 2004 were $6.33 with associated volume of 16.74 Bcf.

103. On November 23, ICE swap prices were approximately $6.81. These prices ranged from $6.87 at 1:58 PM to $6.74 at 3:48 p.m. The last basis trade on ICE prior to ETP's sales was on November at ($0.35). The NYMEX and basis values imply HSC prices of $6.46 on average. Accordingly, ETP's sales that day at $6.40 were $0.06 below prevailing market prices.

104. On November 24, ICE swap prices were approximately $6.71. These prices ranged from $6.68 at 8:11 a.m. to $6.74 at 11:17 a.m. Again adding the basis value, prior to ETP's sales, of ($0.35) to the ICE swap prices provides an implied HSC price of $6.36.

Thus, ETP's sales on December 24 at $6.24 likely contributed to the widening of the basis by $0.12 on average.

105. ETP's weighted average effect on the HSC price based on the previous analyses was $0.10. For December 2004, the price difference between the IFERC HSC index and the average Benchmark Prices was ($0.81). Most of the price difference is attributable to the NYMEX run up of over $1.00 on November 24 after ETP was out of the HSC market.

106. ETP unjustly profited by $2,109,186 or $1,132,886 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for December 2004 equaled (14,074,000) MMBtus. As noted, ETP suppressed the IFERC HSC index by $0.10. ETP's unjust profits from its HSC basis swaps is the product of 14.1 Bcf and $0.10 which is $1,407,400. This figure nets to $431,000. Similarly, multiplying ETP's long physical position of 7.0 Bcf by $0.10 produces an additional gain of $701,786.

**iv. January 2005**

107. On December 28, 2004, the NYMEX expiration day, ETP sold approximately 3.1 Bcf of fixed-price gas for January 2005 deliveries. The sales were made at a weighted average price of $5.75. 1.0 Bcf of the sales were made on ICE from 2:17 p.m. to 3:10 p.m., ET at an average price of $5.72 and representing 100 percent of sales of fixed price gas for January 2005 on ICE. The remainder of the sales were over-the-counter. ETP was long physical gas priced at IFERC HSC of 21,616,611 MMBtus. The IFERC HSC index for January 2005 was $5.75 and based on a volume of 4.96 Bcf.

108. During ETP's sales, ICE swap prices were approximately $6.25. This implied a basis of ($0.50) when compared to ETP's average weighted sales price. As a comparison, on December 28, ETP sold HSC financial basis at a price of ($0.43). ETP's activity thus widened the HSC basis by $0.07, the difference between of the IFERC HSC index price of $5.75 and the price implied by the difference between the ICE swap price of $6.25 and ($0.43), the price at which ETP sold basis. The January 2005 price difference between the IFERC HSC index and the average of Benchmark Prices was ($0.03).

109. ETP unjustly profited by $1,849,583 or $1,636,783 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for January 2005 was (4,805,000) MMBtus. As noted, ETP suppressed the IFERC HSC index by $0.07. ETP's unjust profits are the product of 4.9 Bcf and $0.07, which is $336,350. This figure nets to $123,550. A reasonable measure of ETP's unjust profits from its net purchases of physical gas is the product of 21.6 Bcf and $0.07, which is $1,513,233.

### v. February 2005

110. ETP sold next-month gas at HSC for February 2005 on three dates. On January 27, 2005, the NYMEX expiration day, ETP sold approximately 5.3 Bcf of fixed-price gas for February 2005 deliveries. The sales were made at a weighted average price of $5.76. 1.5 Bcf of the sales were made on ICE from 2:20 p.m. to 3:02 p.m., and also at an average price of $5.76, and representing 55 percent of sales of fixed price gas for February 2005 on ICE. The remainder of the sales were over-the-counter. On January 28 and 31, ETP sold an additional 2.0 Bcf at weighted average prices of $5.69 and $5.64, respectively.

111. In total, ETP's fixed price sales at HSC for February 2005 delivery were 7.3 Bcf at a weighted average price of $5.74. The IFERC HSC index for February 2005 was $5.74 and based on a volume of 16.5 Bcf. ETP was a net purchaser at the IFERC HSC in February 2005 of 27.5 Bcf.

112. During ETP's sales on January 27, ICE swap prices were approximately $6.30. This implied a basis of ($0.56) when compared to ETP's average weighted sales price. On January 26, ETP sold HSC basis swaps at a price of ($0.51). Accordingly, ETP's activity widened the HSC basis by $0.05, the difference between the IFERC HSC index and the price implied by the difference between the ICE swap price of $6.30 and the price at which ETP sold basis of ($0.51). Market comparisons on January 28 and January 31 are not possible because: (1) ETP's trades were not on ICE; (2) ETP did not provide time stamps for market activity off of ICE and (3) the NYMEX Contract had expired. The February 2005 price difference between the IFERC HSC index and the average of Benchmark Prices was ($0.10).

113. ETP unjustly profited by $2,349,571 or $2,062,386 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for February 2005 was (19,457,428) MMBtus. As noted, ETP's sales activity suppressed the IFERC HSC index by $0.05. ETP's unjust profits from its HSC basis swaps is the product of 19.5 Bcf and $0.05, which is $972,871. This figure nets to $685,686. Similarly, multiplying ETP's long physical position of 27.5 Bcf by $0.05 produces an additional gain of $1,376,700.

### vi. July 2005

114. On June 28, 2005, the NYMEX expiration day, ETP sold approximately 13.2 Bcf of fixed-price gas for July 2005 deliveries. The sales were made at a weighted average price of $6.87. 9.5 Bcf of the sales were made on ICE, also at a weighted average price of $6.87, from 2:22 p.m. to 2:33 p.m., ET and represented 81 percent of sales of fixed price gas for July 2005 on ICE. The remainder of the sales were over-the-counter. ETP was long 9.5 Bcf at the IFERC HSC in July 2005. The Platts IFERC HSC index for July 2005 was $6.88 and based on a volume of 25.2 Bcf.

115. During ETP's sales, ICE swap prices were approximately $6.98. This implied a basis of ($0.11) when compared to ETP's average weighted sales price. As a comparison, on June 28, ETP sold HSC basis swaps at a price of ($0.045). Accordingly, ETP widened HSC basis by $0.055, the difference between of the IFERC HSC price of $6.88 and the price implied by the difference between the ICE swap price of $6.98 and the price at which ETP sold basis, ($0.045).

116. A comparison to similar points is not entirely consistent with this analysis. The July 2005 price difference between the IFERC HSC index and the average of Benchmark Prices was ($0.03). This discrepancy is due to one of the similar points, Texas Eastern, South Texas being unusual low for the month. Excluding this aberration, and making a comparison only to Katy, Tennessee South Texas and NGPL South Texas, reveals a difference of ($0.06).

117. ETP unjustly profited by $1,766,692 or $1,039,086 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for July 2005 was (22,610,848) MMBtus. As noted, ETP's sales activity suppressed the IFERC HSC index by $0.055. ETP's unjust profits from its HSC basis swaps is the product of 22.6 Bcf and $0.055 or $1,243,597. This figure nets to $515,991. ETP's unjust profits from its net purchases of physical gas is the product of 9.5 Bcf and $0.055, which is $523,096.

### vii. September 2005

118. On August 29, 2005, the NYMEX expiration day, ETP's subsidiary, HPL, sold approximately 3.9 Bcf of fixed-price gas in fourteen separate transactions on ICE for September 2005 delivery at a weighted average price of $9.61. The sales were on ICE from 2:25 p.m. to 2:34 p.m., and represented 100 percent of sales of fixed price gas on ICE for September 2005 delivery. ETP was a net purchaser of physical gas at IFERC HSC for September 2005 of 5.1 Bcf. The IFERC HSC index for September 2005 was $9.72 on a volume of 7.9 Bcf.

119. Hurricane Katrina hit the coast of Louisiana the morning of August 29, 2005. The hurricane significantly disrupted production in the Gulf of Mexico and a significant number of on-shore gathering and pipeline operations in Louisiana. According to Natural Gas Intelligence (NGI), regarding trading at Henry Hub:

> After opening at $11.20 on Monday, September natural gas got as high as $11.70, before exploring lower on profit-taking. After bouncing off $10.65, the prompt month expired at an all time high of $10.847, up $1.055 from Friday's settle.[94]

Notwithstanding this volatility, a comparison of ETP's trades to the price of ICE swaps

[94] Natural Gas Intelligence, Daily Gas Price Index, Aug. 30, 2005.

and prevailing HSC financial basis levels shows an intention and effect by ETP to suppress prices at HSC, thus widening the basis and benefiting ETP's financial positions and reducing the cost of physical purchases to be priced at the IFERC HSC index.

120. ETP's initial HSC trade at 2:25 p.m. was at $9.61. ICE swap prices were approximately $10.81. These prices imply an HSC basis of ($1.20). ETP's final trade at 2:34 p.m. was priced at $9.62. ICE swaps at 2:34 p.m. were trading at approximately $10.83, implying an HSC basis of ($1.21). As a comparison to the two implied pricing points, the final HSC basis transaction on August 29, just prior to fixed price sales, was a sale by ETP at ($0.75) at 1:30 p.m. Accordingly, staff estimates ETP's activity widened the IFERC HSC index by $0.46 or the difference between the basis of ($1.21) implied by ETP's average sales prices of $9.61 and the price of ETP's last basis trade of $0.75. For pricing context, the September 2005 price difference between the IFERC HSC index and the average Benchmark Prices was ($0.49).

121. ETP unjustly profited by $5,668,726 or $3,894,368 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for September, 2005 was (7,241,520) MMBtus. ETP was long physical gas at IFERC HSC equal to 5,081,797, including daily transactions hedged to the IFERC HSC index. As noted, ETP's sales activity suppressed the IFERC HSC index by $0.46. ETP's unjust profits from its HSC basis swaps is the product of 7.2 Bcf and $0.46 which is $3,331,099. This figure nets to $1,556,741. A reasonable measure of ETP's gain from its net purchases of physical gas is the product of 5.1 Bcf and $0.46, which is $2,337,627.

### viii. December 2005

122. ETP's sales of fixed-price gas for prompt-monthly delivery at HSC on November 28, 2005 also lowered the IFERC HSC index and widened the HSC basis. ETP's sales lowered the IFERC HSC index by $0.37. ETP engaged in 31 sales on ICE on this date. Fixed-price gas for prompt-month delivery at HSC traded at a price of $8.25 before ETP began trading. ETP sold roughly 9 Bcf of fixed-price gas in roughly 20 minutes beginning at 2:06 p.m. ETP's first sale on November 28, 2005 was at 2:06 p.m. for $7.80. ETP's remaining sales during the day were at increasing prices, with the last sale at its highest price of $7.87. ETP's weighted-average sales price for transactions on ICE for November 28, 2005 was $7.82. Again, ETP was the dominant seller in the market, accounting for over 95 percent of total sales volume on ICE, and effectively set the IFERC HSC index, which settled at $7.88, $0.37 lower than when ETP began trading.

123. The last HSC basis swap that traded prior to ETP's first sale on November 28, 2005 was at ($3.00) as compared to a settlement of ($3.30) thus implying ETP was responsible for a reduction of $0.30. This amount is consistent with the amount by which fixed–price sales and the IFERC HSC index were reduced.

124. Two transactions, the first a fixed price deal at $8.25 and the second a basis deal at

($3.00), along with the bids of $8.10, all of which preceded ETP's trading on November 28, 2005, are appropriate benchmarks for determining market value. Trading on November 28, 2005 did not progress along a classical, downward slope. Nonetheless, it became disconnected in value from prior transactions. The result that ETP achieved was lower prices to benefit its basis swaps and its repurchase of fixed price gas in December.

125. ETP unjustly profited by $18,469,116 or $15,760,802 netted for selling physical gas at a lower price. ETP's short HSC basis swap position for December 2005 was (45,181,360) MMBtus. ETP was long physical gas at IFERC HSC equal to 16,382,361. Given that ETP sales activity suppressed the IFERC HSC index by $0.30, a reasonable measure of ETP's unjust profits from its HSC basis swaps is the product of 45.2 Bcf and $0.30 which is $13,554,408. This figure nets to $10,846,094. A reasonable measure of ETP's gain from its net purchases of physical gas is the product of 16.4 Bcf and $0.30, which is $4,914,708.

### g. ETP Should Pay Civil Penalties and Disgorge Unjust Profits

126. As discussed *supra* at P 70-73, the Commission set forth criteria in the *Policy Statement on Enforcement* that guide assessment of civil penalties. We now apply these criteria to ETP's trading activity for the eight months discussed above.

- ETP's violations caused harm for the same reasons we cited in our discussion of civil penalties for ETP's September 28, 2005 manipulations. Counterparties who sold gas to ETP and who were on HSC financial basis contracts with ETP realized less revenue or greater expense than they would have realized absent the violations.

