144 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Enterprise Texas Pipeline LLC Docket No. IN13-16-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 26, 2013)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Enterprise Texas Pipeline LLC (Enterprise Texas). This Order is in the public interest because it resolves on fair and reasonable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2013), into whether Enterprise Texas violated Section 311 of the Natural Gas Policy Act (NGPA), 15 U.S.C. § 3371(a)(2) (2006), and Section 284.123 of the Commission's implementing regulations, 18 C.F.R. § 284.123, by charging its shippers a title transfer and tracking (TTT) fee without seeking Commission authorization and without posting the fee in the company's Commission-approved Statement of Operating Conditions (SOC).

2. Enterprise Texas neither admits nor denies the violations and agrees to pay a civil penalty of $315,000 to the United States Treasury. Enterprise Texas also agrees to make semi-annual compliance reports to Enforcement for a period of one year. On May 31, 2013, Enterprise Texas, in consultation with Enforcement, refunded its customers $7,234,539.62 with interest in connection with the violations at issue in this investigation.

I. Background

3. As described in the Agreement, Enterprise Texas is a wholly-owned subsidiary of Duncan Energy Partners, L.P., which is indirectly owned by Enterprise Products Partners, L.P. (Enterprise Products). Enterprise Texas has owned and operated more than 6,000 miles of pipeline facilities in Texas since 2004 when it acquired the pipeline from GulfTerra Texas Pipeline, L.P.[1] In addition to providing intrastate transportation and

[1] Prior to this time, the pipeline underwent various changes in ownership. At various times, the pipeline was owned by Valero Transmission, L.P., PG&E Texas Pipeline, L.P., and EPGT Texas Pipeline, L.P.

storage services, Enterprise Texas also provides Commission-authorized transportation services in interstate commerce pursuant to NGPA Section 311.[2]

4. On September 28, 2012, Enterprise Texas self-reported to Enforcement that it had been charging its customers an unauthorized TTT fee since it acquired the company in 2004. In the self-report, Enterprise Texas explained that it provided a TTT service to shippers in which Enterprise Texas kept track of the "daisy chain" of gas supply transactions conducted by shippers at the Waha Hub in western Texas. From 2004 to 2005, the TTT fee was $.002 per Dth. In 2005, Enterprise Texas increased the fee from $.002 per Dth to $.005 per Dth.

5. Although Enterprise Texas provided the TTT service and charged the TTT fee over seven years, the TTT fee had never been included in its Commission-approved SOC or otherwise authorized by the Commission. Enterprise Texas claims that a prior owner of the company charged the fees and that Enterprise Texas continued the practice without determining whether it was consistent with Commission statutes or regulations. At the time Enterprise Texas discovered the violations, its compliance program did not effectively focus on its NGPA Section 311 business as a Commission-regulated activity. Upon discovering that it had been charging these fees without authorization, Enterprise Texas conducted a thorough internal investigation, ceased charging the fee immediately, proposed changes to its compliance procedures and promptly reported the violations to Enforcement. In total, Enterprise Texas charged approximately $7,234,539.62 in unauthorized TTT fees from 2004 to 2012.

II. <u>Investigation</u>

6. Following receipt of the written self-report on September 28, 2012, Enforcement commenced a non-public, preliminary investigation of Enterprise Texas. Enterprise Texas cooperated throughout the investigation.

7. Pursuant to Section 311 of the NGPA, the Commission may authorize any intrastate pipeline to transport natural gas on behalf of any interstate pipeline for a fair and equitable price. *See* 15 U.S.C. § 3371(a)(2) (2006). Enforcement determined that Enterprise Texas violated Section 311 of the NGPA when it failed to seek Commission authorization to charge these TTT fees.

---

[2] The Commission authorized Enterprise Texas' predecessor to provide NGPA Section 311 service and approved its SOC in 2002. *See* 99 FERC ¶ 61,295 (2002), *order on reh'g*, 106 FERC ¶ 61,184 (2004).

