

154 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enable Oklahoma Intrastate Transmission, LLC

Docket No. IN04-5-001

ORDER GRANTING PETITION

(Issued February 24, 2016)

1. On October 16, 2015, Enable Oklahoma Intrastate Transmission, LLC (EOIT) filed a petition under Rule 207 of the Commission's Rules of Practice and Procedure requesting that the Commission terminate the Stipulation and Consent agreement approved by the Commission on December 19, 2003¹ (2003 Agreement) between EOIT's predecessor, Enogex, Inc. (Enogex),² and the Commission's Enforcement Staff.³ We will grant the request as discussed below.

¹ *Enogex, Inc.*, 105 FERC ¶ 61,308 (2003).

² EOIT is the successor to the business and properties of Enogex as a result of a series of transactions through which the owners of interests in Enogex contributed those interests to a joint venture formed with affiliates of CenterPoint Energy, now known as Enable Midstream, to own several natural gas transmission, gathering, storage and related oil and gas midstream assets.

³ At the time the 2003 Stipulation and Consent Agreement was negotiated and approved, the Commission's enforcement function was performed by staff of the Enforcement Division of the Office of Market Oversight and Investigations. Currently this function is performed by staff of the Office of Enforcement. This order refers to staff from any of these offices as Enforcement Staff.

I. Background

2. In November 2002, Enogex and its then-affiliate Ozark Gas Transmission, L.L.C. (Ozark), informed Enforcement Staff that they had constructed certain natural gas transmission facilities without fully complying with the provisions of Part 157, Subpart F of the Commission's Regulations,⁴ which require relevant regulatory agencies to approve pipeline construction in advance for compliance with statutes and regulations that protect the environment or cultural resources. Enogex and Ozark's self-reports prompted an Enforcement Staff investigation. To resolve all issues presented by that investigation, Enogex and Ozark entered into the 2003 Agreement with Enforcement Staff, which the Commission approved.⁵

3. As relevant here, under the 2003 Agreement, Enogex agreed to adhere to a pre-construction review and clearance procedure (Construction Procedure) that Ozark had previously agreed to in 2002 for similar violations.⁶ The Construction Procedure established internal mechanisms by which Enogex was to comply with permitting requirements that apply to construction of facilities within the Commission's Natural Gas Act or Natural Gas Policy Act jurisdiction. Specifically, the Construction Procedure set forth a number of steps to ensure that Enogex sought and obtained all applicable environmental permits, approvals, or other authorizations prior to the initiation of any construction or maintenance activity involving jurisdictional facilities.⁷ The Construction Procedure also required Enogex to inform and seek approval from Enforcement Staff before making any modifications to the procedures.⁸

II. EOIT's Petition

4. EOIT now requests that the Commission terminate the 2003 Agreement. EOIT asserts that, since the 2003 Agreement was approved, there have been no instances in which Enogex, and more recently, EOIT, have failed to comply with the applicable

⁴ 18 C.F.R. pt. 157, Subpt. F (1999).

⁵ *Enogex Inc.*, 105 FERC ¶ 61,308 at P 1.

⁶ *Id.* P 7. *See Ozark Gas Transmission Sys., L.L.C.*, 100 FERC ¶ 61,174 (2002) (2002 Ozark Agreement). The Construction Procedure was included in the 2002 Ozark Agreement.

⁷ 2002 Ozark Agreement, 100 FERC ¶ 61,174 at 61,621.