- ETP's violations were the result of manipulation, and thus strongly implicate the Commission's authority to help assure that wholesale energy markets are free and open.

- ETP's actions were willful. ETP used a similar strategy for the eight months discussed above. It set up its book to benefit from its suppression of price at HSC and it benefited from its trading strategy. ETP intended to manipulate fixed price gas at HSC in the referenced months.

- Senior management of ETP was aware of ETP's trading strategy. The strategy was executed for a two year period, and ETP received substantial unjust profits from its manipulations. The September 26, 2005 telephone call of McCrea shows that ETP's senior management knew that "push[ing] Ship down," was a part of the company's trading strategy for selected months. This is not a case where one, or even a handful of employees, embarked on a practice of which senior management may plausibly claim ignorance.

- ETP did not self-report its violations.

- ETP's cooperation was not exemplary and hence does not qualify ETP for a discount of the civil penalty. ETP impeded the investigation at one point by providing incorrect data responses to staff regarding the relevant eight months. After conferences with staff, ETP revised this data and after considerable delay, responded with corrected data.

- ETP did not take steps to remedy its violations in a timely manner. It continued to manipulate the market at HSC for two years.

127. Based on a consideration of the foregoing factors, we believe that imposition of the full civil penalty authority of the Commission is appropriate.[95] ETP's manipulation in the eight relevant months caused serious harm, involved manipulation, was willful, involved senior management and was not a self-report. Accordingly, the Commission directs ETP to show cause why it should not pay civil penalties in the amount of $45,000,000 for its trading activity at HSC in August and November 2005.

128. ETP realized $27,351,689 in unjust profits from its manipulations. The Commission directs ETP to show cause why it should not pay this amount, plus interest.

### B. ETP Violated Market Behavior Rule 2 When it Manipulated Daily Prices at the Waha and Permian Hub

129. ETP manipulated the price of fixed price gas at Waha for next daily delivery (daily gas). ETP sold fixed price daily gas at Waha on December 23, 2005 and December 28, 2005, and bought back similar volumes of daily gas at the Gas Daily index on the same days. ETP had no legitimate business purpose to execute these transactions. However, by selling fixed price daily gas on the noted dates, ETP suppressed the price of that gas, thereby increasing the value of short index swaps. The Commission proposes that ETP pay a civil penalty in the amount of $3,000,000 and that ETP disgorge the benefit it

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[95] As noted, *supra* P 36, the Commission has civil penalty authority in the amount of $1,000,000 per day per violation under the NGA for violations that occurred on or after the August 8, 2005 enactment date of EPAct 2005. Accordingly, the Commission has authority to assess civil penalties against ETP only for the manipulations discussed in this section of the order that occurred on August 28, 2005 and November 28, 2005. ETP made a total of 45 sales on ICE on these days, all of which were violations of Market Behavior Rule 2. Each trade was a manipulation of the market at HSC on those respective dates and thus each trade was a violation of the Commission's Market Behavior Rule 2.

derived from these manipulations, which was $2,228,550, plus interest.

### 1. December 23, 2005 for December 24 to 27, 2005

130. Prices at Waha and Katy had been trading nearly flat to one another in the days leading up to December 23, 2005, but the basis widened dramatically for December 24 to December 27, as indicated by Chart 10 below.

**Chart 10**

| Flow Dates | Waha | Katy | Basis | Basis Change From Previous Day |
|---|---|---|---|---|
| 12/14/05 | $13.27 | $13.51 | $.25 | NA |
| 12/15/05 | $13.04 | $12.97 | ($.07) | ($.32) |
| 12/16/05 | $12.22 | $12.42 | $.20 | $.27 |
| 12/17 -19/05 (weekend package) | $11.62 | $11.82 | $.20 | 0 |
| 12/20/05 | $11.91 | $12.17 | $.26 | $.06 |
| 12/21/05 | $11.91 | $11.97 | $.06 | ($.20) |
| 12/22/05 | $11.38 | $11.36 | ($.025) | ($.09) |
| 12/23/05 | $10.55 | $10.48 | ($.07) | ($.05) |
| 12/24 to 27/05(weekend and holiday package) | **$8.18** | **$8.98** | **$.80** | $.87 |

Source: GasDaily

Prices behaved similarly at Permian, as shown in Chart 11.

**Chart 11**

| Flow Dates | El Paso Permian Average Prices |
|---|---|
| 12/21/05 | **$11.90** |
| 12/22/05 | **$11.35** |
| 12/23/05 | **$10.51** |
| 12/24/05 to 12/27/05 | **$8.34** |

Source: Gas Daily

131. On December 23, 2005 gas prices fell at major trading points across the country.[96]

[96] *Natural Gas Intelligence*, an industry publication, reported for December 24 to 27, packages of gas that "with disappearing heating load and the previous day's screen

Nonetheless, the divergence of price between Waha and Katy on this date was unusual and extraordinary. From September 1, 1997 through September 1, 2006, approximately 2,200 trading days, Waha ended 80 cents lower than Katy compared to the preceding trading day, only five times, or roughly 0.25 percent of trading days in this period.

132. Company traders had previously discussed the relationship between Waha daily prices to the Waha-Katy basis. For example, on October 8, 2004, Luke Fletcher, an ETP trader, told Mark Mandl, an Oasis Pipeline dispatcher, that "Waha is going out well offered minus – yeah, and uh kind of set up for some good wide spreads."[97]

133. The separation of Waha and Permian relative to Katy pricing was exacerbated by ETP's activity at both points on December 23, 2005. ETP began sales on ICE of Waha fixed price daily gas for the 24th to 27th at 8:48 a.m. with a 10,000 MMBtu/d sale to Astra at $8.05. From 8:48 a.m. to 9:33 a.m., ETP was involved on ICE in fixed price transactions totaling sales of 584,000 MMBtus at a weighted average price of $8.06 and a purchase of 56,000 at $8.44. ETP's net short position was (528,000) at $8.02. The ICE average price was $8.16. ETP's activity represented 56 percent of transactions on ICE for Waha.

134. In addition, at the El Paso Waha Pool, a Permian pricing point, ETP from 8:48 a.m. to 10:32 a.m. sold 300,000 MMBtus at $8.01 and from 10:58 a.m. to 11:48 a.m. purchased 94,800 MMBtus at $8.54. ETP's net position was (205,200) at $7.77. The ICE average price was $8.22. ETP's activity represented 75 percent of ICE transactions at El Paso Waha.

135. ETP's total, net fixed price position for December 24, 2005 to December 27, 2005 for all trades on and off ICE for Waha and El Paso Waha Pool was (720,400) MMBtus, the total of twenty two sales transactions of 884,800 MMBtus at $8.04 and five purchase transactions of 164,400 MMBtus at $8.43. Total purchases and sales were 1,049,200 compared to Platts *Gas Daily* volumes for the two points of 1,536,000 MMBtus.

136. ETP covered its net short position by purchasing index or GasDaily gas. The index price for December 24 to December 27 was $8.18. On December 23, ETP purchased index volumes at Waha of 538,248 MMBtus. In addition, ETP had pre-existing arrangements for 36,374 MMBtu/d of Waha, GasDaily priced gas which totaled 145,496 MMBtus for the four day period. Accordingly, total index purchases were 683,744 MMBtus, roughly equal to the short fixed price position of (720,400) MMBtus.

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plunge exacerbated by the extra reduction of industrial demand associated with a long holiday weekend, cash prices tanked by more than a dollar — more than $2 in quite a few cases — across the board Friday."

[97] Fletcher WAV198B (Oct. 8, 2004).

In effect, the evidence shows that ETP cycled its fixed trades into index gas, in the process misrepresenting itself to the marketplace as a net seller while actually having a flat position.

137. ETP benefited from this activity by virtue of short positions in Permian and Waha GasDaily index swaps. A short position in this context means that the holder, ETP, is buying the GasDaily index at Waha and selling the Inside FERC index at Waha. Thus, ETP's short index position profited from a falling GasDaily price. ETP has short GasDaily index positions of (337,500) MMBtu/d at Waha and (285,000) MMBtu/d at Keystone.[98] A good measure of ETP's benefit from their cycling of trades on December 23 is the increased differential to Katy for both points, Waha and Permian, times the daily short index swap positions times the number of days. This approach takes into account the generally falling gas prices for that day. It attributes to ETP price suppression on December 23, 2005 at Waha of $0.87 out of a total price decline that day of $2.37 at Waha and it attributes price suppression to ETP that day at Permian of $0.67 out of a total price decline that at Permian of $2.17. As such, the unjust profits that ETP accrued from its December 23, 2005 trading at issue at Waha and Permian for the four referenced days by reason of its trading activity that appears to have been manipulative is determined as follows: (4 days)*($0.87/MMBtu)*(337,500 MMBtu/d) or $1,174,500 at Waha; and (4 days)*($0.67/MMBtu)*(285,000 MMBtu/d) or $763,800 at Permian for a total of $1,938,300.[99]

### 2. December 28, 2005 for December 29, 2005

138. Daily natural gas prices were falling on December 29, 2005 in the range of $0.05 to $0.85 with the largest declines in the West. Charts 12 and 13 compare Waha and El Paso Permian to Katy.

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[98] ETP Response to Request No. 26, Excel file "December2005.test.xls." Per Platts' methodology, the El Paso Keystone Station south to Waha is one of three pools that make up the index point, El Paso, Permian Basin, for daily and monthly surveys.

[99] ETP Response to Request No. 62 (as revised on Dec. 27, 2006). ETP does not distinguish between Waha and El Paso Waha in its transactional reporting per ETP Response to Request No. 64. *See also* ICE Natural Gas Index Historical Data, *available at:* https://www.theice.com/marketdata/naNaturalGas/naNatGasHistory.jsp.

**Chart 12**

| Flow Dates | Waha | Katy | Basis | Basis Change From Previous Day |
|---|---|---|---|---|
| 12/28/05 | $7.99 | $8.03 | $.04 | NA |
| 12/29/05 | $7.27 | $7.79 | $.52 | $.44 |

Source: GasDaily

**Chart 13**

| Flow Dates | El Paso Permian | Katy | Basis | Basis Change From Previous Day |
|---|---|---|---|---|
| 12/28/05 | $7.98 | $8.03 | $.05 | NA |
| 12/29/05 | $7.29 | $7.79 | $.50 | $.44 |

Source: GasDaily

139. As on December 23, 2005, ETP's activity on December 28, 2005 contributed to the separation of the Waha and Permian relative to Katy pricing. While prices also fell in parts of the country on this date, the drop at Waha relative to Katy was again unusual and extraordinary. From September 1, 1997 through September 1, 2006, Waha ended 40 cents lower than Katy, compared to the previous trading day, only 16 times, or approximately 0.75 percent of the trading days in this period.

140. ETP began sales on ICE of Waha fixed price gas for December 29, 2005 on December 28, 2005 at 8:35 a.m. with a 10,000 MMBtu/d sale to BP Energy at $7.25. From 8:35 a.m. to 10:25 a.m., ET ETP made fixed price sales of 183,500 MMBtu/d at a weighted average price of $7.21 and bought 55,000 MMBtu/d at $7.28. ETP's weighted average position was (128,500) at $7.18. The ICE average price was $7.26. ETP's transactions represented 59 percent of ICE trades.

141. At the El Paso Waha Pool, ETP on ICE from 8:37 a.m. to 10:20 a.m. sold 150,000 MMBtu/d at $7.20 and purchased 12,600 MMBtu/d at $7.30. ETP's net position was (137,400) at $7.19. The ICE average price was $7.28. ETP's transactions represented 64 percent of ICE trades.

142. ETP's net fixed price position for December 29, 2005 for all Waha and El Paso Waha trades on and off ICE was (286,900) MMBtus, the total of thirty sales transactions of 368,500 MMBtus at $7.23 and twelve purchase transactions of 81,600 MMBtus at $7.26. Total purchase and sales were 450,100 compared to Platts volumes for the two points of 1,432,000 MMBtus.

143. ETP largely covered its net short position by purchasing index or GasDaily gas. The index price for December 29, 2005 was $7.27. On December 28, 2005, ETP

purchased index volumes of 213,962 MMBtus. In addition, ETP had from pre-existing arrangements 36,374 MMBtu/d of GasDaily priced gas, thus totaling 250,336 MMBtus of index gas for December 29, 2005, which is similar to the short fixed price position of (286,900) MMBtus.

