

126 FERC ¶ 61,188
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 27, 2009

In Reply Refer To:
Oasis Pipeline, L.P.
Oasis Pipeline Company Texas, L.P.
ETC Texas Pipeline Ltd., Oasis Division
Docket No. IN06-3-004

Skadden, Arps, Slate, Meagher & Flom LLP
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Federal Energy Regulatory Commission
Office of Enforcement
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Attention: William S. Scherman
Attorney for Oasis Pipeline, L.P., *et al.*

Anna V. Cochrane
Deputy Director
Office of Enforcement, Federal Energy Regulatory Commission

Reference: Joint Offer of Settlement

Dear Mr. Scherman and Ms. Cochrane:

1. On December 22, 2008, the Participants in the above-referenced proceeding – (a) Enforcement Litigation Staff and (b) Oasis Pipeline, L.P., Oasis Pipe Line Company Texas L.P., and ETC Texas Pipeline, Ltd., Oasis Division (Oasis Pipeline) jointly submitted a Stipulation and Consent Agreement (Agreement), a Joint Offer of Settlement, and a Joint Explanatory Statement (collectively, the Settlement). Enforcement Litigation Staff and Oasis Pipeline are collectively referred to herein as the Participants. If

approved by the Commission in its entirety and without modification, the Agreement will resolve all issues in the above-referenced proceeding.¹

2. The above-referenced proceeding arose from an Order to Show Cause and Notice of Proposed Penalties (Order to Show Cause) issued by the Commission on July 26, 2007 that directed Oasis Pipeline to respond to alleged violations of Commission requirements. *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086 (2007). The Order to Show Cause alleged that Oasis Pipeline (1) unduly discriminated against non-affiliated shippers and unduly preferred affiliated shippers; (2) charged rates in excess of the maximum lawful rate for service under section 311 of the Natural Gas Policy Act of 1978 (NGPA); and (3) failed to file an amended operating statement.

3. On October 9, 2007, Oasis Pipeline filed a response to the Order to Show Cause in which the company denied that it had unduly discriminated against non-affiliate shippers or violated any of the Commission's regulations. On December 20, 2007, the Commission issued an order finding, among other things, that an administrative hearing was appropriate with respect to the charges against Oasis Pipeline under the NGPA. *Energy Transfer Partners, L.P.*, 121 FERC ¶ 61,282, at PP 25-34 (2007). On February 14, 2008 and March 31, 2008, respectively, Enforcement Litigation Staff and Oasis Pipeline filed briefs. On May 15, 2008, the Commission issued an order setting the matters with respect to Oasis Pipeline for a trial-type evidentiary hearing. *Energy Transfer Partners, L.P.*, 123 FERC ¶ 61,168 (2008). On August 11, 2008, Oasis Pipeline filed a petition for review of the Commission's May 15, 2008 Order in the United States Court of Appeals for the Fifth Circuit. Prehearing matters commenced before Presiding Judge Bruce L. Birchman. Enforcement Litigation Staff filed direct prepared testimony on August 1, 2008 and rebuttal testimony on October 29, 2008. Oasis Pipeline filed answering testimony on September 17, 2008 and September 19, 2008. On November 18, 2008, the presiding judge issued a Partial Initial Decision granting Oasis Pipeline's motion for summary determination with respect to the principal allegation against Oasis Pipeline in the Order to Show Cause: the undue discrimination claim. *Oasis Pipeline, L.P.*, 125 FERC ¶ 63,019 (2008). Trial in this matter on the two remaining claims was scheduled to commence on December 10, 2008 and then on December 15, 2008. These dates were suspended to allow the preparation and submission of the Agreement.

¹All matters in Docket No. IN06-3-003, pertaining to alleged violations of Energy Transfer Partners, *et al.*, of section 284.403(a) of the Commission's regulations, 18 C.F.R. § 284.403(a) (2005), are not covered by, and are expressly excluded from, the Agreement and the Settlement.

