

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Columbia Gulf Transmission Company, LP

Docket No. RP04-413-000

v.

Tennessee Gas Pipeline Company

ORDER GRANTING INTERLOCUTORY APPEAL

(Issued June 22, 2005)

1. On June 1, 2005, Dynegy Midstream Services, LP (Dynegy) filed an interlocutory appeal to the Motions Commissioner of the Presiding Administrative Law Judge's May 25, 2005 Order in the captioned docket. On June 7, 2004, the Motions Commissioner, pursuant to Rule 715(c) of the Commission's Rules of Practice and Procedure, found that the appeal raises extraordinary circumstances which make prompt review of the contested ruling by the Commission necessary to prevent detriment to the public interest or irreparable harm to any person.<sup>1</sup> As discussed below, the Commission grants the appeal and returns the matter to the presiding ALJ.

**Background**

2. On July 26, 2004, Columbia Gulf Transmission Company (Columbia Gulf) filed a complaint against Tennessee Gas Pipeline Company (Tennessee). The complaint alleged that Tennessee is illegally imposing a transportation charge on Columbia Gulf's South Pass 77 shippers in violation of the Natural Gas Act (NGA) and agreements between Tennessee and Columbia Gulf. On October 12, 2004, the Commission set the issues

---

<sup>1</sup> 18 C.F.R. § 385.715(a) (2004).

raised in the complaint for hearing.<sup>2</sup> On May 12, 2005 the ALJ issued an order regarding the confidentiality of certain information in a 2003 “Straddle Agreement” between Tennessee and the Yscloskey Processing Plant. The ALJ found in part that:

All dollar amount references in section 5.1 and Exhibit G shall be redacted. Further, Table A-1 of Exhibit G (referred to in section 5.1) shall be redacted. Particular dollar figures are not what is significant; what is significant is “the fact that any charge was being made” at all.<sup>3</sup> The remainder of these sections shall be retained in the public version of Exhibit No. CGT-12.

3. On May 17, 2004, Dynegy filed a motion with the ALJ for clarification, reconsideration and or leave to file an interlocutory appeal. Dynegy sought verification from the ALJ that certain percentage multipliers contained in Exhibit G of the Straddle Agreement may be redacted. In the alternative, Dynegy sought reconsideration of the May 12 Order to the extent necessary to permit redaction of the percentage multipliers, and absent the grant of such relief, Dynegy further sought leave to seek an interlocutory appeal from the Commission.

4. On May 25, 2005, the ALJ denied Dynegy’s motion and stated that at a May 11, 2005 oral argument, the parties discussed each paragraph of the Straddle Agreement. The ALJ noted that at that meeting, Dynegy only argued that the “dollar figures,” the “category” of charges, and the “period of time” ought to be redacted. The ALJ stated in his May 12, 2005 Order that he agreed with Dynegy as to the “dollar figures” and the “category” of charges but that Dynegy did not raise the matter of percentages during a May 11, 2005 oral argument. The ALJ found that Dynegy had failed to explain why, once “all dollar amount references in section 5.1 and Exhibit G” of the Straddle Agreement are redacted as well as “Table A-1 of Exhibit G,” the “percentages” will provide any meaningful data which need to be protected. The ALJ stated that Dynegy had waived its opportunity to have the percentages redacted, declined to amend the May 12, 2005 Order as requested by Dynegy and also denied Dynegy’s motion for leave to file an interlocutory appeal with the Commission.

---

<sup>2</sup> *Columbia Gulf Transmission Company v. Tennessee Gas Pipeline Company*, 109 FERC ¶ 61, 055 (2004).

<sup>3</sup> May 12 Order at P10, *citing*, Transcript at p. 157.

5. In its June 1, 2005 interlocutory appeal Dynegy argues that unless its appeal is granted, Dynegy and the other owners of the Yscloskey plant will be compelled to make public highly sensitive price information. Dynegy asserts that the business of processing natural gas is non-jurisdictional and not subject to economic regulation by the Commission. Dynegy argues that the disclosure of unregulated, non-jurisdictional price information would provide both Yscloskey plant customers and competitors information they need to obtain a full picture of the plant owners' economics, which would diminish the value of the owners' investment in the plant. Dynegy argues that both Columbia Gulf and the ALJ have stated that price information is not necessary for a decision in this case and in recognition of this fact the ALJ has already permitted the redaction of certain price information.

6. Dynegy argues that these percentage multipliers are similar to prices that the ALJ allowed to be redacted in that anyone who knows the public index referenced by the Straddle Agreement as well as the percentage multiplier will be able to calculate the price. Dynegy asserts that using public information, a competitor who knows the value of the commodities recovered by a processing plant can readily ascertain the prices a processor must charge to earn a profit. Dynegy argues that the only piece of the puzzle that cannot be so readily ascertained is the actual settlement percentage between the processor and the producer because everything else can be estimated fairly closely from public data. It argues that publication of the percentages would place the owners of the Yscloskey Plant at a competitive disadvantage vis-à-vis competing processors and at a negotiating disadvantage with current customers. Dynegy argues that the percentage multipliers are core price terms and that they reveal the prices for services rendered at the Yscloskey Plant and that these percentage figures are every bit as proprietary and as irrelevant to this proceeding as the information that the ALJ determined should be redacted.

7. Dynegy asserts that in ruling that the percentage figures may not be redacted, the ALJ did not rule on whether the percentage figures were a type of price eligible for protection but stated only that because Dynegy had not raised the percentage figure issue in a May 11 oral argument, Dynegy had waived its opportunity to have the issue considered. Dynegy asserts that it did not know it would need a clarification until the ALJ issued the May 12, 2005 Order because it did not know that the ALJ would find that, with a few exceptions, the entire Straddle Agreement would be made public. Dynegy argues that the ALJ should have explained why the percentage figures are a different kind of "specific number" or "dollar figure" from those protected from disclosure. Accordingly, Dynegy requests that the Commission permit the percentage figures in the Straddle Agreement to be redacted.

**Discussion**

8. The Commission will grant Dynegy's requested relief and permit the percentage figures in the Straddle agreement to be redacted. We find that dollar amounts may be derived by using public sources and the percentage figures contained in the Straddle Agreement. Because dollar figures may be calculated by applying the percentages to publicly-available data, to require public disclosure of the percentage amounts is at odds with the ALJ's ruling that the dollar amounts in the Straddle Agreement may be redacted.

9. On balance, the harm in disclosing the percentage figures outweighs the fact that Dynegy did not raise the specific matter of percentage figures at the May 11, 2005 oral argument. The Commission finds that in the context of the Straddle Agreement, the subject percentage figures are sufficiently linked to the price term amounts that the ALJ protected from disclosure so as to warrant equal protection for the percentage figures to prevent irreparable harm to Dynegy and the other owners of the Yscloskey plant.

**The Commission orders:**

Dynegy's June 1, 2005 interlocutory appeal is granted consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.