144. ETP benefited by virtue of short positions in Permian and Waha GasDaily index swaps. A good measure of ETP's benefit from their cycling of trades on December 28, 2005 is the increased differential to Katy for both points, Waha and Permian, times the daily short index swap positions. This approach takes into account the generally falling gas prices for that day. It attributes to ETP price suppression on December 29, 2005 at Waha of $0.48 out of a total price decline that day of $0.72 at Waha and it attributes price suppression to ETP that day at Permian of $0.45 out of a total price decline that day of $0.69 at Permian. As such, the unjust profits that ETP accrued from its December 29, 2005 trading at issue at Waha and Permian for December 29, 2005 by reason of its trading activity that appears to have been manipulative is determined as follows: ($0.48/MMBtu) (337,500 MMBtus) or $162,000 at Waha and ($0.45/MMBtu) (285,000 MMBtus) or $128,250 at Permian for a total of $290,250.[100]

145. The total unjust profits to ETP from its manipulations at Waha on December 23, 2005 and December 28, 2005 are summarized in Chart 14.

**Chart 14**

| | Dec. 23 Trading | Dec. 29 Trading | Total |
|---|---|---|---|
| Waha | $1,174,500 | $162,000 | **$1,336,500** |
| Permian | $763,800 | $128,250 | **$892,050** |
| **Total** | **$1,938,300** | **$290,250** | **$2,228,550** |

### 3. ETP Should Pay Civil Penalties and Disgorge its Unjust Profits

146. The Commission applies the criteria set forth in the *Policy Statement on Enforcement* for assessing appropriate civil penalties.[101] As was the case in ETP's manipulations at HSC, ETP's manipulations at Waha caused harm to counterparties and undermined integrity in the market. The violations were the result of manipulations, and were serious offenses. ETP's actions were willful because it must have intended to sell at fixed price and buy back at index similar volumes on December 23, 2005 and December 28, 2005. The timing of the trades indicate an intent to manipulate the market. It is

[100] ETP Response to Request No. 62 (as revised on Dec. 27, 2006). ETP does not distinguish between Waha and El Paso Waha in its transactional reporting per ETP Response to Request No. 64.

[101] *See supra* P 70-73.

unclear whether senior management was involved in these manipulations. ETP did not self-report the violations. The proposed civil penalties will not affect ETP's viability. ETP's cooperation with respect to the underlying investigation of the violations has been satisfactory, but ETP has not extended itself in a way that would merit a discount in the civil penalty or cooperation the minimum level required by law.

147. The maximum civil penalty is $58,000,000, based on the facts that ETP made 23 trades at Waha on December 23, 2005 and 35 trades at Waha on December 28, 2005, and that each trade constitutes a separate violation. Based on a consideration of the relevant foregoing factors, we believe that a reduction of the full civil penalty authority of the Commission is appropriate. We determine that a civil penalty in the amount of $3,000,000 is warranted and appropriate.[102] A civil penalty of $3,000,000 should serve to deter similar violations in the future while sufficiently punishing ETP for its unlawful conduct. We also propose to order ETP to disgorge $2,228,550 in unjust profits, plus interest.

### C. Oasis Pipeline Violated Commission Requirements

148. Oasis Pipeline unduly preferred affiliated shippers and unduly discriminated against non-affiliated interstate shippers on its system in three ways, all of which constitute violations of section 284.9(b) of the Commissions regulations[103] and Oasis Pipeline's 1986 and 2006 Operating Statements.[104] First, Oasis Pipeline refused to provide interstate transportation service to similarly-situated non-affiliated shippers, at the same time it was providing this service to affiliated shippers.[105] Second, on 180 occasions, Oasis Pipeline charged non-affiliated interstate shippers rates that exceeded

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[102] As noted *supra* P 37, the Commission has civil penalty authority for post-EPAct 2005 violations in the amount of $1,000,000 per day per violation. Each sale that ETP made at Waha for next day gas on December 23, 2005 and December 28, 2005 constituted a violation of Market Behavior Rule 2.

[103] 18 C.F.R. § 284.9(b) (2006).

[104] Oasis Pipeline Response to Request No. 21.

[105] The denied or discouraged requests from non-affiliates were made over the phone or by instant message, rather than through Oasis Pipeline's electronic bulletin board (EBB). Although formal requests for service are submitted through the EBB, there would be no point for a shipper to submit such an EBB request after being told that no capacity is available. Moreover, the voice recordings and instant messages reviewed by staff indicate that it was common practice – for both affiliates and non-affiliates alike – to first make inquiries regarding available space over the phone or by instant message before submitting a formal request through Oasis Pipeline's EBB.

the maximum Commission-approved rate of $0.1239 per MMBtu.[106] Third, Oasis Pipeline unduly preferred its affiliate, ETC Marketing, by allowing it to ship interstate gas under a firm intrastate contract. Oasis Pipeline's violations were continuous from January 26, 2004 through June 30, 2006. We propose to assess a civil penalty of $15,000,000 and order disgorgement of $267,122 in unjust profits, plus interest.

149. Also, the owner of the Oasis Pipeline system, Oasis Pipeline Company Texas, L.P., violated section 284.123(e) of the Commission's regulations[107] when it failed to timely amend its 1986 and 2006 Operating Statements and to file a Capacity Lease and Commercial Operations Agreement, which changed how it operated the pipeline. Oasis Pipeline's violation of the filing requirements has been continuous from January 26, 2004 to the present. We propose to assess a civil penalty of $500,000.

### 1. Undue Preference and Undue Discrimination

150. Oasis Pipeline provided interstate (NGPA section 311) service on an interruptible basis only and intrastate service on both a firm and an interruptible basis. The maximum rate that Oasis Pipeline could charge for interruptible interstate transportation was $0.1239.[108]

151. Oasis Pipeline had an economic incentive to discriminate against non-affiliates when the basis differential between Waha and Katy exceeded the maximum lawful rate for interstate transport of $0.1239. If, for example, gas at Waha could be purchased for $6.00 per MMBtu and sold at Katy for $7.00 per MMBtu, a shipper could purchase interstate gas at Waha for shipment to Katy at the maximum transportation rate of $0.1239 and pocket the amount above $0.1239. By providing this service to an affiliated shipper, Oasis Pipeline could ensure that these profits stayed within the ETP corporate family, rather than losing them to non-affiliates. As discussed below, Oasis Pipeline used a variety of illegal practices to ensure that this valuable service was available primarily to its affiliated shippers and to either foreclose or overcharge non-affiliates for this service.

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[106] In addition to violating Commission regulations and the provisions of its Operating Statement that prohibit undue preferences and undue discrimination, these overcharges violate section 284.122(b) of the Commission's regulations,18 C.F.R. § 284.122(b) (2006). This regulation states that "No rate charged for transportation authorized under this subpart may exceed a fair and equitable rate under § 284.123."

[107] 18 C.F.R. § 284.123(e) (2006).

[108] Oasis Pipeline Response to Request Nos. 21 and 22. *See also*, *Oasis Pipeline Co.*, 24 FERC ¶ 61,264 (1983); *Houston Pipe Line Co.*, 24 FERC ¶ 61,096 (1983); *Houston Pipe Line Co.*, 23 FERC ¶ 61,336 (1983); *Oasis Pipeline Co.*, 12 FERC ¶ 62,186 (1980).

### a. Summary of Evidence

#### i. Refused or Discouraged Requests for Interstate Service

152. On May 19, 2005, UBS requested transportation on Oasis Pipeline from Waha to Katy for June 2005.[109] The Oasis Pipeline dispatcher stated that interruptible service was not available, but that if UBS wanted to ship intrastate gas, Oasis Pipeline would sell UBS firm service if firm capacity was available. Oasis Pipeline shipped an average of 33,500 MMBtu/d using interstate, interruptible service for its affiliates in June.[110]

153. Oasis Pipeline appears to have rejected two requests for daily interruptible service on July 14 and July 25.[111] Oasis Pipeline shipped an average of over 12,000 MMBtu/d using interstate, interruptible service for affiliates in July 2005.[112]

154. In August 2005, Oasis Pipeline rejected two requests for interstate service. On August 17, 2005, an Oasis Pipeline dispatcher informed an Astra representative that Oasis Pipeline was full.[113] Also, on August 24, an unidentified, non-affiliated shipper called to inquire about interruptible capacity on Oasis Pipeline, and was told that nothing was available daily or for the next month.[114] Oasis Pipeline nevertheless shipped an average of over 35,000 MMBtu/d using interstate, interruptible service for its affiliates from August 18 until August 31.[115]

155. On September 19, 2005 at 7:37 a.m., an ETC Marketing shipper sent an instant message inquiring whether he should "work crosshaul." Oasis Pipeline's dispatcher replied that ETC Marketing should "work 50k," though Oasis Pipeline could probably do

[109] Audio digital recording/Wav file of Mark Mandl WAV2351 (May 19, 2005) (Mandl WAV2351 (May 19, 2005)).

[110] Oasis Pipeline Response to Request No. 34.

[111] Mandl WAV281E (July 14, 2005); Mandl WAV2930 (July 25, 2005).

[112] Oasis Pipeline Response to Request Nos. 34 and 35.

[113] Audio digital recording/Wav file of Paul McPheeters WAV20B (Aug. 17, 2005) (McPheeters WAV20B (Aug. 17, 2005)).

[114] McPheeters WAV2D0 (Aug. 24, 2005). *See also* Oasis Pipeline Response to Request No. 6, Bates No. 002110 (IM dated Aug. 22, 2005) (Oasis Pipeline dispatcher tells non-affiliate that no space available from Waha to Katy for the next day).

[115] Oasis Pipeline Response to Request No. 35.

more and that he would "get right back if we can do more."[116] Seven minutes later, an non-affiliated shipper sent an instant message asking for crosshaul, to which the Oasis Pipeline dispatcher responded "no sir, we've been full up all month," and that he was "anticipating being as full next month as I am this."[117] Thus while he was still looking for more space for his affiliated shipper, the Oasis Pipeline dispatcher told the non-affiliate that there was no more space for this month or the next.

156. In October 2005, Oasis Pipeline rejected at least four requests from non-affiliated shippers. On October 10 and again on October 19, representatives of Dow Chemical called inquiring about shipping gas on a monthly basis from November forward.[118] The Oasis Pipeline dispatcher informed them that, although they had interruptible interstate and interruptible intrastate agreements in place, Oasis Pipeline did not have any space available for November and that "you are probably going to need to enter into a firm" intrastate agreement to be able to ship on Oasis Pipeline.[119] However, in three e-mail confirmations on October 26 and October 27, Oasis Pipeline agreed to transport nearly 80,000 MMBtu/d for its affiliate under a dual contract arrangement.[120] Moreover, Oasis Pipeline shipped over 13,000 MMBtu/d of interstate gas for its affiliate during November 2005.

157. Oasis Pipeline also provided affiliated shippers with preferential access to information regarding available capacity and pricing. For example, Oasis Pipeline

[116] Oasis Pipeline Response to Request No. 6, Bates No. 002035 (IM dated Sept. 16, 2005).

[117] Oasis Pipeline Response to Request No. 6, Bates No. 002036 (IM dated Sept. 19, 2005). *See also* Bates Nos. 002143 (IM dated Aug. 31, 2005) (Oasis Pipeline dispatcher told non-affiliate that there was no next day space available), 002147 (IM dated Sept. 1, 2005) (Oasis Pipeline dispatcher told non-affiliate that there would "most likely" not be any space to Katy for the month of September).

[118] McPheeters WAV8D1 (Oct. 10, 2005); Mandl WAV1216 (Oct. 19, 2005).

[119] McPheeters WAV8D1 (Oct. 10, 2005). Also, on October 19 and October 26, an Oasis Pipeline dispatcher informed non-affiliated shippers that daily space was doubtful and that he could not sell for November until producers had elected the volumes they would be shipping for November. *See* Mandl WAV1216 (Oct. 19, 2005) (second call on WAV1216); Mandl WAV1B83 (Oct. 26, 2005).

[120] *See, e.g.*, ETP Response to Request No. 84, Bates Nos. OA84-002446 (e-mail from Small to McPheeters for 65,000 MMBtu/d, Oct. 26, 2005); OA84-002447 (e-mail from O'Kane to McPheeters for 13,375 MMBtu/d, Oct. 26, 2005); OA84-002448 (e-mail from O'Kane to McPheeters for 370 MMBtu/d, Oct. 27, 2005).

personnel informed ETC Marketing personnel in advance when interruptible, interstate capacity became available.[121] This market advantage does not appear to have been extended to non-affiliated shippers, who had to call back day after day to see whether any space had become available.[122] Oasis Pipeline and ETC Marketing personnel also discussed where Oasis Pipeline should set its transportation rates.[123] In some cases, employees of ETC Marketing – a shipper on the system – even recommended that Oasis Pipeline charge *higher* prices for transport.[124]

### ii. Overcharges

158. On 186 occasions from February 20, 2004 through February 2, 2006, Oasis Pipeline charged interstate shippers a rate in excess of the maximum lawful rate of $0.1239 per MMBtu.[125] All but six of these 186 overcharges were to non-affiliates. Oasis Pipeline made these overcharges for deliveries from interstate receipt points at Waha and upstream of Waha from interstate pipelines, which Oasis Pipeline's section 311 contracts identify as interstate receipt points.[126] The total amount of these 186

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[121] Mandl WAV1035 (May 2, 2005) ( Mandl told his counterpart at ETC Marketing in response to a request for capacity that there is "nothing yet, but as soon as I do I will, uh, I'll send you an IM.").