4. Paragraph 1 of the Agreement provides that Enforcement Litigation Staff and Oasis Pipeline enter into Agreement to resolve all matters in the above-captioned proceeding against Oasis Pipeline.
5. Paragraphs 2 through 7 of the Agreement contain stipulated facts relative to the background of Oasis Pipeline.
6. Paragraphs 8 through 10 of the Agreement contain the procedural history of the above-captioned proceeding with regard to Oasis Pipeline.
7. Paragraph 11 of the Agreement provides that Oasis Pipeline neither admits nor denies any of the allegations set forth in the Commission's Order to Show Cause, Enforcement Staff's February 2008 Brief, or Enforcement Litigation Staff's witness testimony filed in this proceeding. However, in view of costs and risks of litigation and in the interest of resolving all matters, Oasis Pipeline and Enforcement Litigation Staff enter into the Agreement. This settlement does not constitute any admission of liability or wrongdoing by Oasis Pipeline to any third party. For purposes of settling all claims, disputes or Commission referrals with respect to Oasis Pipeline arising from the Order to Show Cause, Enforcement Litigation Staff and Oasis Pipeline agree that Oasis Pipeline shall take the following actions and be subject to the following obligations.
8. Paragraph 12 of the Agreement provides that no later than the Effective Date of the Agreement,² Oasis Pipeline will administer its dual contract arrangements as follows:
 - (a) Service provided under NGPA section 311(a)(2) on its system will be allocated on a first-come, first-served basis regardless of whether the customer has a dual contract arrangement or is a stand alone customer.
 - (b) In determining first-come, first-served priority, a shipper submitting a nomination for interstate interruptible transportation with the earlier confirmation date will have priority over competing nominations for interstate service using the same path with a later in time confirmation. This priority will exist regardless of whether the nomination is for stand alone interstate interruptible transportation or interstate interruptible transportation that is part of a dual contract arrangement. For the purposes of the Agreement, "confirmation" means an effective and unexpired affirmative agreement documented by written means,

²Paragraph 28 of the Agreement provides that the Effective Date of the Agreement shall be 20 days after the date that the Commission issues an order approving the Agreement in its entirety without modification and that order is no longer subject to appeal.

including but not limited to facsimile, email or other electronic means evidencing an agreement between Oasis Pipeline and a shipper on all key terms and conditions for a particular arrangement under a service agreement or transportation agreement. Accordingly, the shipper that first reached agreement on the key terms and conditions of the interstate interruptible transaction with the transporter would have priority with respect to the interstate interruptible service.

- (c) Oasis Pipeline's determination of the shipper with whom it first reaches an agreement on the key terms and conditions of the interstate interruptible transaction that establishes priority under Paragraph 12(b) of the Agreement shall not be based in any respect upon whether that shipper is a stand alone shipper or a dual contract shipper (whether affiliated or not affiliated with Oasis Pipeline).
- (d) A stand alone shipper may obtain interstate interruptible transportation on Oasis Pipeline on a monthly basis or for any future period on a not unduly discriminatory basis relative to a dual contract shipper's interstate interruptible transportation (whether affiliated or not affiliated with Oasis Pipeline).
- (e) Oasis Pipeline will allocate capacity among interruptible intrastate transportation customers and NGPA section 311 interruptible interstate transportation customers such that the shipper with the earliest effective date of a confirmation shall be the last to be curtailed. In the event that one or more of these customers have the same effective date and time of a confirmation, then the available capacity, if any, will be awarded to the customer whose transaction provides the greatest economic benefit to Oasis Pipeline, in Oasis Pipeline's judgment. As described in Paragraph 14 of the Agreement, Oasis will amend its Statement of Operating Conditions by the Effective Date of the Agreement to clarify that the determination referred to in the preceding sentence will be made by Oasis Pipeline without regard to whether the customer is an affiliated entity.
- (f) Subject to the provisions of Paragraph 12(a) and Paragraph 12(b) of the Agreement, dual contract customers will be charged a commodity charge for transportation provided pursuant to NGPA section 311(a)(2) on a not unduly discriminatory basis relative to the commodity charge that Oasis Pipeline charges stand alone customers for such transportation.
- (g) Subject to the provisions of Paragraph 12(a) and Paragraph 12(b) of the

