

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enogex Inc.

Docket No. PR05-3-000

ORDER EXTENDING TIME FOR ACTION

(Issued April 14, 2005)

1. This order addresses a revised fuel factor filed by Enogex Inc. (Enogex).¹ As discussed below, the Commission extends the time for action on Enogex's revised fuel factor. This order is in the public interest because it promotes the Commission's goal of encouraging settlements.

Enogex's Filings

2. On November 15, 2004, Enogex filed its annual fuel percentage filing to establish a fixed fuel percentage to be effective for the period January 1, 2005 through December 31, 2005 (Fuel Year 2005 Filing).

3. On August 31, 2004, in Docket No. PR02-10-005, Enogex filed a revised Statement of Operation Conditions governing the non-rate provisions of its Section 311 interruptible transportation service.

4. On September 30, 2004, Enogex filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations and section 311(a)(2) of the Natural Gas Policy Act (NGPA) for interruptible transportation service on its system. Enogex proposed to unbundle its gathering and transmission facilities and increase its previously approved rate to a maximum system-wide transportation rate, effective January 1, 2005. On September 29, 2004, Enogex also filed a revised lower fuel factor for the last quarter of 2004 (Fourth Quarter Fuel Filing), as calculated pursuant to the formulas contained in Exhibit A of Enogex's Statement of Operating Conditions. Enogex proposed to unbundle its fuel between gathering and transmission.

¹ Enogex is an intrastate pipeline with facilities in the State of Oklahoma.

5. On January 25, 2005, all the active parties² (the Joint Parties) filed a motion requesting that the Commission extend the time for action in Docket Nos. PR04-15-000 and PR04-16-000 by 90 days in order to facilitate a settlement of the issues in those proceedings. The Joint Parties stated that through discovery and discussions they had begun to resolve the various issues. However, Joint Parties stated that it was doubtful that a resolution could be finalized prior to February 25, 2005, the date on which the Commission's period of review for those rates would have expired.

6. On February 23, 2005, the Commission granted the Joint Parties' request and extended the time for action in those two proceedings.³ The Commission extended the time for action on Enogex's Fourth Quarter Fuel Filing and petition for rate approval for a period of 90 days or until May 26, 2005. The Commission also required that Enogex file a progress report with the Commission within 90 days of this order and that Commission Staff report to the Commission on the status of settlement negotiations within 120 days of the date of the Extension Order.

Public Notice

7. Notice of Enogex's Fuel Year 2005 Filing was issued on December 2, 2004, with interventions and protests due on or before December 10, 2004. ConocoPhillips filed a motion to intervene and consolidate this proceeding with Docket Nos. PR04-15-000, PR04-16-000 and PR02-10-005. Unimark filed a timely motion to intervene and protest. Enogex filed an answer to each of the motion to consolidate and Unimark's protest. BP, ChevronTexaco, Marathon, Questar Exploration and Production Company (Questar), OIPA and Dominion filed motions to intervene out-of-time.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted for both the fuel tracker proceeding and the rate approval proceeding. Granting late intervention at this state of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

² The signatories of the joint motion are: Enogex; Oklahoma Independent Petroleum Association (OIPA); Unimark LLC (Unimark); Marathon Oil Company (Marathon); ConocoPhillips Company (ConocoPhillips); Dominion Oklahoma Texas Exploration and Production, Inc. (Dominion); Seminole Energy Services, LLC (Seminole); BP America Production Company and BP Energy Company (BP); ChevronTexaco Exploration and Production Company (ChevronTexaco); State of Oklahoma Governor's Office (Governor's Office); Apache Corporation (Apache); Chesapeake Energy Marketing, Inc.; and Cimarex Energy Company.

³ *Enogex, Inc.*, 110 FERC ¶61,181 (2005) (February 23, 2004 Extension Order).

Discussion

9. Section 284.123(b)(2)(ii) provides that 150 days after the date on which the Commission receives an application, the rate proposed in the application will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service, unless within 150 days the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data and arguments.⁴

10. The 150-day period for review of Enogex's rates in Docket No. PR05-3 will expire on April 14, 2005. On March 30, 2005, a technical conference was held dealing with issues raised in Docket Nos. PR04-15-000, PR04-16-000 and PR02-10-005. The purpose of the conference was to discuss the filings made by Enogex including a range of cost of service issues associated with Enogex's three year general rate filing. The technical conference also addressed responses to those filings, including offers of settlement.

11. Given that the parties are currently discussing settlement of these proceedings, which is unlikely to occur before April 14, 2005, and the Commission's preference for settlements, the Commission finds good cause exists to extend the 150-day period. The Commission will therefore extend the time for action, consistent with the Extension Order, until it can make a determination whether Enogex's rates are fair and equitable. In addition, the Commission requires that Enogex include in its progress report required by the February 3, 2004 Extension Order any progress made in the instant proceeding. Commission Staff will also be required to include Docket No. PR05-3-000 in its report to the Commission on the settlement negotiations.

The Commission orders:

Pursuant to the Commission's authority under section 311 of the NGPA and section 284.123(b)(2)(ii) of the Commission's regulations, time for action on Enogex's Fuel Year 2005 Filing is extended until the Commission can make a determination whether Enogex's rates are fair and equitable or until it determines that formal proceedings are necessary.

By the Commission. Commissioner Brownell concurring with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁴ 18 C.F.R. § 284.123(b)(2)(ii)(2004).

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Enogex, Inc.

Docket No. PR05-3-000

(Issued April 14, 2005)

Nora Mead BROWNELL, Commissioner *concurring*:

1. In this case, Enogex, Inc., an intrastate pipeline performing interstate transportation under section 311 of the Natural Gas Policy Act, filed a triennial rate approval petition on September 30, 2004. Within 150 days of the filing, the Commission must act on the application or the proposed rates will be deemed fair and equitable.¹ Today's order extends the time for action until the Commission makes a determination whether Enogex, Inc.'s rates are fair and equitable, and directs Commission staff to make a status report within 120 days.

2. For the reasons set forth in my dissent in Green Canyon Pipe Line Company, L.P., 98 FERC ¶61,041 (2002), I would not impose a triennial rate approval requirement on a Section 311 pipeline. However, the filing is here and the appropriate analysis must be completed. But I am troubled by extending the Commission's review time. Having imposed the administrative expense and uncertainty on Enogex, Inc., I believe our work on these types of filings should be completed within the 150 day period with rare exception.

Nora Mead Brownell

¹18 C.F.R. § 284.123(b)(2)(ii)(2003).