[122] For instance, Astra's representative called on September 20, 2005 inquiring about capacity for October. The Oasis Pipeline dispatcher informed her that none was available, but that she should keep calling back every day to see if some amount did become available. McPheeters WAV58D (Sept. 20, 2005). However, on September 26 and September 30, Oasis Pipeline agreed to transport 80,000 MMBtu/d for the month of October for its affiliate, pursuant to the "dual contract" arrangement discussed below in which shippers could reserve capacity under a firm intrastate contract while shipping interstate gas under the related interstate interruptible contract. *See, e.g.,* ETP Response to Request No. 84, Bates Nos. OA84-001659 (e-mail from Small to McPheeters for 50,000 MMBtu/d, Sept. 26, 2005); OA84-002417 (e-mail from Fletcher to Mandl for 30,000 MMBtu/d, Sept. 30, 2005).

[123] *See, e.g.*, Mandl WAVC87 (Aug. 23, 2005); Mandl WAVE9C (Sept. 16, 2005); McPheeters WAV13B (Aug. 12, 2005).

[124] *See, e.g.*, Mandl WAV1818 (Sept. 29, 2004).

[125] Oasis Pipeline Responses to Request Nos. 1 and 2. *See* Appendix A for a list of these overcharges.

[126] Oasis Pipeline Response to Request No. 24, Bates No. OA24-02-000686 (BP Energy Contract). For example, some contracts identify Oasis Meter No. 0728 / 1265 as follows: "Gas delivered to El Paso / PG&E / Valero (Oasis meter No. 0728 / 1265) that is

overcharges is $267,122. Appendix A to this order forth the dates, receipt points and rates Oasis Pipeline charged on the 186 occasions at issue.

159. Oasis Pipeline dispatchers and ETC Marketing employees frequently informed non-affiliated shippers that they could not transport their gas unless shippers warranted that the gas was intrastate.[127] Moreover, they did so even for gas that was received from an interstate pipeline and even where shippers stated that they believed the gas to be interstate in character, as the following conversation demonstrates.

SHIPPER: It's Texas produced gas, but it hits an interstate before it goes into Oasis.

FLETCHER: That doesn't matter. I mean if it's from the ground in Texas, it's from the ground in Texas . . .

SHIPPER: Well, if that how the San Antonio folks, ah, figure out jurisdictional issues, then that works for me.

FLETCHER: What do you think?

SHIPPER: I, I think realistically it uh – I, I want to say that once it goes into an interstate . . . It may, it may a be colored as interstate gas and then, uh, it can't, it can't be uncolored, but I'm not positive on that [. . . ]

FLETCHER: Sure, uh there's some gas that I buy on an interstate line, El Paso Natural Gas . . . but the guy that I buy it from, he's drilling in Texas . . . And so I just ask him to send me a letter warranting that the gas is intrastate.

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considered by El Paso / Valero as Permian / Waha Hub delivery (HUB Delivery), is subject to the provisions of Section 311 (a)(2) of the Natural Gas Policy Act (NGPA) and Subpart C of Part 284 of the Federal Energy Regulatory Commission's (FERC) regulations"; Bates No. OA24-03-000675 (Interruptible NGPA Section 311 Transportation Agreement for Constellation Power Source, Inc., dated June 1, 2002). Meter No. 1265 is a meter used for a number of the transportations resulting in violations, though there are interconnections upstream of Waha for El Paso (1335/6541), Northern Natural Gas (8724/8725), and NGPL (1329/6481); Bates No. 0A24-03-000447 (Intrastate Interruptible Transportation Contract for Constellation Power Source, Inc., dated September 1, 2001).

[127] *See, e.g.*, McPheeters WAV11FF (May 19, 2005); McPheeters WAV1BE9 (June 3, 2005); Mandl WAV149D (Aug. 19, 2004); Mandl WAV16AB (Sept. 17, 2004).

SHIPPER: Even though it's moving on the interstate?

FLETCHER: Yeah. I mean that's all.

SHIPPER: And that's all as long as you can show where it's coming from --

FLETCHER: Right.

SHIPPER: -- if the FERC police ever show up, it's probably, not an issue.

FLETCHER: Right.[128]

Finally, we note that Oasis Pipeline did not make any effort to verify the truth of shippers' warranties when the gas in question was received from an interstate pipeline.[129]

### iii. Dual Contracts

160. Oasis Pipeline unduly preferred its affiliate by allowing it to reserve capacity under a firm intrastate contract, but ship interstate gas (in place of intrastate gas) by submitting nominations under a "parallel" or "related" interruptible interstate contract. Oasis allowed shippers to use a single transaction confirmation indicating the firm intrastate contract pursuant to which the capacity was reserved and the related interstate interruptible contract pursuant to which interstate gas was nominated.

161. Oasis Pipeline affiliates accounted for roughly 95 percent of the volumes confirmed under this dual contract arrangement.[130] Review of the confirmation e-mails provided by ETP and Oasis Pipeline[131] indicates that, in a total of 60 transactions from January 26, 2004 through June 30, 2006, Oasis Pipeline affiliates confirmed nominations

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[128] Deposition of Luke Fletcher Exhibit 3 (Mar. 2, 2007) (Fletcher Dep. Ex. 3); Fletcher, WAV9B6 (Sept. 19, 2005).

[129] *See, e.g.*, McPheeters WAV512 (Aug. 20, 2004) (caller asked what the "burden of proof" was for shipper warranties, and McPheeters responded that just giving the warranty is enough because he "doesn't have enough time" to verify that the warranty is correct).

[130] Oasis Pipeline Responses to Request No. 24; ETP Responses to Request No. 84. *See* Appendix B for a list of the reference transactions.

[131] *See* Oasis Pipeline Response to Request No. 24; ETP Response to Request No. 84.

of roughly 74 Bcf under these arrangements (almost exclusively monthly or longer-term deals).[132] By contrast, BP confirmed nominations of roughly 3.4 Bcf in 11 transactions (mostly daily deals) from April through September 2005, Chevron confirmed .5 Bcf in a single monthly deal in April 2006. Appendix B to this order forth the dates, terms, prices, volumes, etc. for each of these transactions pursuant to dual contracts.

162. An Instant Message from an Oasis Pipeline dispatcher explains how this process worked:

> I could do up to 50,000/day from TW [Transwestern] or El Paso [Natural Gas Company] to the Hub. I would do 50,000 at a demand of .10 and no commodity. The .10 would be billed on the Firm [intrastate] 204 [contract] and you'd nom[inate] on the related interstate agreement. If I ran into a meter capacity issue at any of those points, you would by noming them on an IT [interruptible] Interstate agreement so it would be subject to cut even though I'm still collecting my .10.[133]

163. In deposition testimony, Mandl explained that the dual contract arrangement permitted a shipper who was unable to ship its full contractual entitlement with intrastate gas to substitute interstate gas on an interruptible basis.[134] This dual contract arrangement thus allowed a shipper who was unable to fill the full capacity reserved (or nominated) with intrastate gas the flexibility to substitute interstate gas to fill the remainder of the reserved capacity, instead of being forced to pay the full demand charge for capacity that it could not use.[135]

#### iv. Other Evidence of Discriminatory Effects and Motive

164. The cumulative effect of this discrimination against similarly-situated non-

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[132] *Id.* Based on staff's review of the confirmation e-mails provided by Oasis Pipeline, all or nearly all of the interstate gas that Oasis Pipeline shipped for affiliates from Waha to Katy was a shipped using the dual contract arrangement.

[133] Deposition of Mark Mandl Exhibit 4 (Mar. 5, 2007) (Mandl Dep. Ex. 4), Oasis Pipeline Response to Request No. 6, Bates No. 001935 (IM dated October 13, 2005). We note that, although Oasis Pipeline informed non-affiliated shippers that interstate gas shipped pursuant to the dual contract arrangement was interruptible, we have not found any instances in which Oasis Pipeline interrupted interstate volumes shipped by its affiliates under the dual contract arrangement.

[134] Mandl Dep. 141:4-43:11.

[135] Fletcher Dep. at 122:5-23:7.

affiliated shippers is apparent from the large disparities between the interstate volumes shipped by affiliates versus non-affiliates.[136] Oasis Pipeline transported interstate gas from Waha to Katy more often, and in substantially larger volumes, for affiliated interstate shippers than it did for all non-affiliated shippers combined throughout the relevant period. With respect to firm intrastate service – which accounted for a substantially larger percentage of Oasis Pipeline's total shipments from Waha to Katy – the ratio of gas shipped for affiliates versus non-affiliates is reversed.

165. Oasis Pipeline provided the vast majority of interstate capacity to its affiliates. Oasis Pipeline's stated practice was to sell transportation on a first come, first served basis, but its affiliates received (among over 30 other, non-affiliated shippers) 80 or more percent of interstate volumes transported from Waha to Katy.[137] Moreover, Oasis Pipeline's affiliates' share of interstate volumes increased along with the Waha-to-Katy basis differential. In other words, as the capacity from Waha to Katy became more valuable, the percentage of interstate capacity shipped by Oasis Pipeline's affiliates increased.

166. For the period from June 2005 through April 2006, Oasis Pipeline transported a total of 13,794,697 MMBtu under interstate contracts for affiliated shippers and 3,739,318 MMBtu under interstate contracts for non-affiliated shippers, a ratio of roughly 3.7:1 in favor of its affiliates. Chart 15 sets forth interstate volumes shipped from Waha to Katy for affiliates and non-affiliates from January 2005 through April 2006. The listed months are the time periods in which Oasis Pipeline unduly discriminated against non-affiliated shippers in the transportation of interstate gas from Waha to Katy.

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[136] Oasis Pipeline provided conflicting data responses with respect the volumes of interstate gas it transported for affiliated and non-affiliated shippers to Katy. For the purposes of this order, we refer to the data that Oasis Pipeline provided that is more favorable to Oasis Pipeline.

[137] Oasis Pipeline's 2005 Annual Report indicates that it transported interstate gas for 32 shippers. Oasis Pipeline Response to Request No. 20.

**Chart 15**

| | Affiliate (MMBtu) | Non Affiliate (MMBtu) | Total (MMBtu) | % Affiliate | Average of Daily Basis |
|---|---|---|---|---|---|
| Jun-05 | 1,006,546 | 691,914 | 1,698,460 | 59.3% | $ 0.58 |
| Jul-05 | 373,115 | 20,000 | 393,115 | 94.9% | $0.39 |
| Aug-05 | 1,234,619 | 1,481,224 | 2,715,843 | 45.5% | $0.57 |
| Sep-05 | 2,968,242 | 217,500 | 3,185,742 | 93.2% | $0.54 |
| Oct-05 | 1,317,590 | 232,500 | 1,550,090 | 85.0% | $0.76 |
| Nov-05 | 404,719 | 185,065 | 589,784 | 68.6% | $0.26 |
| Dec-05 | 304,084 | 46,115 | 350,199 | 86.8% | $0.17 |
| Jan-06 | - | 135,000 | 135,000 | 0.0% | $0.22 |
| Feb-06 | 1,993,892 | 210,000 | 2,203,892 | 90.5% | $0.43 |
| Mar-06 | 1,976,964 | 225,000 | 2,201,964 | 89.8% | $0.61 |
| Apr-06 | 2,214,926 | 295,000 | 2,509,926 | 88.2% | $0.89 |

167. However, the disparity between affiliates and non-affiliates is reversed for firm intrastate service.

**Chart 16**

| | Affiliate (MMBtu) | Non-Affiliate (MMBtu) | Total (MMBtu) | % Affiliate |
|---|---|---|---|---|
| Jun-05 | 2,536,204 | 8,565,924 | 11,102,128 | 22.8% |
| Jul-05 | 805,344 | 7,912,981 | 8,718,325 | 9.2% |
| Aug-05 | 1,181,096 | 10,213,401 | 11,394,497 | 10.4% |
| Sep-05 | 1,715,176 | 10,865,621 | 12,580,797 | 13.6% |
| Oct-05 | 5,386,456 | 11,963,270 | 17,349,726 | 31.0% |
| Nov-05 | 2,584,936 | 12,154,090 | 14,739,026 | 17.5% |
| Dec-05 | 232,725 | 13,001,232 | 13,233,957 | 1.8% |
| Jan-06 | 2,203,259 | 12,406,924 | 14,610,183 | 15.1% |
| Feb-06 | 1,226,925 | 12,729,008 | 13,955,933 | 8.8% |
| Mar-06 | 2,083,776 | 13,782,726 | 15,866,502 | 13.1% |
| Apr-06 | 1,682,421 | 13,956,218 | 15,638,639 | 10.8% |

Thus, while affiliated shippers accounted for over 80 percent of the interstate volumes shipped in seven of the 11 months from June 2005 through April 2006, non-affiliates account for over 80 percent of the (much larger volumes of) intrastate firm service in nine of the eleven months. We note that the non-affiliated shippers included major producers and marketers such as BP, Burlington Resources, Calpine, Cargill, Chevron Texaco, Cinergy, Conoco Phillips, Constellation, Coral, Sempra and Dynegy.[138] Thus, this is not

[138] *See* Oasis Pipeline Response to Request No. 34.

a case where affiliates of an intrastate pipeline are much larger than other shippers combined and hence might be expected to do more business on the affiliated pipeline.