8. Section 284.123(b)(2) of the Commission's regulations require that all NGPA Section 311 pipelines seek Commission approval of their proposed rates and charges by filing with the Commission the proposed rates and charges in the form of a SOC.[3] Enforcement determined that Enterprise Texas violated Section 284.123(b)(2) of the Commission's regulations and its Commission-approved SOC by assessing TTT fees without Commission authorization. In so concluding, Enforcement considered the Commission's precedent on volumetric-based TTT fees. The Commission has repeatedly rejected volumetric-based fees, such as the ones charged by Enterprise Texas, because any costs associated with a title transfer are more a function of the total number of transactions as opposed to the total volumes transferred. *See CNG Transmission Corp.*, 89 FERC ¶ 61,278, at 61,807 (1999).[4]

III. Stipulation and Consent Agreement

9. Enforcement staff and Enterprise Texas resolved Enforcement's investigation by means of the attached Agreement. Enterprise Texas stipulates to the facts recited in the Agreement. Among other things, Enterprise Texas stipulates that it is a natural gas intrastate pipeline providing Commission authorized transportation services on behalf of interstate pipelines. Enterprise Texas stipulates that, since acquiring the pipeline in 2004, it provided a TTT service to its shippers in exchange for the payment of a volumetric-based TTT fee. Enterprise Texas stipulates that, although Enterprise Texas provided the TTT service and charged the TTT fee over seven years, the TTT fee had never been included in its Commission-approved SOC or otherwise authorized by the Commission. Until August 31, 2012, when Enterprise Texas ceased charging the TTT fee, Enterprise Texas charged its customers approximately $7,234,539.62 in unauthorized TTT fees.

10. Enterprise Texas neither admits nor denies these violations of Section 311 of the NGPA, 18 C.F.R. § 284.123, and its Commission-approved SOC. However, Enterprise Texas agrees to pay a civil penalty of $315,000, which it agrees not to pass through to any of its present or future customers or ratepayers. Enterprise Texas has already made refunds to its customers in the amount of $7,234,539.62 with interest calculated pursuant

---

[3] NGPA Section 311 pipelines may alternatively elect to base their rates on schedules on file with appropriate state regulatory agencies. *See* 18 C.F.R. § 284.123(b)(1). Enterprise Texas has elected to seek Commission approval of its rates.

[4] *See also High Point Gas Transmission, LLC*, 139 FERC ¶ 61,237, at P 211 (2012) (rejecting per-volume rate); *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,379, at P 10 (2002); *Algonquin Gas Transmission Co.*, 100 FERC ¶ 61,374, at P 13 (2002); *Maritimes & Northeast Pipeline, L.L.C.*, 100 FERC ¶ 61,372, at P 21 (2002).

to 18 C.F.R. § 154.501(d). Enterprise Texas further agrees to submit periodic compliance reports for one year following the Effective Date of the attached Agreement.

IV. Determination of the Appropriate Sanctions

11. In determining the appropriate remedy for Enterprise Texas, Enforcement considered the seriousness of Enterprise Texas's actions pursuant to the Commission's Penalty Guidelines.[5] Enterprise Texas's conduct harmed the Commission's oversight of the market. By charging TTT fees without seeking Commission authorization, Enterprise Texas inhibited the Commission's ability to ensure the fees were fair and equitable. Indeed, the Commission has rejected similar volumetric-based TTT fees. Moreover, while these fees are relatively small when viewed individually, they generated millions of dollars in unauthorized revenue for Enterprise Texas.

12. Enforcement credits Enterprise Texas for its self-report, efforts at remediation and exemplary cooperation throughout this investigation. Enforcement did not find any evidence that Enterprise Texas acted intentionally to deceive its customers or the Commission when it charged the TTT fees.

13. The Commission concludes that the Agreement is a fair and equitable resolution of this matter and is in the public interest, as it reflects the nature and seriousness of Enterprise Texas's conduct. The Commission also concludes that the civil penalty is consistent with the Penalty Guidelines.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[5] *Revised Policy Statement on Penalty Guidelines,* 132 FERC ¶ 61,216 (2010).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Enterprise Texas Pipeline LLC) Docket No. IN13-16-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Enterprise Texas Pipeline LLC (Enterprise Texas) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2013). The investigation proceeded from a self-report by Enterprise Texas, an intrastate natural gas pipeline, in which it admitted that it charged shippers at the Waha Hub in western Texas a title transfer and tracking (TTT) fee without seeking Commission authorization and without posting the fee in the company's Commission-approved Statement of Operating Conditions (SOC), in violation of Section 311 of the Natural Gas Policy Act (NGPA), 15 U.S.C. § 3371(a)(2) (2006), and Section 284.123 of the Commission's implementing regulations thereunder, 18 C.F.R. § 284.123. Enterprise Texas, in consultation with staff, refunded its customers $7,234,539.62 with interest on May 31, 2013 in connection with the violations at issue in this investigation. Enforcement and Enterprise Texas agree that Enterprise Texas will also pay a civil penalty of $315,000 to the United States Treasury and will commit to improving compliance going forward, subject to compliance monitoring, as detailed in the following paragraphs of this Agreement.