Agreement, Oasis Pipeline will not provide a dual contract customer with priority on an unduly discriminatory basis with respect to interstate interruptible transportation over a stand alone customer seeking interstate interruptible transportation. Subject to the foregoing terms and the terms of Oasis Pipeline's Statement of Operating Conditions, the sole advantage accruing to a dual contract holder from Oasis Pipeline's perspective with respect to interstate interruptible service will be the flexibility to use its interstate interruptible contract to fill in capacity under its parallel firm intrastate contract.

9. Paragraph 13 of the Agreement provides that available "cross-haul" transportation, if any, for the next day's service, will be posted by 4:00 p.m. Central Time of the prior business day, and such information will be accessible by shippers on Oasis Pipeline's electronic bulletin board (EBB). Oasis Pipeline commits to post such information as soon as reasonably practical, but in no event later than 150 days from the Effective Date of the Agreement.³

10. Paragraph 14 of the Agreement provides that no later than the Effective Date of the Agreement, Oasis Pipeline will amend its Statement of Operating Conditions to provide that in the event one or more customers have the same effective date of confirmation, then the available capacity, if any, will be awarded to the customer whose transaction Oasis Pipeline agreed to first as determined by the date of the confirmation and, in the event that the date of confirmation is the same, the time of confirmation. In the event that the date and time are the same, the available capacity, if any, will be awarded to the customer whose transaction provides Oasis Pipeline the greatest economic benefit, in Oasis Pipeline's judgment, without regard to whether the shipper is an affiliated entity.

11. Paragraph 15 of the Agreement provides that no later than the Effective Date of the Agreement, Oasis Pipeline will file with the Commission all agreements to lease fifty percent or more of the capacity on its pipeline that post-date its September 21, 2007 filing with the Commission pursuant to section 284.123(e) of the Commission's regulations. Prospectively, Oasis Pipeline agrees to file with the Commission pursuant to section 284.123(e) of the Commission's regulations all such leases and amendments that result in a change in the operations of Oasis Pipeline; provided, however, that all such filings shall be accorded confidential treatment, as applicable, under section 388.112 of the Commission's regulations.

³Cross-haul transportation is transportation from all meter points upstream of Oasis Pipelines' Prairie Lea compressor station in Caldwell County, Texas, that is delivered to meters downstream of Oasis Pipeline's Prairie Lea compressor station.

12. Paragraph 16 of the Agreement provides that no later than the Effective Date of this Agreement, Oasis Pipeline will file with the Commission an amended Statement of Operating Conditions that explicitly describes the availability of dual contract arrangements as specified in the Agreement. Among other things, the amended Statement of Operating Conditions will state that a dual contract arrangement is not a precondition to a stand alone customer receiving non-unduly discriminatory interstate interruptible transportation

13. Paragraph 17 of the Agreement states that, currently, Oasis Pipeline has an EBB known as “i-PVMS” that is available to customers who submit on-line nominations and for operators to confirm on-line nominations and flow reports. Invoices are also available on-line. Paragraph 17 further provides that Oasis Pipeline commits to enhancing its EBB to ensure that customers have access to general pipeline-related information that Oasis Pipeline posts. Oasis Pipeline’s EBB will have the ability to post, and a customer will have the ability to view, such customer’s nominated, scheduled, actual and historical volumes for the preceding two years specific to the particular customer. Oasis Pipeline will post information regarding the availability of dual contract arrangements. As stated in Paragraph 13 of the Agreement, Oasis Pipeline will also enhance its EBB to ensure that available cross-haul service, if any, for the next-day’s flow will be posted and accessible by shippers by 4:00 p.m. Central Time of the preceding business day.