168. Oasis Pipeline and ETP had a strong incentive to discriminate against non-affiliates in the provision of interstate service due to the fact that interstate rates were capped at $0.1239. Oasis Pipeline generally set its rates for intrastate transportation from Waha to Katy equal to the basis differential between these two points,[139] but it could not do so for interstate transportation rates due to the fact that these rates cannot exceed the maximum lawful rate. When the basis differential between these two points exceeds $0.1239 per MMBtu, ETC Marketing (and thus the ETP corporate family) can capture the basis differential above $0.1239 by shipping gas from Waha to Katy, an opportunity that is lost when a non-affiliate ships gas from Waha to Katy at the maximum interstate rate. Chart 17 below demonstrates that the share of interstate volumes shipped for affiliates increased as a function of the Waha-to-Katy basis differential.

**Chart 17**

| | Affiliate (MMBtu) | Non-Affiliate (MMBtu) | Total (MMBtu) | % Affiliate | % Non-Affiliate |
|---|---|---|---|---|---|
| Basis > $.75 | **5,232,675** | **807,359** | **6,040,034** | **86.6%** | **13.4%** |
| Basis > $.30 | **13,919,023** | **6,821,127** | **20,740,150** | **67.1%** | **32.9%** |
| Basis < $.30 | **2,845,909** | **2,845,670** | **5,691,579** | **50.0%** | **50.0%** |
| Basis < $.1239 | **199,746** | **386,957** | **586,703** | **34.0%** | **66.0%** |

**b. Legal Analysis**

169. To prove the existence of undue discrimination or undue preference, it must be shown that: (1) two classes of customers are treated differently; and (2) that the two classes of customers are similarly situated.[140] In the voice recordings and instant messages summarized above, Oasis Pipeline rejected or discouraged non-affiliated shippers' requests for transportation during the period from June 1, 2005 through November 30, 2005. Oasis Pipeline rejected or discouraged non-affiliated shippers'

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[139] *See, e.g.*, Fletcher Dep 104:16-19; Deposition of Paul McPheeters 51:9-52:1 (Feb. 27, 2007) (McPheeters Dep. 51:9-52:1) ("we would be looking at ICE and trying to capture the Waha-to-Katy spread.").

[140] *See, e.g.*, *"Complex" Consol. Edison v. FERC*, 165 F.3d 992, 1012 (D.C. Cir. 1999); *Sebring Utility Comm'n v. FERC*, 591 F.2d 1003, 1009, n.24 (D.C. Cir. 1979); *Transwestern Pipeline Co.*, 36 FERC ¶ 61,175, at 61,433 (1986) (undue discrimination is in essence an unjustified difference in treatment of similarly-situated customers); *Tennessee Gas Pipeline Co.*, 77 FERC ¶ 61,215, at 61,877 (1996).

requests for interstate service, then either agreed to ship or actually shipped interstate gas for affiliates during the time period covered by the non-affiliates' requests.

170. Oasis Pipeline discriminated against non-affiliates on a systematic basis, and not just in the instances captured by voice recordings. Oasis Pipeline's affiliates accounted for the vast majority of the interstate volumes shipped from Waha to Katy during these periods and its affiliates' share of interstate transportation increased as the Waha-to-Katy price spread increased and the vast majority (roughly 95 percent) of the volumes confirmed under the dual contract arrangement, while non-affiliates account for 180 out of 186 overcharges. Oasis Pipeline had an economic incentive to unduly prefer its affiliate. When the basis between Waha and Katy is greater than the maximum lawful rate of $0.1239, the difference between the basis differential and the maximum lawful rate for interstate gas would be simply lost if Oasis Pipeline shipped gas for a non-affiliate. However, if it ships for ETC Marketing or another affiliate, the revenue from this difference stays within the ETP family.

#### i. Refused or Discouraged Requests for Interstate Service

171. In several of the calls discussed above, the Oasis Pipeline dispatchers explained to non-affiliated shippers that they could not say whether or not they could provide interstate service because producers shipping on Oasis Pipeline had not yet elected the volumes that they were going to ship for the period in question or due to uncertainty about the volumes shipped for generators.[141] Nevertheless, Oasis Pipeline subsequently granted affiliates requests to ship interstate volumes after these requests by non-affiliates were made. Thus, Oasis Pipeline was not in fact following a first-come, first-served priority system and that the claims it made to non-affiliated shippers regarding producer or generator volumes may have been a pretext.

172. Oasis Pipeline gave affiliated shippers information regarding available capacity and pricing in advance of that given to non-affiliated shippers.[142] In *Panhandle Eastern Pipe Line Co.*,[143] we found that Panhandle's provision of such advance notice to its marketing affiliate and certain customers to be unduly preferential in violation of section 311.

[141] *See, e.g.*, McPheeters WAV2D0 (Aug. 24, 2005); McPheeters WAV58D (Sept. 20, 2005); McPheeters WAV8D1 (Oct. 10, 2005); Mandl WAV1216 (Oct. 19, 2005).

[142] Mandl WAV1035 (May 2, 2005).

[143] Opinion No. 275, 39 FERC ¶ 61,274, at 61,900 (1987).

### ii. Overcharges

173. By charging in excess of the maximum lawful rate – overwhelmingly for non-affiliates (180 out of 186 instances) – Oasis Pipeline violated sections 284.9(b) and 284.122(b) of the Commission's regulations. An intrastate pipeline is not permitted to charge rates for interstate transportation that exceed the fair and equitable rate, or maximum lawful rate. Oasis Pipeline violated this provision by charging in excess of the maximum lawful rate for interstate transportation on 186 occasions; no maximum rate applies for intrastate transportation. The gas received at the specified interstate points was interstate gas because, under the "commingling" doctrine, gas transported on an interstate pipeline (and thus "commingled" with interstate gas) is interstate in character for purposes of the Commission's jurisdiction.[144]

174. We note that Oasis Pipeline's intrastate contracts provide that the shipper warrants the intrastate character of the gas and that the gas has not been commingled with interstate gas in such a manner as to make it subject to the Commission's jurisdiction and that the shipper shall be liable for any breaches of this warranty.[145] Oasis Pipeline and

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[144] *See, e.g., California v. Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965) (commingling in a pipeline of gas destined for sale in interstate commerce with gas destined for sale in intrastate commerce causes all of the gas moving through the pipeline to be dedicated for sale in interstate commerce). *See also FPC v. Florida Power & Light Co.*, 404 U.S. 453, 461 n.10 (1972); *Oklahoma Natural Gas Co. v. FERC,* 28 F.3d 1281, 1285 (D.C. Cir. 1994); *Louisiana Power & Light Co.*, 483 F.2d 623 (1973); *Lee 8 Storage P'ship,* 73 FERC ¶ 61,159 (1995).

[145] A typical example of this warranty is found in Oasis's contract with Constellation Power Source, Inc.:

> Shipper represents and warrants to Oasis (i) that all gas delivered to Oasis hereunder will be produced in the State of Texas from reserves not dedicated or committed to interstate commerce, or (ii) that the gas which Shipper delivers or receives hereunder will not have been or be sold, consumed, transported or otherwise utilized in interstate commerce at any point upstream of the Points of Receipt or downstream of the Points of Delivery, nor have been or be commingled at any point upstream of the Points of Receipt or downstream of the Points of Delivery with other gas which is or may be sold, consumed, transported or otherwise utilized in interstate commerce in such a manner which will subject the gas subject to this Agreement or Oasis's or its designee's pipeline system, or any portion thereof, to the jurisdiction of the Federal Energy Regulatory Commission or any successor authority under the Natural Gas Act.

Oasis Pipeline Response to Request No. 24, Bates Nos. OA24-03-000550-51.

ETC Marketing personnel frequently required non-affiliated shippers to provide these warranties for gas that they knew was received from interstate pipelines at points that Oasis Pipeline's contracts designated as interstate receipt points and thus had been commingled in interstate commerce. Requiring shippers to certify that gas is intrastate – when it is in fact interstate – circumvents the Commission's authority.

175. Oasis Pipeline cannot rely on the fact that shippers – at Oasis Pipeline's insistence – provided warranties, which Oasis Pipeline knew or should have known were erroneous, to charge a rate for interstate gas in excess of the maxim lawful rate or to shift liability for its own violations onto the shippers. Both Commission and judicial precedent are clear that neither a shipper's mistake nor misrepresentation as to the intrastate character of the gas permits a pipeline to charge a rate in excess of the maximum interstate rate for gas that is in fact interstate. To do so would violate the filed rate doctrine. In *Southern Union Gathering Co. v. FERC*,[146] the United States Court of Appeals for the District of Columbia Circuit invoked the filed rate doctrine to vacate a Commission order allowing the enforcement of a state court judgment awarding damages for negligent misrepresentation as to the interstate character of the gas in question because to do so would have allowed the producer to charge in excess of the maximum lawful rate for interstate gas.[147] In subsequent orders, the Commission has interpreted *Southern Union* as "clear precedent" that any agreement to pay more than the maximum lawful rate is unenforceable.[148]

176. Although in limited circumstances interstate pipelines can demonstrate compliance with section 284.102 of the Commission's regulations[149] by obtaining a certificate from shippers,[150] this precedent is not applicable to the shipper certifications at issue here.

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[146] 857 F. 2d 812 (D.C. Cir. 1988) (*Southern Union*).

[147] *Id*. at 817-818 (the state court held that Southern Union had negligently misrepresented that the gas in question was intrastate (and thus not subject to the applicable NGPA price ceiling), when it was in fact interstate and subject to the NGPA price ceiling).

[148] *Burlington Res. Oil & Gas Co., L.P. v. FERC*, 396 F.3d 405 (D.C. Cir. 2005), *order on remand, Burlington Res. Oil & Gas Co., L.P.*, 112 FERC ¶ 61,257 (2005), *reh'g denied*, 113 FERC ¶ 61,257 at P 42 (2005).

[149] 18 C.F.R. § 284.102 (2006). This regulation sets forth the conditions under which an interstate pipeline may transport gas "on behalf of" an intrastate pipeline or LDC pursuant to section 311(a)(1) of the NGPA.

[150] S*ee, e.g., Williams Natural Gas Co*., 86 FERC ¶ 61,213 (1999) (*Williams*); *Missouri Gas Energy v. Williams Natural Gas Co.*, 79 FERC ¶ 61,204 (1997); *Peoples Natural Gas Company v. Williams Natural Gas Co*., 59 FERC ¶ 61,121 (1992).

Cases such as *Williams* simply found that the interstate pipeline did not violate section 284.102 of the Commission's regulations, which includes an express requirement that pipelines obtain a certification from shippers that the requirements of this section are met, because the pipeline did in fact obtain the necessary certification and therefore complied with the certification requirement. Here, the Commission regulations at issue (which prohibit pipelines from charging in excess of the maximum lawful rate) do not mandate that pipeline obtain a certification from shippers. The mere fact that Oasis Pipeline used boilerplate warranty language in its transportation contracts, or even requested warranties for particular transportation transactions, does not immunize the pipeline from liability for charging an excessive rate.

177. Finally, even if Oasis Pipeline sought warranties as to the intrastate character of the gas received at interstate points, the warranties that they requested from shippers did not establish that the gas was in fact intrastate. Oasis Pipeline's two primary schedulers, Paul McPheeters and Mark Mandl, and ETC Marketing trader Luke Fletcher, testified that they only required warranties on certain occasions that the gas in question was produced in Texas. They did not inform shippers that shippers could not transport under an intrastate contract gas that had been transported on an interstate pipeline.[151] In a September 19, 2005 conversation between Fletcher and an unaffiliated shipper, the shipper pointed out that gas produced in Texas and transported on an interstate pipeline is interstate in character, but Fletcher still charged as if it were intrastate.[152]

### iii. Dual Contracts

178. With respect to the dual contracts, Oasis Pipeline unduly preferred its affiliated shippers by providing this interstate transportation service option almost exclusively to its affiliates, but not to similarly-situated, non-affiliated shippers. Oasis Pipeline's affiliates accounted for over 95 percent of the volumes confirmed and generally did so under monthly or longer-term deals. This service option provided Oasis Pipeline's affiliated shippers an advantage – largely unavailable to non-affiliates – insofar as they had the flexibility to ship interstate gas using capacity reserved for intrastate gas; in the absence of this option, Oasis Pipeline's affiliates would simply have had to pay the full demand charge for capacity that they could not have used.

