

126 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Energy Transfer Partners, L.P.	Docket Nos. IN06-3-003
Energy Transfer Company	IN06-3-006
ETC Marketing, Ltd.	IN06-3-007
Houston Pipeline Company	
Oasis Pipeline, L.P.	
Oasis Pipeline Company Texas, L.P.	
ETC Texas Pipeline Ltd., Oasis Division	

ORDER DENYING MOTION FOR STAY AND RECONSIDERATION AND
GRANTING REQUEST FOR CONFERENCE

(Issued January 28, 2009)

1. In the Commission's September 4, 2008 order on rehearing, the Commission granted Energy Transfer Partners, L.P.'s (ETP) October 9, 2007 subpoena, in part, and directed the McGraw-Hill Companies, Inc. (McGraw-Hill) to provide ETP with the information requested by Items 1.5, 1.6, 1.7, and 1.10 of the subpoena.¹ On December 30, 2008, the Commission denied McGraw-Hill's request for reconsideration of the September 4, 2008 Order, and again, directed McGraw-Hill to provide ETP with the information requested by Items 1.5, 1.6, 1.7, and 1.10 of the subpoena.² As of yet, McGraw-Hill has not provided ETP the information in dispute. Nevertheless, on January 13, 2009, McGraw-Hill filed a motion for a stay and reconsideration of the Commission's December 30 Order and requested a conference. On January 16, 2009, ETP submitted a pleading in opposition to McGraw-Hill's request. For the reasons discussed below, the Commission denies McGraw-Hill's request for a stay and

¹ *Energy Transfer Partners, L.P., et al.*, 123 FERC ¶ 61,224 (2008).

² *Energy Transfer Partners, L.P., et al.*, 125 FERC ¶ 61,387 (2008) (December 30 Order).

reconsideration of the December 30 Order and grants McGraw-Hill's request for a limited conference.

Discussion

2. To support its motion, McGraw-Hill renews its argument that ETP's request for the Platts information on the eleven data points does not go to the "heart of the matter," and is available from alternative sources. The Commission previously rejected these arguments, and determined that the information requested is directly related to³ and crucial to⁴ ETP's defense, and that the type of data available from the other named alternate sources is not similar to the information that can be obtained from Platts for purposes of challenging the implied price theory.⁵ Accordingly, McGraw-Hill's motion for a stay and reconsideration of the December 30 Order is denied.

3. To support its request for a conference, McGraw-Hill states that (1) Platts only used some basis trades to determine the index for four data points; (2) Platts did not, in the requested time frame, publish an index for one of the eleven data points; and (3) Platts did not use basis trades to determine the index for six of the data points. McGraw-Hill contends that this data will not enable ETP to achieve the purpose contemplated, i.e., to compare fixed price trades to physical basis trades. Accordingly, McGraw-Hill requests a conference to explore whether the data still remains of significant interest to ETP and to explore the possibility of compromise that might resolve the dispute and avoid federal litigation over the subpoena.

4. McGraw-Hill has raised questions concerning the existence or usefulness of data. In order for the parties to discuss these questions and give the parties an opportunity to avoid federal district court litigation, the Commission directs the Presiding ALJ to convene a conference by February 4, 2009, to determine whether a compromise regarding the data can be reached.⁶ By February 6, 2009, the Presiding ALJ should report to the Commission. The report shall be limited to whether a settlement has been reached and no rulings concerning the merits of the parties' positions should be made by the Presiding ALJ. At the conference, ETP should also clarify whether it is seeking information for the Columbia Gulf Mainline point as requested in its subpoena or the Columbia Gulf,

³ *Energy Transfer Partners, L.P., et al.*, 123 FERC ¶ 61,224 at P 33.

⁴ *Energy Transfer Partners, L.P., et al.*, 125 FERC ¶ 61,387 at P 9.

⁵ *Energy Transfer Partners, L.P., et al.*, 123 FERC ¶ 61,224 at P 34; *Energy Transfer Partners, L.P., et al.*, 125 FERC ¶ 61,387 at P 10.

⁶ We note that McGraw-Hill specifically requested such a conference.

Louisiana point which is referenced in its July 25, 2008 pleading. McGraw-Hill points out that the index for the Columbia Gulf Mainline point was first published in August 2007, two years after the time period at issue in this proceeding. If a full settlement is not reached, the Commission will take action to enforce the Commission's orders, to the extent McGraw-Hill has not complied, utilizing appropriate enforcement measures, including the enforcement of them in United States District Court pursuant to sections 14 and 20 of the Natural Gas Act.

The Commission orders:

(A) McGraw-Hill's request for reconsideration and stay is denied.

(B) No later than February 4, 2009, the Presiding Judge shall convene a conference between McGraw-Hill, ETP, and appropriate Office of Enforcement Litigation Staff to explore the possibility of a resolution of the dispute over access to the requested information, and report back to the Commission whether a settlement has been reached by February 6, 2009 .

By the Commission. Commissioner Kelliher not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.