14. Paragraph 18 of the Agreement provides that Oasis Pipeline commits to enhancing (within 150 days of the Effective Date of the Agreement) and maintaining its EBB to include posting by 4:00 p.m. Central Time each business day the following categories of information with respect to interstate interruptible cross-haul transportation:

- (a) A shipper code;
- (b) The rate charged;
- (c) The receipt and delivery point(s);
- (d) The quantity of interstate interruptible natural gas nominated, confirmed by the customer and confirmed by Oasis Pipeline; and
- (e) Whether the shipper is an affiliate of Oasis Pipeline.

15. Paragraph 18 of the Agreement further provides that in the event that the Commission adopts posting requirements in Docket No. RM09-2 or any related or successor docket that do not require one or more of the categories of information enumerated in subparts (a) through (e) of Paragraph 18 to be posted based on a determination that such posting would be inconsistent with, or not in the interests of, well-functioning or competitive natural gas markets, Oasis Pipeline shall not be required to continue to post such categories of information; *provided* that while committing to full and complete compliance with the Agreement, Oasis Pipeline reserves all rights with respect to any arguments it may raise on rehearing of (or judicial challenge to) Order No. 720, *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, FERC

Stats. & Regs. ¶ 31,283 (2008), or in the proceeding instituted by the Commission in *Contract Reporting Requirements of Intrastate Natural Gas Companies*, FERC Stats. & Regs. ¶ 35,559 (2008) (Notice of Inquiry), or any related or successor proceeding; *provided further*, absent a Commission order to the contrary, any and all Oasis Pipeline obligations in Paragraphs 17 and 18 of the Agreement shall terminate four (4) years after the completion of the enhancements listed in those paragraphs. Oasis Pipeline will provide Enforcement Litigation Staff written notice of the date its enhancements become effective no later than seven days after that date.

16. Paragraph 19 of the Agreement provides that subject to Paragraph 32 of the Agreement (*see infra*), Oasis Pipeline will bear all costs of enhancing and maintaining its EBB. Oasis Pipeline anticipates that this could entail significant costs and commits to providing any and all upgrades of resources, staffing and information technology as reasonably appropriate to implement the terms and conditions set forth in the Agreement and continued compliance with existing rules.

17. Paragraph 20 of the Agreement provides that Oasis Pipeline will retain an independent, outside auditor to audit the company's compliance with Paragraph 12 of the Agreement. The audit shall cover a one year period beginning on the Effective Date of this Agreement. The auditor will prepare a report that contains, among other things, the following information:

- (a) The scope and methods of the audit;
- (b) The auditors and company personnel that participated in the audit;
- (c) Practices Oasis Pipeline undertook, and resources Oasis Pipeline devoted, to comply with the terms in Paragraph 12 of the Agreement;
- (d) A thorough description of how the dual contract arrangements were administered by Oasis Pipeline;
- (e) Specification of instances of non-compliance, if any, the circumstances thereof and the reasons therefore; and
- (f) An assessment of the degree of Oasis Pipeline's compliance with the terms of Paragraph 12 of the Agreement.

18. Paragraph 20 of the Agreement also provides that a copy of the audit report will be provided simultaneously to Enforcement Litigation Staff and Oasis Pipeline within 60 days of the close of the audit period.

19. Paragraph 21 of the Agreement provides that Oasis Pipeline's Chief Compliance Officer (CCO) will explicitly supervise, for a period co-extensive with the audit period set forth in Paragraph 20 of this Agreement, a compliance monitoring program. This program shall consist of measures calculated to assure non-discriminatory access to interstate transportation on Oasis Pipeline. Oasis Pipeline will provide the CCO a weekly report detailing how the dual contract arrangements are being administered. The CCO

will ensure that Oasis Pipeline provides annual compliance training with respect to all aspects of transportation that Oasis Pipeline provides under NGPA section 311(a)(2). The CCO currently has and will retain direct access to the Board of Oasis Pipeline's parent company, Energy Transfer Partners, L.P.

20. Paragraph 22 of the Agreement provides that Oasis Pipeline will record all telephone conversations of its dispatchers for a period of four years from the Effective Date of the Agreement and maintain for two years on a rolling basis all such voice recordings.