179. Further, Oasis Pipeline used these dual contract arrangements to circumvent the first come, first served priority system for access to interstate interruptible capacity in two respects. First, while Oasis Pipeline did not permit shippers to reserve interruptible capacity, the dual contract arrangement allowed its affiliated shippers to reserve capacity

[151] McPheeters Dep. 154:4-155:16; Fletcher Dep. 141:13-142:13; Mandl Dep. 56:6-59:8.

[152] Fletcher Dep. Ex.3; Fletcher WAV9B6 (Sept. 19, 2005).

that could be used to ship interstate gas months in advance. This option was not available to similarly-situated non-affiliated shippers who did not have access to Oasis Pipeline capacity under the dual contract arrangement. Second, Oasis Pipeline allowed affiliated shippers to obtain capacity that could be used for interruptible interstate transport after a request by a non-affiliate had been made. As noted above, in late September and October of 2005, non-affiliated shippers were told that there was no interstate capacity available from Waha to Katy, while subsequent requests from affiliates for the same time period were accepted, under the dual contract arrangement. Thus, Oasis Pipeline allowed its affiliates to jump to the front of the line in Oasis Pipeline's first come, first served system.

### c. Notice of Proposed Penalties

#### i. Oasis Pipeline Knowingly Committed Violations

180. For civil penalties to be assessed under the NGPA, violations must be committed "knowingly." The statute defines "knowing" as having "actual knowledge" or "the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances."[153] The Commission has construed this requirement as a "knew or should have known" standard.[154]

181. Oasis Pipeline knowingly committed the violations described above. Oasis Pipeline repeatedly refused or discouraged requests for interstate transportation from similarly-situated non-affiliated shippers, while shipping interstate gas for its affiliates. In some occasions, Oasis Pipeline granted its affiliates requests for interstate service after it had denied or discouraged those of non-affiliates. Oasis Pipeline knew or should have known that these actions were unduly preferential towards its affiliates and unduly discriminatory to non-affiliates.

182. Oasis Pipeline's overcharge violations were committed knowingly because interstate receipt points are listed and identified as such in Oasis Pipeline transportation contracts. Company personnel knew or should have known that transportation of gas on an interstate pipeline to a receipt point at which Oasis Pipeline received the gas rendered the gas it received to be interstate in character and thus that Oasis could not charge a transportation rate for this gas in excess of the applicable maximum lawful rate of $0.1239.

183. With respect to the dual contracts, Oasis Pipeline committed these violations knowingly because Oasis Pipeline and its dispatchers were aware of the benefits that this

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[153] 15 U.S.C. § 3414(b)(6)(B) (2000).

[154] *Panhandle Eastern Pipe Line Co.*, 40 FERC ¶ 61,187, at 61,582-583 (1987).

arrangement provided to affiliated shippers. That benefit was the increased flexibility to ship interstate gas using capacity reserved under a firm intrastate contract. Oasis Pipeline and its transportation personnel thus knew or should have known that providing this dual contract arrangement, and its attendant benefits, almost exclusively to its affiliate constituted an undue preference to its affiliate.

184. The Commission proposes to assess a civil penalty in the amount of $15,000,000 for Oasis Pipeline's and to order disgorgement of $267,122 in unjust profits. Oasis Pipeline's violations were continuous throughout the periods from January 26, 2004 through June 30, 2006. As noted, *supra* at P 37, for a continuing violation, each day constitutes a separate violation.[155] The maximum civil penalty for the pre-EPAct 2005 violations is $5,500 per day,[156] and the maximum civil penalty for the post-EPAct 2005 violations is $1,000,000 per day.[157]

### ii. Policy Statement on Enforcement Penalty Factors

185. In the Commission's Policy Statement on Enforcement,[158] the Commission set forth the factors it would consider in assessing civil penalties.

- Oasis Pipeline's violations were serious, as they involve discriminatory treatment of non-affiliates in favor of a pipeline's marketing affiliates. One of the core purposes of the statutes that it administers is to prevent unduly discriminatory or unduly preferential treatment and set maximum rates for interstate transportation. The various types of violations above all served to give Oasis Pipeline's unduly preferential treatment and to deprive non-affiliates of the ability to move interstate gas from Waha to Katy and thereby capture the basis differential above the maximum lawful rate. Also, Oasis Pipeline's undue discrimination against non-affiliated shippers was not limited to interstate shippers.[159]

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[155] 15 U.S.C. § 3414(b)(6)(C) (2000).

[156] 18 U.S.C. § 385.1602(a) (2006).

[157] EPAct 2005, Pub. L. 109-58 § 314(b)(2) (2005).

[158] *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005).

[159] For example, on August 12, 2005, an Oasis Pipeline dispatcher tells his counterpart at ETC Marketing that he "threw out 52 to somebody to scare them off," in other words, quoted a transportation price of 52 cents, which was high, to discourage the non-affiliate from purchasing the capacity. The ETC Marketing employee then said he

- Oasis Pipeline's violations were willful. Oasis Pipeline repeatedly refused or discouraged requests from non-affiliates for interstate transportation service, while flowing substantial volumes for affiliates. Tellingly, affiliates' share of interstate transport increased along with the Waha-to-Katy basis differential, indicating that this set of violations was part of corporate policy to ensure that the ETP corporate family would get the full Waha-to-Katy spread. Oasis Pipeline must have known that gas received from an interstate pipeline – which has been commingled with gas in interstate commerce – was interstate gas subject to the maximum lawful rate under the NGPA and applicable Commission orders and that it could not attempt to contract out of Commission jurisdiction. Oasis Pipeline appears to have used the dual contract arrangement to benefit its affiliates both by providing them with greater flexibility in using firm intrastate service than non-affiliates, and to allow them to circumvent Oasis Pipeline's purported first come, first serve system.

- Oasis Pipeline's violations harmed non-affiliated interstate shippers (as well as their suppliers and customers) who were denied access to a key pipeline asset for transporting gas from production areas in West Texas to key markets in East and South Texas, frequently charged in excess of the maximum lawful rate, and denied the opportunity to use Oasis Pipeline to transport interstate gas and the flexibility to use the dual contract arrangement to do so.

- Oasis Pipeline did not self-report its violations.

- Oasis Pipeline's cooperation was not exemplary. It failed to make witnesses available for depositions in a timely manner. Moreover, on May 18, 2007, Oasis Pipeline informed staff that transportation-related data that had been provided to, and relied upon by, staff over eight months earlier was incorrect.[160]

186. Based on consideration of the foregoing factors as set forth in the Policy Statement on Enforcement, the proposed civil penalty of $15,000,000 is warranted and appropriate. A civil penalty of $15,000,000 is considerably less than the maximum civil penalty the Commission could propose, considering that the penalty period is each day from January 26, 2004 through June 30, 2006 and that the maximum civil penalty for each post-EPAct

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would make a nomination for 50,000 to 80,000 MMBtu for that week-end, and the Oasis Pipeline dispatcher responded that that would be fine. McPheeters WAV13B (Aug. 12, 2005).

[160] *See* Oasis Pipeline Response to Request Nos. 11, 12, 34 and 35.

2005 violation is $1,000,000 per day per violation. The Commission believes that appropriate remedial, deterrence and punitive objectives can be achieved by a civil penalty of this size. We also propose to order ETP to disgorge $267,122 in unjust profits, plus interest.

### 2. Oasis Pipeline's Capacity Lease and Commercial Operations Agreement Violates Section 284.123 of the Commission's Regulations

187. The owner of the Oasis Pipeline system, Oasis Pipeline Company Texas, L.P., violated section 284.123(e) of the Commission's regulations[161] when it failed to timely amend its Operating Statement to reflect a Capacity Lease and Commercial Operations Agreement (Agreement) that changed how it operated the pipeline and varied the terms of its Operating Statements on file with the Commission. Oasis Pipeline should have amended its Operating Statements on file with the Commission to reflect a change in the pipeline's operations that occurred when a new commercial operator took over in January 2004 and again when a subsequent commercial operator took over in March 2004.

188. Oasis Pipe Line Company Texas L.P. (Oasis Pipe Line Company Texas), the owner of the Oasis Pipeline system, executed the Agreement with ETC Texas Pipeline LTD., Oasis Division (ETC Texas), a predecessor-in-interest of Oasis Pipeline.[162] The Agreement, which became effective January 1, 2004, and is still in effect, is essentially a lease of all Oasis Pipeline capacity by Oasis Pipe Line Company Texas to ETC Texas. On March 1, 2004, ETC Texas assigned its interest in the Agreement to Oasis Pipeline, L.P.[163]

189. The Agreement became effective January 1, 2004 and expires January 1, 2009.[164] Under the Agreement, Oasis Pipe Line Company Texas continues to "perform or cause to be performed, emergency operation and maintenance services"[165] and continues to "have

[161] 18 C.F.R. § 284.123(e) (2007).

[162] Oasis Pipeline Response to Request No. 23, Bates Nos. OA23-000001-000036.

[163] Oasis Pipeline Response to Request No. 23, Bates No. OA23-000019-20, Bates No. OA23-000008 ("Consent to Assign Pipeline Capacity Lease and Commercial Operations Agreement," letter dated March 1, 2004).

[164] Subsequent name changes can cause confusion. Currently, Oasis Pipeline, L.P. leases all the capacity from Oasis Pipeline Line Company Texas L.P, i.e., Oasis Owner. McPheeters Dep. 38:13-16.

[165] Oasis Pipeline Response to Request No. 23, Bates No. OA23-000015 (Operations Agreement § 3.3).

the sole right and discretion to determine and perform necessary operation and maintenance activities."[166] The Agreement further recites that ETC Texas shall receive revenue for all capacity sold on the pipeline.[167] ETC Texas agreed to pay Oasis Pipe Line Company Texas an annual fee,[168] which currently is $27 million per year.[169]

190. On January 11, 2006, Oasis Pipeline filed its 2006 Operating Statement pursuant to section 284.123(e) of the Commission's regulations. The 2006 Operating Statement does not reference the Agreement.

191. Subpart C of Part 284 of the Commission's regulations sets forth requirements for an intrastate pipeline to transport natural gas pursuant to NGPA section 311. Section 284.123(e) requires an intrastate pipeline that undertakes service pursuant to NGPA section 311(a)(2) to file with the Commission a statement of the terms and conditions under which the pipeline provides that service.[170] If the pipeline changes its operations, section 284.123(e) states that the company must amend its operating statement and file the amendment with the Commission within 30 days after commencement of the change.

192. Oasis Pipeline should have timely filed an amendment to its 1986 Operating Statement because the Agreement constitutes a change in pipeline operations. The Agreement changes the way the Oasis Pipeline is operated by leasing all pipeline capacity to Oasis Pipeline, which would sell that capacity, and keep revenues from that sold capacity, in exchange for payment of a fee to Oasis Pipe Line Company Texas. Oasis Pipeline's failure to file has frustrated the Commission's opportunity to review changes in operations of a pipeline that provides NGPA section 311 service.

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[166] Oasis Pipeline Response to Request No. 23, Bates No. OA23-000015 (Operations Agreement § 3.4).

[167] Oasis Pipeline Response to Request No. 23, Bates No. OA23-000013 (Operations Agreement § 2.4).

[168] Oasis Pipeline Response to Request No. 23, Bates No. OA23-000019-20 (Operations Agreement § 6.1).

[169] Oasis Pipeline Response to Request No. 23, Bates Nos. OA23-000004-5.

[170] Section 284.123(e) states in part that:

> If the pipeline changes its operations or rate election under this subpart, it must amend the [operating] statement and file such amendments not later than 30 days after commencement of the change in operations or the change in rate election.

18 C.F.R. § 284.123(e) (2006).

193. Finally, Oasis Pipeline's 2006 Operating Statement is inconsistent with the Agreement. The 2006 Operating Statement provides that all requests for service are to be sent to "Oasis Pipe Line Company of Texas L.P.[,]" *i.e.,* Oasis Pipe Line Company Texas. Though the Agreement assigns the management of the commercial operations to ETC Texas (and currently Oasis Pipeline, L.P.), the 2006 Operating Statement directs the shipper seeking capacity to seek approvals (e.g. creditworthiness) for such capacity from "Transporter," i.e., Oasis Pipe Line Company Texas, not Oasis Pipeline. Under the Agreement, it is Oasis Pipeline, L.P. that is responsible for "[n]ominations, confirmations, and negotiation of transportation rates."[171]

194. Oasis Pipeline's violation of the Commission's regulation of intrastate pipelines under subpart C of the Commission's regulations has frustrated the Commission's ability to review its changes in operations. Oasis Pipeline' failure to amend its Operating Statement may have contributed to the undue preference and overcharge violations described above by impliedly conveying to Oasis Pipeline the sense that, as a lessee not known to the Commission, it could violate Commission requirements with impunity. Moreover, Oasis Pipeline's failure to amend its Operating Statement is inexplicable because it involved a failure to comply with a straightforward regulatory requirement.

