

129 FERC ¶ 61,111  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Ozark Gas Transmission, L.L.C.

Docket Nos. CP78-532-012  
IN02-7-001

ORDER GRANTING PETITION

(Issued November 9, 2009)

1. On July 24, 2009, Ozark Gas Transmission, L.L.C. (Ozark) filed a petition under Rule 207 of the Commission's Rules of Practice and Procedure requesting that the Commission terminate two stipulation and consent agreements approved by the Commission on March 21, 1983<sup>1</sup> (1983 Agreement) and August 6, 2002<sup>2</sup> (2002 Agreement) between Ozark and the Commission's enforcement staff.<sup>3</sup> We will grant the request as discussed below.<sup>4</sup>

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<sup>1</sup> *Ozark Gas Transmission Sys.*, 22 FERC ¶ 61,334 (1983) (*Ozark I*).

<sup>2</sup> *Ozark Gas Transmission Sys., L.L.C.*, 100 FERC ¶ 61,174 (2002) (*Ozark II*).

<sup>3</sup> In 1983 the Commission's enforcement function was performed by staff of the Enforcement Division, Office of the General Counsel. In 2002, that function was performed by the staff of the Market Oversight and Enforcement section of the Office of the General Counsel. Currently the function is performed by staff of the Office of Enforcement. This order refers to staff from any of these offices as enforcement staff.

<sup>4</sup> We note that enforcement staff supports the decision to terminate the agreements.

## I. Background

2. On July 28, 1981, the Commission authorized Ozark's predecessor, Ozark Gas Transmission System,<sup>5</sup> to construct and operate a natural gas pipeline in Oklahoma and Arkansas, which included the Carter Lateral and the Carter Lateral Compressor Station.<sup>6</sup> Ozark located the compressor station near the Leisure Estates community in Ozark, Arkansas. Ozark substantially completed constructing the pipeline by late January 1982, including the Carter Lateral and Carter Lateral Compressor Station, began operating compressor facilities on February 21, 1982, and commenced transportation services on March 1, 1982.

### A. The 1983 Agreement

3. In March 1982 the Commission received a series of letters from U.S. Representative John Paul Hammerschmidt of Arkansas regarding constituent complaints about the Carter Lateral Compressor Station and a petition from forty residents of the Leisure Estates community concerning excessive noise levels and possible safety hazards due to the compressor station's proximity to their residences.<sup>7</sup>

4. After an informal investigation of these complaints, Commission staff determined that Ozark may have violated section 7(c) of the Natural Gas Act (NGA) by failing to comply with a noise condition of its certificate of public convenience and necessity with respect to the Carter Lateral Compressor Station and by materially deviating from the certificate's approved route for the Carter Lateral and approved siting of the Carter Lateral Compressor Station. As constructed, the lateral joined the mainline three-fourths of a mile to the east of the approved location and the compressor station was located near

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<sup>5</sup> In July 1998 the Commission authorized the combination of Ozark's predecessor, Ozark Gas Transmission System, and NOARK Pipeline System, L. P., an intrastate pipeline, into a new interstate pipeline to be named Ozark Gas Transmission, L.L.C. *See Ozark Gas Transmission Sys.*, 84 FERC ¶ 61,002, *reh'g granted in part*, 85 FERC ¶ 61,329 (1998). Most recently, on May 4, 2009, Spectra Energy Partners, L.P. acquired Ozark. Spectra Energy Corp., the general partner of Spectra Partners, became the indirect owner and operator of Ozark.

<sup>6</sup> *Ozark Gas Transmission Sys.*, Opinion No. 125, 16 FERC ¶ 61,099; *order denying reh'g*, Opinion No. 125-A, 17 FERC ¶ 61,024 (1981).

<sup>7</sup> On April 15, 1982, the U. S. Department of Transportation's Pipeline Safety Office of Operations and Enforcement determined that the compressor station was not hazardous to nearby homeowners. *See Ozark I*, 22 FERC at 61,574 and note 2.

the Leisure Estates community instead of the approved site, which was separated from the community by a heavily wooded hill with only one residence nearby.

5. Although Ozark neither admitted nor denied that it violated the NGA or any Commission regulations, it entered into a stipulation and consent agreement with enforcement staff on December 13, 1982 which was approved by the Commission in an order issued on March 21, 1983.<sup>8</sup>

6. The 1983 Agreement requires Ozark to obtain a case specific certificate of public convenience and necessity from the Commission before construction of any pipeline, compressor, or interconnection with any other facility in Township 9N, Range 26W in Franklin County, Arkansas (the area where the Carter Lateral and Carter Lateral Compressor Station are located) regardless of whether a proposed project would otherwise be authorized by a blanket certificate. This settlement also requires Ozark to submit more than the standard required information in any certificate application involving facilities in that area.<sup>9</sup>

#### **B. The 2002 Agreement**

7. On August 6, 2002, the Commission approved the 2002 Agreement, a stipulation and consent agreement between Ozark and enforcement staff addressing the construction of eight projects in Oklahoma built by Ozark under its blanket certificate or section 311 of the Natural Gas Policy Act (NGPA) without having first obtained the environmental clearances required by section 157.206(b) of the Commission's regulations, and in some instances without having complied with other applicable laws, e.g., the National Historic

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<sup>8</sup> *Ozark I*, 22 FERC ¶ 61,334.