II. STIPULATIONS

2. Enforcement and Enterprise Texas hereby stipulate and agree to the following facts.

A. Background

3. Enterprise Texas is a wholly-owned subsidiary of Duncan Energy Partners, L.P., which is indirectly owned by Enterprise Products Partners, L.P. (Enterprise Products). Enterprise Texas has owned and operated more than 6,000 miles of pipeline facilities in Texas since 2004 when it acquired the pipeline from GulfTerra Texas Pipeline, L.P. In addition to providing intrastate transportation and storage services, Enterprise Texas also

provides Commission-authorized transportation services in interstate commerce pursuant to NGPA Section 311.[1]

4. On September 28, 2012, Enterprise Texas self-reported to Enforcement that it had been charging its customers an unauthorized TTT fee since it acquired the company in 2004. In the Self-Report, Enterprise Texas explained that it provided a TTT service to shippers in which Enterprise Texas kept track of the "daisy chain" of gas supply transactions conducted by shippers at the Waha Hub in western Texas. From 2004 to 2005, the TTT fee was $.002 per Dth. In 2005, Enterprise Texas increased the fee from $.002 per Dth to $.005 per Dth. Until August 31, 2012, when Enterprise Texas ceased charging the TTT fee, Enterprise Texas charged its customers approximately $7,234,539.62 in unauthorized TTT fees.

5. Although Enterprise Texas provided the TTT service and charged the TTT fee over seven years, the TTT fee had never been included in its SOC or otherwise authorized by the Commission. Enterprise Texas explained that a prior owner of the company appeared to have commenced charging the fees, and that through inadvertence Enterprise Texas continued the practice without determining whether it was consistent with Commission statutes or regulations. At the time Enterprise Texas discovered the violations, its compliance program did not effectively focus on its NGPA Section 311 business as a Commission-regulated activity. Upon discovering that it had been charging these fees without authorization, Enterprise Texas conducted a thorough internal investigation, ceased charging the fee immediately, proposed changes to its compliance procedures and promptly reported the violations to Enforcement. Following the Self-Report, Enforcement commenced a preliminary non-public investigation. Because Enterprise Texas provided comprehensive information in the Supplemental Self-Report, staff did not need to conduct additional fact finding.

B. Violations

6. Pursuant to Section 311 of the NGPA, the Commission may authorize any intrastate pipeline to transport natural gas on behalf of any interstate pipeline for a fair and equitable price. *See* 15 U.S.C. § 3371(a)(2) (2006). Enforcement determined that Enterprise Texas violated Section 311 of the NGPA when it failed to seek Commission authorization to charge these TTT fees.

---

[1] The Commission authorized Enterprise Texas' predecessor to provide NGPA Section 311 service and approved its SOC in 2002. *See* 99 FERC ¶ 61,295 (2002), *order on reh'g*, 106 FERC ¶ 61,184 (2004).

7. Section 284.123(b)(2) of the Commission's regulations require that all NGPA Section 311 pipelines seek Commission approval of their proposed rates and charges by filing with the Commission the proposed rates and charges in the form of a SOC. Enforcement determined that Enterprise Texas violated Section 284.123(b)(2) of the Commission's regulations and its Commission-approved SOC by assessing TTT fees without Commission authorization. Where pipelines have sought authorization to charge volumetric-based TTT fees like the ones charged by Enterprise Texas, the Commission has rejected such fees because any costs associated with a title transfer are more a function of the total number of transactions as opposed to the total volumes transferred. *See CNG Transmission Corp.*, 89 FERC ¶ 61,278, at 61,807 (1999).