195. We propose to assess a civil penalty of $500,000 to address Oasis Pipeline's violation of section 284.123(e) of the Commission's regulations, and require that Oasis Pipeline amend its 2006 Operating Statement within 60 days of the date of this order. Oasis Pipeline's violation has been continuous from January 26, 2004 to the present.

## V. DIRECTION TO ETP TO SHOW CAUSE

<u>The Commission orders:</u>

(A) ETP, within 30 days of the date of this order, to file an answer in accordance with 18 C.F.R. § 385.213 (2006) showing why it should not be found to have manipulated prices in violation of Market Behavior Rule 2with respect to fixed price natural gas for prompt month delivery at Houston Ship Channel (Ship Channel) in the months of January 2004, October 2004, December 2004, January 2005, February 2005, July 2005, September 2005, October 2005 and December 2005 and with respect to fixed price natural gas for next day delivery at Waha, Texas, on December 23 and December 28, 2005.

(B) ETP to show cause, no later than 30 days from the date of this order, why the Commission should not revoke ETP's blanket marketing certificate of public convenience and necessity pursuant to section 7 of the NGA authorizing ETP to make sales for resale at negotiated rates in interstate commerce of gas subject to the

[171] McPheeters Dep. 35:8-14.

Commission’s jurisdiction for a period of one year, such period to commence 120 days from the date of this order and assess a civil penalty pursuant to the Commission’s authority under the NGA in the amount of $82,000,000 and order ETP to disgorge unjust profits in the amount of $69,866,966, plus interest.

(C) Oasis Pipeline, within 30 days of the date of this order, to file an answer in accordance with 18 C.F.R. § 385.213 (2006), showing why it should not be found to have violated section 284.9(b) of the Commission’s regulations by unduly discriminating against non-affiliated shippers and unduly preferring affiliated shippers from January 26, 2004 through June 30, 2006, to have violated of section 284.122(b) of the Commission’s regulations charging certain shippers rates in excess of the prevailing Commission–approved fair and equitable rate for interstate transportation, and to have violated section 284.123(e) of the Commission’s regulations when it failed to amend its Operating Statement to reference the Capacity Lease Agreement.

(D) Oasis Pipeline to show cause, no later than 30 days from the date of this order, why the Commission should not assess a civil penalty pursuant to the Commission’s authority under the NGPA in the amount of $15,500,000 and order ETP to disgorge unjust profits in the amount of $267,122, plus interest.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.

Appendix A

| Date | Meter | Service Type | Class | Contract # | Volume | TrspRate | Overcharge |
|---|---|---|---|---|---|---|---|
| 2/2/2006 | 1265 | Intra | I | 0280319802001 | 6531 | $0.2000 | $497.01 |
| 8/8/2005 | 1265 | Intra | I | 0281969002001 | 4999 | $0.3000 | $880.32 |
| 8/7/2005 | 1265 | Intra | I | 0281969002001 | 5000 | $0.3000 | $880.50 |
| 8/6/2005 | 1265 | Intra | I | 0281969002001 | 5000 | $0.3000 | $880.50 |
| 8/5/2005 | 1265 | Intra | I | 0281969002001 | 4000 | $0.3000 | $704.40 |
| 8/4/2005 | 1265 | Intra | I | 0281969002001 | 15000 | $0.2000 | $1,141.50 |
| 5/26/2005 | 1265 | Intra | I | 0281969002001 | 10000 | $0.5300 | $4,061.00 |
| 5/14/2005 | 1265 | Intra | I | 0280319802001 | 20446 | $0.5000 | $7,689.74 |
| 5/9/2005 | 1265 | Intra | I | 0281969002001 | 3034 | $0.3500 | $685.99 |
| 5/8/2005 | 1265 | Intra | I | 0281969002001 | 3033 | $0.3500 | $685.76 |
| 5/7/2005 | 1265 | Intra | I | 0281969002001 | 3033 | $0.3500 | $685.76 |
| 5/2/2005 | 1265 | Intra | I | 0280319802001 | 13265 | $0.2800 | $2,070.67 |
| 5/1/2005 | 1265 | Intra | I | 0280319802001 | 13265 | $0.2800 | $2,070.67 |
| 10/28/2004 | 1265 | Intra | I | 0281969002001 | 400 | $0.5200 | $158.44 |
| 10/26/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.6500 | $5,261.00 |
| 10/26/2004 | 1265 | Intra | I | 0281969002001 | 3000 | $0.6500 | $1,578.30 |
| 10/26/2004 | 1265 | Intra | I | 0281969002001 | 7000 | $0.6500 | $3,682.70 |
| 10/25/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.5000 | $3,761.00 |
| 10/25/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.4000 | $2,761.00 |
| 10/23/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.5000 | $3,761.00 |
| 10/23/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.4000 | $2,761.00 |
| 10/21/2004 | 1265 | Intra | I | 0281969002001 | 2845 | $0.5000 | $1,070.00 |
| 10/21/2004 | 1265 | Intra | I | 0281969002001 | 3000 | $0.5000 | $1,128.30 |
| 10/21/2004 | 6541 | Intra | I | 0281969002001 | 3000 | $0.5000 | $1,128.30 |
| 10/20/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.3800 | $1,280.50 |
| 10/20/2004 | 6541 | Intra | I | 0281969002001 | 5000 | $0.3800 | $1,280.50 |
| 10/12/2004 | 1265 | Intra | I | 0281969002001 | 10058 | $0.3500 | $2,274.11 |
| 10/11/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.8000 | $3,380.50 |
| 10/10/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.8000 | $3,380.50 |
| 10/9/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.8000 | $3,380.50 |
| 10/8/2004 | 1265 | Intra | I | 0281969002001 | 7000 | $0.7000 | $4,032.70 |
| 9/30/2004 | 1265 | Intra | I | 0286589502001 | 9402 | $0.6500 | $4,946.39 |
| 9/20/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.2000 | $761.00 |
| 9/19/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.2000 | $761.00 |
| 9/18/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.2000 | $761.00 |
| 9/14/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.2000 | $380.50 |
| 9/2/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.1500 | $261.00 |
| 9/2/2004 | 1265 | Intra | I | 0286589502001 | 10200 | $0.1500 | $266.22 |
| 8/26/2004 | 1265 | Intra | I | 0281969002001 | 50 | $0.1300 | $0.31 |
| 8/24/2004 | 1265 | Intra | I | 0281969002001 | 50 | $0.1500 | $1.31 |
| 8/23/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2200 | $1,922.00 |
| 8/23/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2100 | $1,722.00 |
| 8/22/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2200 | $1,922.00 |
| 8/22/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2100 | $1,722.00 |
| 8/21/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2200 | $1,922.00 |
| 8/21/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2100 | $1,722.00 |
| 7/29/2004 | 1265 | Intra | I | 0281969002001 | 5324 | $0.2200 | $511.64 |
| 7/6/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.4100 | $2,861.00 |
| 7/6/2004 | 1265 | Intra | I | 0280241302001 | 19753 | $0.4000 | $5,453.80 |
| 7/5/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.4100 | $2,861.00 |
| 7/5/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.4000 | $5,522.00 |

Appendix A

| Date | Meter | Service Type | Class | Contract # | Volume | TrspRate | Overcharge |
|---|---|---|---|---|---|---|---|
| 7/4/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.4100 | $2,861.00 |
| 7/4/2004 | 1265 | Intra | I | 0280241302001 | 19557 | $0.4000 | $5,399.69 |
| 7/3/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.4100 | $2,861.00 |
| 7/3/2004 | 1265 | Intra | I | 0280241302001 | 19758 | $0.4000 | $5,455.18 |
| 7/2/2004 | 1265 | Intra | I | 0280241302001 | 9995 | $0.3300 | $2,059.97 |
| 7/1/2004 | 1265 | Intra | I | 0280241302001 | 16001 | $0.2000 | $1,217.68 |
| 6/30/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.2300 | $1,061.00 |
| 6/25/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.3200 | $980.50 |
| 6/24/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.3400 | $4,322.00 |
| 6/24/2004 | 1265 | Intra | I | 0280241302001 | 5756 | $0.3000 | $1,013.63 |
| 6/23/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.3400 | $2,161.00 |
| 6/23/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.3200 | $3,922.00 |
| 6/22/2004 | 1265 | Intra | I | 0280241302001 | 19999 | $0.2300 | $2,121.89 |
| 6/21/2004 | 1265 | Intra | I | 0280241302001 | 40000 | $0.3000 | $7,044.00 |
| 6/21/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/20/2004 | 1265 | Intra | I | 0280241302001 | 40000 | $0.3000 | $7,044.00 |
| 6/20/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/19/2004 | 1265 | Intra | I | 0280241302001 | 40000 | $0.3000 | $7,044.00 |
| 6/19/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/18/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/17/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/16/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/15/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.1800 | $561.00 |
| 6/15/2004 | 1265 | Intra | I | 0286589502001 | 21 | $0.1800 | $1.18 |
| 6/15/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/14/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.3700 | $4,922.00 |
| 6/14/2004 | 1265 | Intra | I | 0280241302001 | 18139 | $0.3500 | $4,101.23 |
| 6/14/2004 | 1265 | Intra | I | 0281969002001 | 10000 | $0.3500 | $2,261.00 |
| 6/14/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.3500 | $2,353.25 |
| 6/14/2004 | 1265 | Intra | I | 0286589502001 | 9380 | $0.3500 | $2,120.82 |
| 6/14/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/13/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.3700 | $4,922.00 |
| 6/13/2004 | 1265 | Intra | I | 0280241302001 | 18136 | $0.3500 | $4,100.55 |
| 6/13/2004 | 1265 | Intra | I | 0286589502001 | 9381 | $0.3500 | $2,121.04 |
| 6/13/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.3500 | $2,353.25 |
| 6/13/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/12/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.3700 | $4,922.00 |
| 6/12/2004 | 1265 | Intra | I | 0280241302001 | 18065 | $0.3500 | $4,084.50 |
| 6/12/2004 | 1265 | Intra | I | 0286589502001 | 9363 | $0.3500 | $2,116.97 |
| 6/12/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.3500 | $2,353.25 |
| 6/12/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/11/2004 | 1265 | Intra | I | 0280241302001 | 18104 | $0.3700 | $4,455.39 |
| 6/11/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.3500 | $4,522.00 |
| 6/11/2004 | 1265 | Intra | I | 0286589502001 | 9372 | $0.3500 | $2,119.01 |
| 6/11/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.3500 | $2,353.25 |
| 6/11/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/10/2004 | 1265 | Intra | I | 0280241302001 | 20000 | $0.2100 | $1,722.00 |
| 6/10/2004 | 1265 | Intra | I | 0281969002001 | 2500 | $0.2100 | $215.25 |
| 6/10/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.2100 | $430.50 |
| 6/10/2004 | 1265 | Intra | I | 0286589502001 | 204 | $0.1800 | $11.44 |
| 6/10/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.1800 | $561.00 |

