

153 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Seaway Crude Pipeline Company LLC

Docket No. OR15-6-001

ORDER DENYING REHEARING

(Issued November 16, 2015)

1. On October 15, 2015, Airlines for America¹ (“A4A”) requested limited rehearing of the Commission’s September 15, 2015 Order on Market-Based Rate Application and Establishing Hearing Procedures (“MBR Order”) in Docket No. OR15-6-000.² A4A’s limited request for rehearing argues that the Commission wrongfully denied A4A’s motion to intervene in Docket No. OR15-6-000. In this order, the Commission denies rehearing.

Background

2. On December 9, 2014, Seaway Crude Pipeline Company LLC (“Seaway”) filed an application for authorization to charge market-based rates in Docket No. OR15-6-000. On February 9, 2015, A4A and Valero Marketing and Supply Company (“Valero”) jointly and individually moved to intervene and comment and protest Seaway’s application. On February 24, 2015, Seaway filed a response to various interventions/protests and motions for summary disposition. In its response, Seaway argued that A4A’s motion was a procedurally improper attempt to re-argue matters raised in the request for rehearing in Docket No. OR12-4-001.³ Seaway argued that A4A’s protest was nothing more than a collateral attack on Commission precedent and should be dismissed.⁴

¹ Air Transport Association of America, Inc. d/b/a Airlines for America (“A4A”). A4A’s members are: Alaska Airlines Inc.; American Airlines Group, Inc. (American Airlines and US Airways); Atlas Air Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² *Seaway Crude Pipeline Co. LLC*, 152 FERC ¶ 61,204 (2015).

³ Seaway Response at 6.

⁴ Seaway Response at 44-45.

3. On September 15, 2015, the Commission issued an order on Seaway's application which denied A4A's motion to intervene.⁵ The Commission found that the arguments raised by A4A in its motion to intervene had been resolved with the contemporaneous issuance of an Order on Rehearing in Docket No. OR12-4-001.⁶ The Commission therefore found A4A's motion to intervene moot.

Request for Rehearing

4. A4A argues that the Commission incorrectly denied A4A intervenor status based on an erroneous application of the Commission's regulations and an improper discounting of A4A's interests in the outcome of this proceeding.⁷ A4A also states that no party objected to A4A's intervention.⁸

5. A4A argues that it has an adequate interest in this proceeding even after the issuance of the Order on Rehearing. A4A states that the validity and reasonableness of the Commission's "newly-announced market power evaluation principles" in Docket No. OR12-4 will be the focus of the current proceeding.⁹ A4A argues that the current proceedings "will have broad and far-reaching influences on future requests for market-based rate authority for both crude oil and petroleum product pipelines."¹⁰

Discussion

6. A4A seeks rehearing pursuant to section 17(6) of the Interstate Commerce Act ("ICA")¹¹ and Rule 713 of the Rules of Practice and Procedure of the Commission.¹² A4A's request for rehearing involves solely its motion to intervene, and does not raise issues concerning protests. Pursuant to Commission Rule 214, any movant seeking to intervene must have or represent an interest which may be directly affected by the

⁵ *Seaway Crude Pipeline Co. LLC*, 152 FERC ¶ 61,204 (2015).

⁶ *Enterprise Products Partners L.P. and Enbridge Inc.*, 152 FERC ¶ 61,203 (2015).

⁷ Request for Rehearing at 3.

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ Request for Rehearing at 6.

¹¹ 49 U.S.C. App. § 17(6) (1988).

¹² 18 C.F.R. § 385.713 (2015). The Commission will, in its discretion, rule on the merits of A4A's request, despite both the ICA and the Commission's rules only allowing requests for rehearing from parties.

outcome of the proceeding.¹³ Further, Rule 214 states that an unopposed motion to intervene results in the movant becoming a party.¹⁴

7. Contrary to A4A's argument, Seaway did in fact oppose A4A's motion to intervene, stating that A4A's motion was procedurally improper, a collateral attack on Commission precedent, and should be dismissed.¹⁵ A4A's argument that this was a challenge solely to A4A's protest, and not opposition to intervention, is without merit.¹⁶ Thus, in order for A4A to be accorded party status it must demonstrate an interest which may be directly affected by the outcome of the proceeding. A4A has failed to meet this burden.

8. Furthermore, our decision in the present proceeding is directly applicable only to the market-based rate application of Seaway, and market power determinations are fact-based inquiries decided on a case-by-case basis. By its own admission, A4A's interest in this proceeding is the potential precedential impact on future oil pipeline market-based rate application decisions. A petitioner seeking the right to intervene, however, must have a direct interest in a proceeding and not merely the desire to shape precedent.¹⁷ The Commission has consistently held that where a movant's interest appears solely based on the possible precedential effect of the Commission's decision, such does not constitute a sufficiently direct interest to warrant intervention.¹⁸ Accordingly, we affirm that A4A has not established a direct interest in the outcome of this proceeding sufficient to sustain its intervention. We note that this determination does not preclude A4A from intervening in future proceedings in which A4A has a direct interest.

9. For the reasons set forth above, A4A's request for rehearing is denied.

¹³ 18 C.F.R. § 385.214(b)(2)(ii) (2015).

¹⁴ 18 C.F.R. § 385.214(c)(1) (2015).

¹⁵ Seaway Response at 44-45.

¹⁶ Even in cases of unopposed motions to intervene, the Commission has still denied intervention where a direct interest in the proceedings was not demonstrated. *Virginia Electric & Power Co.*, 27 FERC ¶ 61,093 (1984).

¹⁷ *Kansas-Nebraska Natural Gas Co., Inc.*, 21 FERC ¶ 61,285, at 61,781 (1982).

¹⁸ *Northeast Utilities Service Co.*, 53 FERC ¶ 61,135, at 61,456 (1990); *Cleveland Electric Illuminating Co.*, 64 FERC ¶ 61,097, at 61,903 (1993).

The Commission orders:

The request for rehearing filed by A4A is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.