Energy

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FERC ISSUES TWO SHOW CAUSE ORDERS FOR ALLEGED VIOLATIONS OF ANTI-MANIPULATION RULE AND APPROVES SETTLEMENTS FOR VIOLATIONS AND ATTEMPTED VIOLATIONS IN CONNECTION WITH MULTIPLE AFFILIATE BIDDING STRATEGY IN GAS PIPELINE OPEN SEASON; COMMISSIONERS MOELLER AND SPITZER DISSENT

On January 15, 2009, FERC issued two Show Cause orders and approved four settlements in connection with its investigation of open season bidding for natural gas transportation capacity on the Cheyenne Plains Natural Gas Company ("Cheyenne Plains"). The Show Cause orders and two settlements alleged violations of FERC's anti-manipulation rule, 18 C.F.R. § 1c.1; two of the settlements alleged attempted violations of 18 C.F.R. § 1c.1.

FERC opened its investigation into Cheyenne Plains' open season in response to complaints made by open season market participants. The complaining market participants alleged that some other participants submitted multiple bids through affiliated companies in order to obtain multiple pro rata shares of capacity at the expense of market participants who submitted single bids and received single pro rata shares of capacity.

Although the settlements and Show Cause orders were approved by the Commission, Commissioners Spitzer and Moeller dissented. Commissioner Spitzer stated that civil penalties were not appropriate in light of FERC's "mixed message" with regard to multiple-affiliate bidding practices. Commissioner Moeller stated that FERC should not penalize market participants millions of dollars for conduct that could have reasonably been viewed as consistent with Commission policy, and that the Show Cause orders violated fundamental principles of fairness.

SHOW CAUSE ORDERS

FERC directed Seminole Energy Services LLC ("Seminole") and four of its affiliates to show why they should not be found to have violated FERC's anti-manipulation rule and buy/sell prohibition. Enforcement Staff alleged that Seminole and its affiliates entered into a scheme to obtain a larger allocation on Cheyenne Plains than Seminole could have acquired itself, and that Seminole and its affiliates engaged in a series of buy/sell transactions to consolidate the value of the capacity with Seminole since the affiliates themselves had no use for the capacity. The Show Cause order proposed $4.25 million in civil penalties, as well as disgorgement.

FERC also directed National Fuel Marketing Company LLC ("National Fuel") and three of its affiliates to show cause why they should not be found to have violated FERC's anti-manipulation and shipper-must-have-title rules. FERC alleged that National Fuel and its affiliates entered into a scheme to obtain a larger allocation on Cheyenne Plains than National Fuel could have acquired

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itself, and that the affiliates who had no use for capacity used it to transport gas for National Fuel in violation of the shipper-must-have-title requirement. The Show Cause order proposed $4.5 million in civil penalties, as well as disgorgement.

SETTLEMENTS

FERC's settlement with Tenaska Marketing Ventures ("TMV") and seven of its affiliates resolved alleged violations of FERC's anti-manipulation rule. Specifically, FERC alleged that TMV and its affiliates violated the anti-manipulation rule by submitting bids during Cheyenne Plains' open season that allowed them to receive multiple pro rata shares of the available capacity, and then entering into pre-arranged releases that gave all of the capacity to TMV. FERC also alleged that TMV engaged in substantially the same conduct during Colorado Interstate Gas Company and Northern Natural Gas Company open seasons.

Similarly, FERC's settlement with Oneok Energy Services Company ("Oneok") and five of its affiliates resolved alleged violations of FERC's anti-manipulation rule, in addition to self-reported violations of the Commission's shipper-must have title rule and buy/sell prohibition. FERC alleged that Oneok and its affiliates violated the anti-manipulation rule by submitting bids that allowed them to receive pro rata shares of capacity during Cheyenne Plains' open season, and then entering into pre-arranged releases that gave all of the capacity to Oneok.

Finally, FERC's settlement with Klabzuba Oil & Gas FLP and its settlement with Jefferson Energy Trading Company LLC ("Jetco"), Wizco, Inc., and Golden Stone Resources LLC resolved allegations of attempted manipulation of 18 C.F.R. § 1c.1. FERC alleged that TMV solicited these entities to join in planning multiple entity bids during the open season, and that TMV proposed an asset management agreement to share profits. The agreement, however, was never consummated. Instead, these entities submitted independent bids, with Jetco acting as their agent.

The four settlements resulted in over $8 million in civil penalties, about $4 million in disgorgement, and compliance reporting requirements. FERC stated that the penalties reflected the fact that the bidding conduct occurred in a single day and was not continuing in nature.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our energy practice group:

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