<sup>9</sup> The Commission subsequently approved in Docket No. IN86-6 a second stipulation and consent agreement concerning Ozark's construction of facilities approved in Opinion No. 125. *Ozark Gas Transmission Sys.*, 40 FERC ¶ 61,129 (1987) (1987 Agreement). The 1987 Agreement does not mention the 1983 Agreement. Ozark states that it fully performed its obligations to make the payments required under the 1987 Agreement and continues to be obligated to comply with the NGA and the Commission's regulations as required by the agreement and the subsequent injunction (the 1987 Agreement provided that the Commission and Ozark would propose the entry of a judgment by the U.S. District Court for the District of Columbia which permanently enjoined Ozark from, among other things, constructing any jurisdictional facilities associated with its existing pipeline system without complying with NGA section 7(c) and Commission regulations). Accordingly, Ozark states, it is not requesting modification of the 1987 Agreement.

Preservation Act, 15 U.S.C. § 3371 (2006).<sup>10</sup> Ozark discovered these violations and self-reported the construction activities to the Commission.<sup>11</sup>

8. Under the 2002 Agreement Ozark agreed to make a \$40,000 payment to the United States Treasury to defray the Commission's costs of investigating the eight projects constructed prior to obtaining the necessary clearances. Ozark also agreed to pay \$1,000 to the Missouri State Historic Preservation Office to defray the costs, expenditures, time, and inconvenience relating to the archeological site survey of one of the projects. Ozark made both payments and, under the agreement, was not allowed to recover any of this money through any rate or jurisdictional service.

9. Ozark also agreed to institute and follow a Construction Project Clearance Procedure (compliance plan) to ensure that it applies for and receives all applicable environmental permits, approvals, and other authorizations prior to the initiation of any construction or maintenance activity involving jurisdictional facilities. Additionally, Ozark agreed to file any changes in the compliance plan with the Commission for approval before implementing such changes.

## **II. Ozark's Petition**

10. Ozark requests the Commission to terminate the 1983 and 2002 Agreements. Ozark asserts that it has had a history of compliance since the violations occurred. With respect to the 1983 Agreement, Ozark states that has been compliant with the terms of that agreement for the twenty-seven years that it has been in force. Ozark also states that

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<sup>10</sup> *Ozark II*, 100 FERC ¶ 61,174.

<sup>11</sup> In 2003 the Commission approved two settlement agreements in Docket No. IN04-5, one between Ozark and enforcement staff (2003 Agreement) and the other between Ozark's then indirect parent company, Enogex, Inc. (Enogex), and enforcement staff. *Enogex, Inc.*, 105 FERC ¶ 61,308 (2003) (*Enogex*). The 2003 investigation was precipitated by Ozark and Enogex self-reporting possible violations of the Commission's construction prior approval regulations that occurred prior to 2002 but were not discovered in time to be included under the 2002 Agreement. Ozark states that it fully performed its obligation under the 2003 Agreement by making a required payment to the United States Treasury to defray the Commission's costs in conducting its investigation of Ozark's possible violations. Therefore, Ozark states, it is not requesting modification of the 2003 Agreement. We note that, in the order approving the 2003 Agreement, the Commission stated that Ozark had identified all construction-related violations that occurred before the agreement and that Ozark was complying with the construction procedures required by the 2002 Agreement. *See Enogex*, 105 FERC ¶ 61,308 at P 11.

the time and resources needed to comply with case specific authorization required by the 1983 Agreement puts it at a competitive disadvantage because it cannot construct receipt and delivery facilities in the same time frame as other pipelines in the same geographic market. Ozark explains that it is required to prepare numerous certificate applications covering routine construction projects in Franklin County, such as receipt and delivery point projects and new taps and metering facilities that it could have constructed under its blanket certificate absent the 1983 Agreement. Ozark also notes that it was under different management when the violations that led to the 1983 Agreement occurred.

11. As to the 2002 agreement, Ozark says that over the last seven years, it has demonstrated a consistent focus on compliance with Commission regulations and the Agreements. In addition, Ozark asserts, as a result of the May 2009 acquisition of Ozark by Spectra Partners, Ozark will be operated and maintained by Spectra Partners' general partner, Spectra Energy, a large, experienced company with a demonstrated commitment to Commission compliance and extensive natural gas pipeline construction experience. Ozark maintains that the goals of the Agreements have been achieved, including the establishment of a culture of compliance. Ozark maintains that Spectra Energy's ownership of Ozark will serve to further reinforce Ozark's culture of compliance.

### **III. Notices and Interventions**

12. Notice of Ozark's petition was published in the *Federal Register* on August 17, 2009 (74 Fed. Reg. 41430). No motions to intervene, protests, or comments were filed.