⁸ *Id.* at 61,623.

provisions of Part 157, Subpart F, the relevant environmental laws, or the Construction Procedure. Enogex states that this history demonstrates that EOIT has in place a strong, vibrant, and effective commitment to compliance. EOIT also asserts that since 2013, it has been a member of the Enable Midstream⁹ family of oil and gas midstream companies. EOIT states that Enable Midstream, which has a history of successfully complying with the Commission's regulations and policies, is fully equipped to assist EOIT in its efforts to remain compliant with the relevant requirements of Part 157 and to ensure that construction pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA)¹⁰ will not proceed without the required Commission and permitting agency authorizations and approvals.¹¹

5. EOIT avers that the Construction Procedure is more than 13 years old and is both resource-intensive and outmoded.¹² EOIT explains that the Construction Procedure does not reflect Enable Midstream's current structure and is less efficient than other approaches Enable Midstream currently employs.¹³ Further, EOIT states that Enable Midstream is working to establish a single, integrated process for managing and documenting environmental clearance and regulatory compliance across all Enable Midstream pipelines. EOIT asserts that, unless it is relieved of the obligation to follow the Construction Procedure, it will not be able to benefit from the process enhancements that Enable Midstream is currently developing, in addition to the expertise and abundant resources available to the other Enable Midstream companies. Additionally, EOIT states that, under essentially identical circumstances, the Commission terminated the

⁹ EOIT states that Enable Midstream is a family of energy companies including interstate and intrastate natural gas pipeline companies with substantial experience in the permitting and construction of facilities subject to this Commission's jurisdiction. EOIT Petition at 3.

¹⁰ 15 U.S.C. § 3371 (2012). NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport natural gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines "under such terms and conditions as the Commission may prescribe."

¹¹ EOIT Petition at 8.

¹² *Id.* at 6.

¹³ *Id.* at 9.

2002 Ozark Agreement, which obligated Ozark to observe the Construction Procedure at issue here.¹⁴

III. Discussion

6. EOIT has demonstrated compliance with the 2003 Agreement for the 12 years of the 2003 Agreement's existence. A review of our records indicates that Enogex has filed only two construction applications since the 2003 Agreement, both for the Bennington Compressor Station Project in Bryan County, Oklahoma. Enogex filed a prior notice request for Phase I of the project in Docket No. CP08-57-000 on January 18, 2008; the project became operational on June 1, 2009. On June 26, 2009, Enogex filed a prior notice request for Phase II of the project in Docket No. CP09-441-000, which it placed into service on February 7, 2011. Enogex received all necessary environmental clearances prior to commencing construction for both phases of the project. Thus, EOIT appears to have complied with the 2003 Agreement's compliance plan in the intervening years since its adoption.

7. As EOIT also notes, it now has available to it a new and more efficient process for managing and documenting environmental clearance and regulatory compliance that will be integrated across all Enable Midstream Companies. EOIT states that this new process will permit EOIT to benefit from the expertise and abundant resources available to the other Enable Midstream companies and will ensure that EOIT remains in compliance with its obligations under the Commission's regulations, including the applicable Part 157, Subpart F and other requirements prior to undertaking section 311 construction activities.¹⁵

8. In light of EOIT's history of compliance under the 2003 Agreement, and EOIT's new process enhancements, we find that it is no longer necessary to require EOIT to abide by the Construction Procedure contained in the 2003 Agreement, and we therefore terminate the 2003 Agreement and the requirement that EOIT abide by the Construction

¹⁴ *Id.* at 7. In November 2009, the Commission terminated the 2002 Ozark Agreement, thus terminating the requirement that Ozark abide by the Construction Procedure. *Ozark Gas Transmission, L.L.C.*, 129 FERC ¶ 61,111 (2009). However, Enogex continued to be required to follow the Construction Procedure as adopted by the 2003 Agreement. EOIT Petition at 7.

¹⁵ *Id.* at 9-10. Moreover, terminating the 2003 Agreement with Enogex is consistent with the Commission's 2009 decision to terminate the 2002 Ozark Agreement, which involved the same Construction Procedure. *Ozark Gas Transmission, L.L.C.*, 129 FERC ¶ 61,111.

Procedure. Notwithstanding this action, we remind EOIT of its continuing obligation to abide by the statutes we oversee and our regulations and precedent.

The Commission orders:

The 2003 Agreement is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.