21. Paragraph 23 of the Agreement provides that subject to Paragraph 32 of the Agreement (*see infra*), Oasis Pipeline will bear all costs of enhancing and maintaining its compliance monitoring program. Oasis Pipeline anticipates that this could entail significant costs and commits to providing any and all upgrades or resources, staffing and information technology as reasonably appropriate to implement the terms and conditions of its compliance monitoring plan and to comply with applicable Commission requirements.

22. Paragraph 24 of the Agreement provides that absent a Commission order to the contrary, any and all Oasis Pipeline obligations in Paragraphs 20 through 23 of the Agreement (other than recording and maintaining the voice recordings) shall terminate within 60 days of the close of the audit period.

23. Paragraph 25 of the Agreement provides that with respect to gas delivered to Oasis Pipeline meter 0728/1265, Oasis Pipeline shall be entitled to rely on all shipper warranties with respect to whether the natural gas subject to a contract is subject to the jurisdiction of the Commission, *provided*, that if Oasis Pipeline has information that calls into question the validity of any shipper warranty of natural gas delivered to Oasis Pipeline at meter 0728/1265, Oasis Pipeline shall take reasonable steps under the circumstances to investigate the validity of the shipper warranty.

24. Paragraph 26 of the Agreement provides that no later than five days from the Effective Date of this Agreement, Oasis Pipeline will cause to be filed a motion with the United States Court of Appeals for the Fifth Circuit dismissing its petition for review in Case Nos. 08-60730 and 08-60810 solely with respect to challenges to the Commission's procedural disposition of the NGPA issues in this proceeding.

25. Paragraph 27 of the Agreement provides that Enforcement Litigation Staff and Oasis Pipeline will jointly request that, upon issuance of a final and non-appealable order approving the Agreement, the Commission vacate the Partial Initial Decision that the presiding judge issued in this proceeding on November 18, 2008.

26. Paragraph 30 of the Agreement provides that Commission approval of this Agreement in its entirety without modification shall release Oasis Pipeline from, and

forever bar the Commission from bringing against it (or making referrals with respect to) any and all claims arising out of, or related to, matters referenced in the Order to Show Cause or asserted by Enforcement Litigation Staff in this proceeding.

27. Paragraph 32 of the Agreement provides that neither Oasis Pipeline nor its affiliates shall seek to recover through any administrative rate proceeding money to compensate it for expenditures it makes solely to comply with this Agreement; *provided, however*, that Paragraph 32 of the Agreement further states that this provision does not preclude Oasis Pipeline from recovering any costs arising from its compliance with any other regulatory requirements imposed by the Commission separately and apart from this Agreement, in other proceedings, such as Order No. 720, *Pipeline Posting Requirements under Section 23 of the Natural Gas Act*, FERC Stats. & Regs. ¶ 31,283 (2008), the proceeding instituted by the Commission in *Contract Reporting Requirements of Intrastate Natural Gas Companies*, FERC Stats. & Regs. ¶ 35,559 (2008), or any related or successor proceeding.

28. The Commission finds that the Stipulation and Consent Agreement is fair, reasonable, and in the public interest and the Stipulation and Consent Agreement is hereby approved, under Rule 602(g)(3) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.602 (2008)).

29. This letter order terminates Docket No. IN06-3-004. The Presiding ALJ's November 28, 2008 certified question and Enforcement Litigation Staff's December 10, 2008 interlocutory appeal, which were held in abeyance pending the outcome of settlement negotiations, are dismissed as moot.

30. The non-public versions of the following submission are hereby made public: the Stipulation and Consent Agreement, the Joint Offer of Settlement, the Joint Explanatory Statement, the Joint Statement of Information to be Provided with Settlement Agreements, and the Presiding Administrative Law Judge's Certification of Uncontested Settlement.

31. This letter is an order of the Commission. Effective on the date that this order becomes final and non-appealable, the Commission vacates the Partial Initial Decision that the presiding judge issued in this proceeding on November 18, 2008.

By direction of the Commission. Commissioner Kelliher is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc:

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