

106 FERC ¶ 61,170  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Jupiter Energy Corporation

Docket No. CP03-11-003

ORDER DENYING REHEARING

(Issued February 18, 2004)

1. On December 22, 2003, Williams Gas Processing-Gulf Coast Company, LP (Williams) and Transcontinental Gas Pipe Line Corporation (Transco)<sup>1</sup> jointly filed a request for rehearing of the Commission's November 20, 2003 Order<sup>2</sup> denying Williams' and Transco's request for late intervention and rehearing of a May 16, 2003 Order<sup>3</sup> finding that Jupiter's gas facilities are transmission facilities subject to the Commission's jurisdiction under the Natural Gas Act (NGA).
2. Transco's request for rehearing of the November 20 Order.

**Background**

3. Jupiter's natural gas pipeline facilities extend from offshore Texas to a sub-sea interconnect with Transco's system and a shoreline interconnect with Tennessee Gas Pipeline Company (Tennessee). Jupiter's application requested that the Commission find that Jupiter's pipeline facilities are non-jurisdictional gathering facilities exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA. The Commission's May 16 Order in this proceeding found that Jupiter's facilities downstream of Platform 39A provide jurisdictional transmission service. Therefore, the

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<sup>1</sup> Williams and Transco are wholly-owned subsidiaries of The Williams Companies, Inc.

<sup>2</sup> Jupiter Energy Corporation, 105 FERC ¶ 61,243 (2003).

<sup>3</sup> Jupiter Energy Corporation, 103 FERC ¶ 61,184 (2003).

May 16, 2003 Order denied Jupiter's request that the Commission find that the primary function of Jupiter's facilities is non-jurisdictional gathering.

4. In their joint motion for late intervention filed on May 30, 2003, Williams and Transco stated that they only became aware that their interests might be affected upon reviewing the Commission's May 16 Order. The Commission's notice, however, stated that Jupiter's application was for a determination that its facilities are non-jurisdictional gathering facilities and for authorization to abandon the facilities. The notice was published in the Federal Register on November 19, 2002, with motions to intervene due by December 4, 2002.<sup>4</sup> The other downstream pipeline company, Tennessee, filed a timely motion to intervene on December 4, 2002.

5. The Commission found that Williams and Transco failed to show good cause for not filing their motion to intervene until after the Commission issued its May 16, 2003 Order addressing Jupiter's application. The Commission further noted that Jupiter made the same argument as Williams and Transco regarding the Commission's prior finding that Transco's downstream facilities are non-jurisdictional gathering facilities. The Commission, however, rejected this argument as a basis for granting rehearing of the May 16 Order because the record in the Transco proceeding did not indicate that the Transco facilities at issue were located downstream of Jupiter's transmission facilities. Accordingly, the Commission denied Williams' and Transco's joint motion to intervene out of time and dismissed the request for rehearing for lack of standing.

6. Williams' and Transco's request for rehearing of the November 20 Order states that the Commission erroneously denied Williams' and Transco's late intervention and therefore erroneously dismissed their request for rehearing. Williams and Transco state that adequacy of notice does not on its own justify denial of late intervention, that the November 20 Order on rehearing did not suggest any prejudice or disruption might result from such late intervention, and that late intervention should be granted where questions of jurisdiction are at issue or where a proceeding has been pending for some time.

## **Discussion**

7. Citing City of Atka,<sup>5</sup> Williams and Transco assert that late intervention should be granted where jurisdictional issues have been raised. To the extent City of Atka would allow late interventions solely on the grounds that the pleadings raise issues of jurisdiction, that case does not reflect current Commission policy. Such a policy would

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<sup>4</sup> 67 Fed. Reg. 69,730 (Nov. 19, 2002).

<sup>5</sup> Citing City of Atka, 95 FERC ¶ 61,150 at 61,485 (2001).

be extremely disruptive to the processing of cases before the Commission and unfair to other parties, especially applicants. To avoid unjustified disruption, the Commission has clarified its policy since issuance of City of Atka and made explicit the “higher burden” test employed here. Specifically, when late intervention is sought after the issuance of an order disposing of an application, the prejudice to the other parties and burden upon the Commission of granting the late intervention may be substantial; thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention.<sup>6</sup> In determining whether to grant late intervention, the Commission may consider such factors as whether the movant had good cause for filing late and whether the movant’s interest is adequately represented by other parties to the proceeding.<sup>7</sup> We find that Williams and Transco have not met that higher burden.

8. The Commission’s notice of Jupiter’s application for abandonment and non-jurisdictional determination published in the Federal Register established the location of the facilities at issue and described them in sufficient detail to alert Williams and Transco of their interconnection with Transco’s facilities. Williams and Transco, which have experience dealing with Commission matters, have presented no reason why they could not have determined then that they had an interest in this proceeding. Further, as noted previously in our November 20 Order on rehearing, the issues raised in Williams’ and Transco’s request for rehearing of the May 16 Order were also raised in Jupiter’s rehearing request and were addressed in the Commission’s November 20 Order on rehearing. Under these circumstances, we found that Williams and Transco had not shown good cause for filing late, or that granting their request for late intervention was necessary to ensure adequate representation of their stated interest in this proceeding.

9. Finally, Williams and Transco assert that late intervention should be granted where a proceeding has been pending for some time. In the case cited in their rehearing request, the proceeding, including the late petitions to intervene, had been pending on rehearing for an extraordinarily long time, four years after issuance of the Commission order.<sup>8</sup> That is not the case here.

10. For the above reasons, we conclude that Williams and Transco have not met the higher burden of demonstrating good cause to grant late intervention after issuance of the Commission’s May 16, 2003 Order addressing Jupiter’s application. Accordingly,

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<sup>6</sup> See *Greenbrier Pipeline Company, LLC*, 104 FERC ¶ 61,145 at P 10-11 (2003); *Southern Star Central Gas Pipeline, Inc.*, 104 FERC ¶ 61,080 at P 10-11(2003); *Islander East Pipeline Pipeline Co.*, 102 FERC ¶ 61, 054 at P 17-18 (2003); and *North Baja Pipeline, L.L.C.*, 99 FERC ¶ 61,028 (2002).

<sup>7</sup> See 18 CFR § 385.214(d) (2003).

<sup>8</sup> *Citing Venice Gathering Co.*, 97 FERC ¶ 61,045 at 61,245 (2001).

we affirm our denial of late intervention and our dismissal of their request for rehearing of the Commission's jurisdictional determination regarding Jupiter's facilities.

The Commission orders:

Williams' and Transco's joint request for rehearing of the November 20, 2003 Order in this docket is denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.