

121 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Energy Transfer Partners, L.P.
Energy Transfer Company
ETC Marketing, Ltd.
Houston Pipeline Company
Oasis Pipeline, L.P.
Oasis Pipeline Company Texas, L.P.
ETC Texas Pipeline Ltd., Oasis Division

Docket No. IN06-3-003

ORDER DELAYING DECISION ON MOTION TO INTERVENE

(Issued November 15, 2007)

1. On October 31, 2007, the Interstate Gas Association of America (INGAA) filed a motion for limited intervention in the above entitled investigation proceeding (the Motion). In this order, the Commission delays its decision on the Motion.

Background

2. On July 26, 2007, the Commission issued an order directing Energy Transfer Partners, L.P., Energy Transfer Company, ETC Marketing, Ltd. and Houston Pipeline Company (collectively, the Companies) to show cause no later than 30 days after the order was issued why the Commission should not find that the Companies had manipulated markets at Houston Ship Channel and Waha, Texas, on specific dates between December 2003 and December 2005, and why the Commission should not revoke their blanket certification to sell gas subject to the Commission's jurisdiction.¹ The Show Cause Order further directed the Companies to show why they should not pay civil penalties in the amount of \$82,000,000 and disgorge more than \$69,866,966, plus

¹ *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086 (2007) (the Show Cause Order).

interest, in unjust profits resulting from market manipulation under the Natural Gas Act (NGA).²

3. The Show Cause Order further directed Oasis Pipeline³ to show cause why the Commission should not find that Oasis Pipeline: (1) unduly discriminated against non-affiliated shippers and unduly preferred one or more affiliated shippers; (2) charged rates in excess of the maximum lawful rate for service under Natural Gas Policy Act (NGPA) section 311;⁴ (3) failed to file an amended operating statement; and (4) should pay civil penalties in the amount of \$15,500,000 and disgorge \$267,122 in unjust profits, plus interest.

4. On August 27, 2007, ETP⁵ filed an expedited request for rehearing and request for stay of the Show Cause Order. In its request, ETP alleges that the Commission erred in finding that: (1) the Commission can require ETP to litigate the NGPA⁶ charges in an agency adjudication before assessing the penalty and obtaining *de novo* review in a federal district court; and (2) the Commission can require ETP to litigate the NGA charges in an adjudication at the agency without an opportunity to have its potential civil penalty reviewed *de novo* by a federal district court.

Interventions

5. On October 31, 2007, INGAA filed the Motion and expressed an interest in the issue of the availability of *de novo* review in federal district court of the Commission's civil penalty orders under NGA section 22.⁷

6. INGAA states that, in accordance with Rule 214(b) of the Commission's Rules of Practice and Procedure, it has an interest in this proceeding.⁸ INGAA asserts that it is a

² 15 U.S.C. § 717t-1 (Supp. V 2005) (NGA section 22).

³ Oasis Pipeline includes Oasis Pipeline, L.P., Oasis Pipeline Company Texas, L.P., and ETC Texas Pipeline LTD., Oasis Division.

⁴ 15 U.S.C. § 3317 (2000).

⁵ ETP includes Energy Transfer Partners, L.P., Energy Transfer Company, ETC Marketing Ltd., Houston Pipeline Company, Oasis Pipeline, L.P., Oasis Pipeline Company Texas, L.P., and ETC Texas Pipeline LTD., Oasis Division.

⁶ 15 U.S.C. § 3414 (2000 & Supp. V 2005).

⁷ NGA section 22 *supra note 2*.

⁸ The Motion at 2 (citing 18 C.F.R. § 385.214(b) (2007)).

national, non-profit trade association, representing the interstate natural gas pipeline industry operating in the United States, as well as comparable companies in Mexico and Canada. It states that its U.S. members transport virtually all of the natural gas sold in interstate commerce, and the Commission regulates its members pursuant to the NGA. INGAA maintains that ETP's request for rehearing presents an issue of first impression regarding whether federal district court review of the Commission's imposition of civil penalties under the NGA is available. INGAA asserts that, because the Commission regulates its members under the NGA, its members may be subject to civil penalty orders in the future and therefore have a direct interest in the question of the availability of *de novo* review in district court.

7. INGAA notes that the Commission did not establish a time limitation for intervention under Rule 214(d). It further notes that the Commission's regulations provide that no person may participate or intervene as a matter of right in investigation proceedings.⁹ However, it asserts that there is good cause for the Commission to allow INGAA to intervene. It claims that its members' views and interests cannot be adequately represented by other parties. INGAA asserts that the Commission has allowed intervention by third parties in investigation proceedings where, as here, that party's interest is affected.¹⁰

Discussion

8. INGAA is correct that the Commission did not provide a time limit for intervention in the Show Cause Order and that the Commission's regulations provide that no person may participate or intervene as a matter of right in investigation proceedings.¹¹ INGAA is also correct that NGA section 22¹² is new and that the Commission has not yet ruled on ETP's request for rehearing. In light of these circumstances, the Commission will delay, without prejudice, ruling on INGAA's motion until it rules on ETP's request for rehearing.

⁹ *Id.* (citing 18 C.F.R. § 1b.11 (2007)).

¹⁰ *Id.* (citing *Williams Gas Pipelines Central Inc.*, 94 FERC ¶ 61,285, at 62,026 (2001)).

¹¹ The Motion at 2.

¹² NGA section 22, *supra* note 2.

The Commission orders:

The Commission hereby delays its decision to rule on INGAA's limited motion to intervene, as described in the body of this order. Until the Commission so rules, INGAA shall not be considered a party to these proceedings.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.