

Background

On January 17, 2000, El Paso entered into an agreement to acquire The Coastal Corporation (“Coastal”). Both El Paso and Coastal owned natural gas pipelines in a number of locations in the United States, which raised competitive concerns. One such area was a central portion of the Gulf of Mexico where El Paso owned several pipelines and Coastal owned the ANR pipeline, which is a major natural gas pipeline in the relevant area. On March 19, 2001, the Commission issued an Order (with El Paso’s consent) to resolve its concerns, including a requirement that El Paso divest the Green Canyon and Tarpon pipelines and related assets to Williams.

In connection with these divestitures, Paragraph V.D. of the Order also required El Paso to establish a \$40 million development fund, to remain in effect for a twenty-year period.¹ The purpose of the development fund was to encourage expansions of the Green Canyon and Tarpon pipelines and thereby expand the reach of Williams into “an area of competitive concern and to compete against the Respondents in that area.”² The Order set forth specific conditions, including geographic location, that would permit Williams to access the fund. The Order also provided that any money remaining in the fund after twenty years would be returned to El Paso.

After the Commission accepted the consent agreement for public comment, El Paso consummated its merger with Coastal, divested the Green Canyon and Tarpon pipelines to Williams in January 2001, and established the development fund. Since establishment of the fund, Williams has not found an opportunity to use any of the money for construction projects that comply with the Order’s conditions.

In 2007, El Paso sold the ANR pipeline to Trans-Canada, Inc. (“TransCanada”). The sale to TransCanada introduced a new competitor into the market and restored ANR to its pre-merger status as an alternative to El Paso, but this time under the ownership of TransCanada instead of Coastal.

As explained in the Petition, in addition to El Paso’s sale of ANR to TransCanada, there have been other developments in the Central Gulf area since 2001. To a great extent, the focus of natural gas exploration and discovery has shifted away from the Gulf of Mexico to other areas of the country. In particular, natural gas exploration over the last few years has focused on lower-cost on-shore shale production. The number of producing gas wells in the Gulf dropped by over 50 perce

¹ The funds are being held in an escrow account, pursuant to the Order.

² Analysis of the Complaint and Proposed Consent Orders to Aid Public Comment, p. 7 (Jan. 29, 2001).

³ Petition at 16.

⁴ *Id.* at 16-17.

⁵ *Id.* at 19.

⁶ We need not spell out the details of the settlement for purposes of this Order, thereby
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modification would serve the public interest before the Commission determines whether to reopen an order and consider all of the reasons for and against its modification.

A “satisfactory showing” requires, with respect to public interest requests, that the petitioner make a *prima facie* showing of a legitimate public interest reason or reasons justifying relief. A request to reopen and modify will not contain a “satisfactory showing” if it is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the reasons why the public interest would be served by the modification.¹⁰ This showing requires the petitioner to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the Commission were to grant the requested relief. In addition, this showing must be supported by evidence that is credible and reliable.

If, after determining that the petitioner has made the required showing, the Commission decides to reopen the order, the Commission will then consider and balance all of the reasons for and against modification. In no instance does a decision to reopen an order oblige the Commission to modify it,¹¹ and the burden remains on the petitioner in all cases to demonstrate why the order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.¹² All information and material that the petitioner wishes the Commission to consider shall be contained in the request at the time of filing.¹³

Changed Circumstances of Fact Warrant Modification of the Order

The Commission has determined that (i) changed circumstances in the central Gulf of Mexico require that the Order be reopened; and (ii) in light of these changed circumstances, the order should be modified to set aside the development fund requirement imposed by Paragraph V.D.

The Commission previously has modified orders to eliminate a divestiture requirement when a respondent subsequently sold off one of the “offending assets” that prompted the

¹⁰ 16 C.F.R. § 2.51.

¹¹ *See Louisiana-Pacific Corp.*, 967 F.2d at 1376-77 (reopening and modification are independent determinations).

¹² *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

¹³ 16 C.F.R. § 2.51(b).

Conclusion

For the reasons explained above, the Commission has determined to reopen and modify the Order to set aside the development fund required by Paragraph V.D. of the Order. Therefore, the Order will be modified to set aside the development fund requirement and to set aside the related definitions.

Accordingly, IT IS ORDERED that this matter be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that Paragraphs I.F., I.I., I.YY., and V.D. of the Order be, and hereby are, set aside as of the effective date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED: October 4, 2010