III. REMEDIES AND SANCTIONS

8. In determining the appropriate remedy for Enterprise Texas, Enforcement considered the seriousness of Enterprise Texas's actions pursuant to the Commission's Penalty Guidelines.[2] Enforcement finds that Enterprise Texas's conduct harmed the Commission's oversight of the market. By charging TTT fees without seeking Commission authorization, Enforcement finds that Enterprise Texas inhibited the Commission's ability to ensure the fees were fair and equitable. Indeed, the Commission has rejected similar volumetric-based TTT fees. *See CNG Transmission Corp.*, 89 FERC at 61,807; *High Point Gas Transmission, LLC*, 139 FERC ¶ 61,237, at P 211 (2012); *Kern River Gas Transmission Co.*, 100 FERC ¶ 61,379, at P 10 (2002); *Algonquin Gas Transmission Co.*, 100 FERC ¶ 61,374, at P 13 (2002); *Maritimes & Northeast Pipeline, L.L.C.*, 100 FERC ¶ 61,372, at P 21 (2002).

9. Enforcement credits Enterprise Texas for its self-report, efforts at remediation and commends its exemplary cooperation throughout this investigation. There is no evidence that Enterprise Texas acted intentionally to deceive its customers or the Commission when it charged the TTT fees.

10. For purposes of settling any and all civil and administrative disputes arising from this investigation without further proceedings, Enterprise Texas agrees with the facts as stipulated in Section II.A of this Agreement but neither admits nor denies the violations described in Section II.B of this Agreement. Enterprise Texas additionally agrees to undertake the payment and performance obligations set forth below.

---

[2] *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010).

A. Civil Penalty

11. Enterprise Texas shall pay a civil penalty in the total amount of $315,000 to the United States Treasury, by wire transfer, and submit proof of payment to the Commission, within ten (10) days of the Commission issuing an order approving this Agreement in its entirety without material modification.

12. Enterprise Texas shall not pass through the civil penalty, directly or indirectly, to any present or future customers or ratepayers.

B. Disgorgement

13. As discussed above, Enterprise Texas improperly charged TTT fees in the amount of $7,234,539.62. In consultation with Enforcement, Enterprise Texas refunded the improperly collected fees and interest to its customers on May 31, 2013.

C. Compliance and Compliance Monitoring

14. Enterprise Texas agrees to submit semi-annual compliance monitoring reports to Enforcement for one (1) year following the Effective Date of this Agreement, with the option of a second year at Enforcement's discretion. Each compliance report will describe any new and existing compliance program measures, including training, and alert Enforcement to any violations that may occur.

IV. TERMS

15. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve all matters raised by the investigation and resulting in this Agreement as to Enterprise Texas and its affiliates, parents, owners, subsidiaries, related parties and any of their principals, directors, officers, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Enterprise Texas.

16. Commission approval of this Agreement in its entirety and without material modification shall fully and finally release, individually and collectively, Enterprise Texas, its affiliates, parents, owners, subsidiaries, and any of their principals, directors, officers, employees, agents, representatives and attorneys, both past and present, and any successor in interest to Enterprise Texas (collectively, Released Parties) from, and forever bar the Commission from holding the Released Parties liable for, any and all administrative or civil claims, actions, remedies or penalties known or unknown, arising from, related to, or connected with the investigation and/or conduct addressed in this Agreement and occurring on or before the effective date of this Agreement.

17. Enterprise Texas's failure to: (a) make a timely civil penalty payment; (b) comply with the compliance reporting requirements agreed to herein; or (c) comply with any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the NGPA, and may subject Enterprise Texas to additional action under the enforcement and penalty provisions of the NGPA.

18. If Enterprise Texas does not timely make the civil penalty payment at the time agreed to by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) from the date that payment is due, in addition to the penalty specified above.

19. This Agreement binds the Released Parties. This Agreement does not create any additional or independent obligations on the Released Parties other than the obligations identified in this Agreement.

20. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer, or promise of any kind by any member, employee, officer, director, agent, or representative of Enforcement or Enterprise Texas has been made to induce the signatories or any other party to enter into the Agreement.

21. Unless the Commission issues an order approving the Agreement in its entirety without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Enterprise Texas shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Enterprise Texas.

22. In connection with the payment of the civil penalty provided for herein, Enterprise Texas agrees that the Commission's order approving the Agreement without material modification shall be a final and nonappealable order assessing a civil penalty under Section 504(b) of the NGPA, 15 U.S.C. § 3414(b) (2006). Enterprise Texas waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

23. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

24. The undersigned representative of Enterprise Texas affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to

the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on these representations.

25. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:

Norman Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Enterprise Texas Pipeline LLC
By: Stephanie C. Hildebrandt
Its: Senior Vice President and
General Counsel