Appendix A

| Date | Meter | Service Type | Class | Contract # | Volume | TrspRate | Overcharge |
|---|---|---|---|---|---|---|---|
| 6/10/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/9/2004 | 1265 | Intra | I | 0280241302001 | 19527 | $0.2300 | $2,071.81 |
| 6/9/2004 | 1265 | Intra | I | 0281969002001 | 1667 | $0.2300 | $176.87 |
| 6/9/2004 | 1265 | Intra | I | 0281969002001 | 5000 | $0.2300 | $530.50 |
| 6/9/2004 | 1265 | Intra | I | 0286589502001 | 9887 | $0.2100 | $851.27 |
| 6/9/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.2100 | $35.13 |
| 6/9/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/8/2004 | 1265 | Intra | I | 0280241302001 | 35000 | $0.2100 | $3,013.50 |
| 6/8/2004 | 8724 | Intra | I | 0286460802001 | 291 | $0.1800 | $16.33 |
| 6/7/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.2250 | $1,052.25 |
| 6/7/2004 | 1265 | Intra | I | 0286589502001 | 9990 | $0.2250 | $1,009.99 |
| 6/6/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.2250 | $1,011.00 |
| 6/6/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.2250 | $1,052.25 |
| 6/5/2004 | 1265 | Intra | I | 0286589502001 | 9999 | $0.2250 | $1,010.90 |
| 6/5/2004 | 1265 | Intra | I | 0286589502001 | 10408 | $0.2250 | $1,052.25 |
| 6/4/2004 | 1265 | Intra | I | 0286589502001 | 10204 | $0.1700 | $470.40 |
| 6/4/2004 | 1265 | Intra | I | 0286589502001 | 10204 | $0.1400 | $164.28 |
| 5/27/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.1700 | $18.81 |
| 5/27/2004 | 1265 | Intra | I | 0286589502001 | 9500 | $0.1700 | $437.95 |
| 5/26/2004 | 1265 | Intra | I | 0286589502001 | 204 | $0.1800 | $11.44 |
| 5/26/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.1800 | $561.00 |
| 5/21/2004 | 1265 | Intra | I | 0286589502001 | 19999 | $0.2200 | $1,921.90 |
| 5/21/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.2200 | $39.21 |
| 5/20/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.2500 | $1,261.00 |
| 5/20/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.2500 | $51.45 |
| 5/19/2004 | 1265 | Intra | I | 0280241302001 | 9998 | $0.2300 | $1,060.79 |
| 5/19/2004 | 1265 | Intra | I | 0280319802001 | 10204 | $0.2100 | $878.56 |
| 5/19/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.2100 | $35.13 |
| 5/18/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.2000 | $31.05 |
| 5/18/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.2000 | $761.00 |
| 5/17/2004 | 1265 | Intra | I | 0280319802001 | 15306 | $0.3500 | $3,460.69 |
| 5/16/2004 | 1265 | Intra | I | 0280319802001 | 15306 | $0.3500 | $3,460.69 |
| 5/15/2004 | 1265 | Intra | I | 0280319802001 | 15306 | $0.3500 | $3,460.69 |
| 5/14/2004 | 1265 | Intra | I | 0286589502001 | 204 | $0.2750 | $30.82 |
| 5/14/2004 | 1265 | Intra | I | 0280319802001 | 15306 | $0.2200 | $1,470.91 |
| 5/13/2004 | 1265 | Intra | I | 0286589502001 | 20 | $0.1800 | $1.12 |
| 5/13/2004 | 1265 | Intra | I | 0286589502001 | 408 | $0.1800 | $22.89 |
| 5/13/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.1800 | $561.00 |
| 5/12/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.1500 | $261.00 |
| 5/12/2004 | 1265 | Intra | I | 0286589502001 | 4969 | $0.1500 | $129.69 |
| 5/12/2004 | 1265 | Intra | I | 0286589502001 | 612 | $0.1500 | $15.97 |
| 5/12/2004 | 1265 | Intra | I | 0286589502001 | 5000 | $0.1500 | $130.50 |
| 5/11/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.1800 | $561.00 |
| 5/11/2004 | 1265 | Intra | I | 0286589502001 | 5612 | $0.1400 | $90.35 |
| 5/11/2004 | 1265 | Intra | I | 0286589502001 | 5000 | $0.1400 | $80.50 |
| 5/7/2004 | 1265 | Intra | I | 0286589502001 | 1990 | $0.2500 | $250.94 |
| 5/7/2004 | 1265 | Intra | I | 0286589502001 | 200 | $0.2500 | $25.22 |
| 5/7/2004 | 1265 | Intra | I | 0286589502001 | 5000 | $0.2500 | $630.50 |
| 5/5/2004 | 1265 | Intra | I | 0286589502001 | 2200 | $0.1700 | $101.42 |
| 5/5/2004 | 1265 | Intra | I | 0286589502001 | 4000 | $0.1700 | $184.40 |
| 5/4/2004 | 1265 | Intra | I | 0286589502001 | 10200 | $0.1600 | $368.22 |

Appendix A

| Date | Meter | Service Type | Class | Contract # | Volume | TrspRate | Overcharge |
|---|---|---|---|---|---|---|---|
| 3/12/2004 | 1265 | Intra | I | 0286589502001 | 200 | $0.2500 | $25.22 |
| 3/12/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.2500 | $1,261.00 |
| 3/12/2004 | 1265 | Intra | I | 0286589502001 | 200 | $0.2500 | $25.22 |
| 3/12/2004 | 1265 | Intra | I | 0286589502001 | 10000 | $0.2500 | $1,261.00 |
| 3/9/2004 | 1265 | Intra | I | 0286589502001 | 10200 | $0.1500 | $266.22 |
| 3/1/2004 | 1265 | Intra | I | 0280241302001 | 10000 | $0.1500 | $261.00 |
| 3/1/2004 | 1265 | Intra | I | 0288728302006 | 1414 | $0.1500 | $36.91 |
| 3/1/2004 | 1265 | Intra | I | 0288728302006 | 2694 | $0.1500 | $70.31 |
| 3/1/2004 | 1265 | Intra | I | 0288728302006 | 290 | $0.1500 | $7.57 |
| 3/1/2004 | 1265 | Intra | I | 0288728302006 | 806 | $0.1500 | $21.04 |
| 2/29/2004 | 1265 | Intra | I | 0286589502001 | 3533 | $0.1500 | $92.21 |
| 2/29/2004 | 1265 | Intra | I | 0288728302006 | 4123 | $0.1500 | $107.61 |
| 2/29/2004 | 1265 | Intra | I | 0288728302006 | 5742 | $0.1500 | $149.87 |
| 2/29/2004 | 1265 | Intra | I | 0288728302006 | 339 | $0.1500 | $8.85 |
| 2/29/2004 | 6541 | Intra | I | 0282694502005 | 30792 | $0.1500 | $803.67 |
| 2/29/2004 | 6541 | Intra | I | 0286589502001 | 6667 | $0.1500 | $174.01 |
| 2/28/2004 | 1265 | Intra | I | 0286589502001 | 3533 | $0.1500 | $92.21 |
| 2/28/2004 | 1265 | Intra | I | 0288728302006 | 4123 | $0.1500 | $107.61 |
| 2/28/2004 | 1265 | Intra | I | 0288728302006 | 5742 | $0.1500 | $149.87 |
| 2/28/2004 | 1265 | Intra | I | 0288728302006 | 339 | $0.1500 | $8.85 |
| 2/28/2004 | 6541 | Intra | I | 0282694502005 | 30792 | $0.1500 | $803.67 |
| 2/28/2004 | 6541 | Intra | I | 0286589502001 | 6667 | $0.1500 | $174.01 |
| 2/27/2004 | 1265 | Intra | I | 0286589502001 | 3533 | $0.1500 | $92.21 |
| 2/27/2004 | 1265 | Intra | I | 0288728302006 | 4123 | $0.1500 | $107.61 |
| 2/27/2004 | 1265 | Intra | I | 0288728302006 | 5742 | $0.1500 | $149.87 |
| 2/27/2004 | 1265 | Intra | I | 0288728302006 | 339 | $0.1500 | $8.85 |
| 2/27/2004 | 6541 | Intra | I | 0282694502005 | 30792 | $0.1500 | $803.67 |
| 2/27/2004 | 6541 | Intra | I | 0286589502001 | 6667 | $0.1500 | $174.01 |
| 2/26/2004 | 6541 | Intra | I | 0282694502005 | 4020 | $0.1600 | $145.12 |
| 2/26/2004 | 6541 | Intra | I | 0282694502005 | 26760 | $0.1600 | $966.04 |
| 2/26/2004 | 1265 | Intra | I | 0280241302001 | 9959 | $0.1300 | $60.75 |
| 2/26/2004 | 1265 | Intra | I | 0288728302006 | 10204 | $0.1300 | $62.24 |
| 2/20/2004 | 6541 | Intra | I | 0282694502005 | 39000 | $0.1500 | $1,017.90 |
| **Totals** | | | | | **1718154** | | **267121.714** |

Appendix B

| Date/Term | Shipper | Intra Contract# | Inter Contract# | Demand | Daily Vol | Total Vol | Bates# (OA84-) |
|---|---|---|---|---|---|---|---|
| August 1-31, 2005 | BP Energy | 028-10495-02-004 | 028-10495-02-005 | 0.185 | 50000 | 1550000 | 001336 |
| May 21-23, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.55 | 20408 | 61224 | 001337 |
| April 2-4, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.46 | 20263 | 60789 | 001338 |
| March 19-21, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.22 | 30395 | 91185 | 001339 |
| March 18, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.2 | 30395 | 30395 | 001340 |
| March 12-14, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.34 | 20263 | 60789 | 001341 |
| February 10, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.14 | 30395 | 30395 | 001342 |
| February 11, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.14 | 30395 | 30395 | 001343 |
| February 12-14, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.16 | 30395 | 91185 | 001344 |
| February 15, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.14 | 30395 | 30395 | 001345 |
| April 3-30, 2005 | | 028-10495-02-004 | 028-10495-02-005 | 0.3 | 50000 | 1400000 | 001348 |
| | | | | | | **3436752** | |
| April 1-30, 2006 | Chevron | 028-15675-02-003 | 028-15675-02-004 | 0.15 | 15000 | **450000** | 001595 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.50 | 10000 | 300000 | 001658 |
| May 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.23 | 10000 | 310000 | 001660 |
| May 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.17 | 30000 | 930000 | 001661 |
| April 1-30, 2004 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.29 | 20000 | 600000 | 001665 |
| April 1-30, 2004 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.25 | 30000 | 900000 | 001666 |
| April 1-30, 2004 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.15 | 50000 | 1500000 | 001667 |
| April 1-30, 2004 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.18 | 50000 | 1500000 | 001668 |
| October 03-March 04 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.06 | 50000 | 3250000 | 001688 |
| June 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.33 | 5000 | 150000 | 001690 |
| May 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.80 | 20000 | 620000 | 001691 |
| May 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.56 | 40000 | 1240000 | 001692 |
| May 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 1.00 | 50000 | 1550000 | 001693 |
| April 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.53 | 475 | 14250 | 001694 |
| April 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.28 | 20000 | 600000 | 001695 |
| April-October 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.60 | 30000 | 5490000 | 001696 |
| April 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.525 | 50000 | 1500000 | 001697 |
| April 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.42 | 12500 | 375000 | 001700 |
| April 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.55 | 10000 | 300000 | 001701 |
| April 1-30, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.40 | 20000 | 600000 | 001703 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.35 | 10000 | 310000 | 001704 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.35 | 35000 | 1085000 | 001705 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.35 | 15000 | 465000 | 001706 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.48 | 7500 | 232500 | 001707 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.43 | 25000 | 775000 | 001708 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.48 | 40000 | 1240000 | 001709 |
| March 1-31, 2006 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.52 | 10000 | 310000 | 001710 |
| August 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.16 | 30000 | 930000 | 002412 |
| August 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.16 | 50000 | 1550000 | 002412 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.40 | 30000 | 900000 | 002419 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.50 | 10000 | 300000 | 002420 |
| August 16, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.34 | 65000 | 65000 | 002427 |
| August 13-15, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.41 | 80000 | 240000 | 002429 |
| September 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.46 | 10000 | 310000 | 002430 |
| September 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.35 | 50000 | 1550000 | 002431 |
| October 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.80 | 50000 | 1550000 | 002433 |
| October 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.60 | 50000 | 1550000 | 002436 |
| October 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.60 | 50000 | 1550000 | 002438 |
| October 1-31, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.75 | 50000 | 1550000 | 002440 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.40 | 30000 | 900000 | 002441 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.40 | 30000 | 900000 | 002442 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.50 | 10000 | 300000 | 002443 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.45 | 65000 | 1950000 | 002446 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.50 | 13375 | 401250 | 002447 |
| November 1-30, 2005 | ETC | 028-26495-02-007 | 028-26495-02-008 | 0.50 | 370 | 11100 | 002448 |
| February 1-28, 2006 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 50000 | 1400000 | 001657 |
| July 1-Sept. 30, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.11 | 100,000 | 9,200,000 | 002661 |
| Oct. 03-March 04 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 50,000 | 3,250,000 | 001669 |
| April 1 - June 30, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 50,000 | 4,550,000 | 001671 |
| Oct. 20, 2003 - March 3' | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 50,000 | 3,250,000 | 001673 |
| February 1-29, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 35,000 | 1,015,000 | 001674 |
| February 1-29, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.08 | 50,000 | 1,450,000 | 001676 |

Appendix B

| Date/Term | Shipper | Intra Contract# | Inter Contract# | Demand | Daily Vol | Total Vol | Bates# (OA84-) |
|---|---|---|---|---|---|---|---|
| January 1- 31, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 70,000 | 420,000 | 001681 |
| January 1- 31, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.08 | 50,000 | 300,000 | 001683 |
| June 1-30, 2006 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 3,200 | 96,000 | OA24-04-002790 |
| February 1-29, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 35,000 | 1,015,000 | 002478 |
| February 1-29, 2004 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.08 | 50,000 | 1,450,000 | 002480 |
| February 1-28, 2006 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 50,000 | 1,400,000 | 002462 |
| June 1-30, 2006 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 3200 | 96,000 | 002497 |
| October 1-31, 2005 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 30,000 | 930,000 | 002417 |
| October 1-31, 2005 | ETC | 028-26945-02-007 | 028-26945-02-008 | 0.1 | 50,000 | 1,550,000 | 002418 |
| | | | | | | **74026100** | |