### **IV. Discussion**

13. Ozark has demonstrated consistent compliance with the 1983 Agreement for the twenty-seven years of the agreement's existence.<sup>12</sup> Given this long history of compliance under the 1983 Agreement, the Commission's need to process case-specific applications related to facilities otherwise eligible for blanket certificate authorization in Franklin County has become an inefficient use of the Commission's resources. Therefore, we believe that the agreement's continuing requirement that Ozark file case specific section 7(c) certificate applications for otherwise eligible facilities within Township 9N, Range

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<sup>12</sup> Ozark cites the following cases where it followed the 1983 Agreement by applying for case specific authorization for projects otherwise eligible for blanket certificate authorization: *Ozark Gas Transmission, L.L.C.*, 100 FERC ¶ 62,118, at 64,135 (2002); *Ozark Gas Transmission Sys.*, 68 FERC ¶ 62,129 (1994); *Ozark Gas Transmission Sys.*, 68 FERC ¶ 61,052 (1994); *Ozark Gas Transmission Sys.*, 65 FERC ¶ 62,168 (1993); *Ozark Gas Transmission Sys.*, 64 FERC ¶ 62,114 (1993); *Ozark Gas Transmission Sys.*, 64 FERC ¶ 62,031 (1993).

26W, Franklin County, Arkansas<sup>13</sup> is no longer necessary. Given these circumstances, we find it to be in the public interest to terminate the 1983 Agreement.

14. With respect to the 2002 Agreement, we note that Ozark's only remaining requirement under that agreement is to comply with the agreement's compliance plan. The Commission has previously terminated a similar compliance plan imposed by a settlement agreement between a jurisdictional pipeline company and enforcement staff upon a showing of two years of compliance with the plan.<sup>14</sup> In that case, unlike the compliance plan in the 2002 Agreement, the agreement specifically provided that the pipeline could request termination of the compliance plan after two years upon a showing of compliance. It has been seven years since Ozark entered into the 2002 Agreement in which Ozark agreed to institute and abide by the compliance plan "to ensure that Ozark has applied for and received all applicable environmental permits/approvals or other authorizations prior to the initiation of any construction activity for which [the Commission] has prescribed rules and/or regulations."<sup>15</sup>

15. A review of our records indicates that Ozark has filed only one construction application since the 2002 Agreement went into effect, the Standing Rock Compressor Station Project in Docket No. CP08-20-000. Ozark filed a prior notice request under its Part 157 blanket construction certificate in that proceeding on November 9, 2007 for authorization to install and operate a 6,500 horsepower booster compressor station in Izard County, Arkansas. Ozark received all necessary environmental clearances prior to commencing construction, which was completed on October 12, 2008. Thus, Ozark appears to have complied with the 2002 Agreement's compliance plan.

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<sup>13</sup> We note that a Director's order issued May 4, 2005 approved Ozark's abandonment of the Carter Lateral and the Carter Lateral Compressor Station by sale to its affiliate, Ozark Arkansas Gas Gathering, L.L.C. In that proceeding, Ozark stated that it would continue to comply with the terms of the 1983 agreement by seeking case-specific certificate authorization to construct any jurisdictional facilities in the area covered by the agreement. *See Ozark Gas Transmission, L.L.C.*, 111 FERC ¶ 62,121, at 64,262 (2005).

<sup>14</sup> *See Northern Natural Gas Co.*, 108 FERC ¶ 61,232, at P 3 (2004) (terminating the settlement agreement's compliance plan because the pipeline complied with the plan for two years).

<sup>15</sup> *Ozark II*, 100 FERC at 61,621 (Construction Project Clearance Procedure, Purpose Statement).

16. Further, Ozark states that Spectra Energy has a certificate planning process dedicated to obtaining any necessary permits, authorizations, or clearances for construction or maintenance involving jurisdictional facilities and personnel dedicated to certificate issues across multiple pipelines.<sup>16</sup> Ozark states that its procedures will be integrated into Spectra Energy's certificate planning process, resulting in greater efficiency and consistency of implementation. This process and the experienced personnel implementing the process serve to ensure that Ozark remains in compliance with its obligations under the Commission's regulations, including the blanket certificate regulations, and the conditions attached to specific NGA section 7(c) certificate orders. Therefore, the objectives of the compliance plan imposed on Ozark in the 2002 Agreement should be satisfied by Ozark's new certificate planning and compliance activities and the compliance plan is no longer necessary.

17. For all of these reasons, we find that it is in the public interest to terminate the 2002 Agreement and the requirement that Ozark abide by the agreement's compliance plan.

The Commission orders:

The 1983 Agreement and the 2002 Agreement and compliance plan are terminated.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>16</sup> Ozark states that, in addition to Ozark, Spectra Energy owns, among others, the following jurisdictional natural gas pipeline and storage facilities: Algonquin Gas Transmission, LLC; East Tennessee Natural Gas, LLC; Egan Hub Storage; Saltville Gas Storage Co.; and Texas Eastern Transmission, LP. A review of our records indicates that none of these jurisdictional pipelines have been the subject of an investigation by enforcement staff with respect to construction of facilities.