

CLIENT ALERT

FERC Penalizes Pipeline for Failure to Make Routine Filing

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AUTHORS

Norman C. Bay | Paul J. Pantano, Jr. | Serge B. Agbre | Michael V. Hartz

On June 24, 2022, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) approved a Stipulation and Consent Agreement (“Consent Agreement”) with a liquids pipeline carrier that allegedly failed to submit certain mandatory reports to the Commission over a six-year period.¹ Although the civil penalty of \$30,000 is relatively low, the Consent Agreement is noteworthy because it demonstrates the Commission’s willingness to pursue penalties against market participants for violations of routine administrative filing requirements. Regulated entities will be well-served by reviewing their regulatory obligations to ensure that they timely file any required reports.

Background

The Order imposed a civil monetary penalty on M3 Ohio Gathering LLC (“M3”), which was the facility manager of two eight-mile-long pipelines used to transport propane and ethane from a fractionation plant in Ohio.² As the facility manager, M3 was responsible for construction, maintenance, and operation of the pipelines on behalf of Utica East Ohio Midstream LLC (“Utica East”), which M3 partially owned at the time.³ In its facility manager role, M3 was responsible for making necessary filings with FERC.⁴ In September 2019, M3 sold its ownership interest in Utica East to UEOM NGL

¹ M3 Ohio Gathering LLC, Utica East Ohio Midstream LLC, and UEOM NGL Pipelines LLC, 179 FERC ¶ 61,221 (2022) (“Order”).

² Order at PP 3, 4.

³ *Id.* at P 4.

⁴ *Id.*

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Pipelines LLC (“UEOM”), a subsidiary of the Williams Companies, Inc. (“Williams”).⁵ Utica East and UEOM were also parties to the Consent Agreement.

The Filings at Issue

The Order states that M3 and Utica East failed to file the FERC Form No. 6 and FERC Form No. 6-Q (collectively, the “Form No. 6s”), for the period from December 2013 through September 2019.⁶ All oil pipeline carriers must submit an abbreviated version of the Form No. 6s to provide FERC with certain financial and operational information related to their businesses.⁷ Carriers with annual jurisdictional operating revenues exceeding \$500,000 must file more comprehensive versions of those forms.⁸

The Consent Agreement stated that Form No. 6 filings are “a fundamental requirement” for regulated pipelines, and the failure to file the form “impairs the Commission’s ability to exercise basic regulatory oversight.”⁹ In particular, the Commission highlighted that the missing Form No. 6s caused FERC to lose transparency into the carrier’s jurisdictional cost of services, and may have impeded the ability of shippers to challenge the carrier’s rates.¹⁰ The Commission also noted that the carrier was not included in FERC’s review of 2014-2019 oil pipeline cost information, which was used to establish the 2021-2026 five-year oil pipeline index.¹¹

Lessons Learned

This enforcement action provides a reminder of FERC’s ability to pursue violations of routine obligations established under the Commission’s Interstate Commerce Act (“ICA”) authority. Under the ICA, failure to submit required filings can result in a penalty of \$1,453 per offense, per day.¹² The Commission rarely initiates enforcement action under this authority. Prior to this Consent Agreement, FERC had not settled an ICA enforcement action since 1984.¹³ However, this recent settlement may signal more enforcement scrutiny to come.

The Order also underscores the importance of conducting thorough diligence when considering a potential acquisition. When Williams began the diligence process to purchase M3’s interest in Utica East, M3 was not aware of its obligation to

⁵ *Id.* at P 6.

⁶ *Id.* at 3, 5-6.

⁷ 18 C.F.R. § 357.2(a).

⁸ 18 C.F.R. § 357.2(a)(1); 18 C.F.R. § 357.4(b)(1).

⁹ Consent Agreement at PP 14, attached to the Order (Apr. 22, 2022).

¹⁰ *Id.*

¹¹ *Id.*

¹² 49 App. U.S.C. 20(7)(a); 18 C.F.R. § 385.1602(i).

¹³ *South Timbalier Pipeline System, et al.*, 29 FERC ¶ 61,345 (1984).

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file the Form No. 6s.¹⁴ Williams informed M3 of this requirement during the diligence process, at which point M3 prepared draft Form No. 6s and transferred those documents to UEOM at the time of the transaction.¹⁵

Following its acquisition of the pipelines, Williams informed FERC about the unfiled Form No. 6s and requested a waiver of the requirement to file corporate officer certifications for the Form No. 6s, given that Williams employees did not have independent knowledge of Utica East's business affairs from 2013–2019.¹⁶ It is possible that this filing triggered the investigation that resulted in the Consent Agreement; FERC ended up dismissing Williams' request for a waiver as moot, explaining that the issue had been resolved in the Consent Agreement.¹⁷

As expected, in addition to imposing a civil monetary penalty, the Consent Agreement required Utica East and UEOM to submit all of the missing Form No. 6s from 2013–2019.¹⁸ Notably, however, the Consent Agreement stated that FERC will not take action against UEOM if the Form No. 6s contain false or inaccurate data that M3 had provided.¹⁹ This provision appears designed to assuage Williams' concerns about certifying data that M3 had prepared.

Finally, the relatively low civil monetary penalty amount likely reflects a number of factors, including the parties' proactive steps to resolve this issue with FERC. Although Williams' December 2019 filing did not appear to constitute a self-report *per se*, FERC enforcement staff may have viewed the filing favorably because Williams affirmatively flagged that Utica East had not been submitting the Form No. 6s. According to FERC staff's latest enforcement report, self-reporting is viewed in high regard—the vast majority of self-reports are concluded with no further enforcement action.²⁰ Separately, the Order stated that the parties fully cooperated with FERC enforcement staff during the investigation.²¹ In addition, the violation was inadvertent, and no economic harm was alleged. All of those factors likely weighed in favor of a smaller penalty, per FERC's published guidelines on civil monetary penalties.²²

¹⁴ Consent Agreement at PP 6-7, attached to the Order (Apr. 22, 2022).

¹⁵ *Williams Company*, 179 FERC ¶ 61,222 at P 5 (2022); Consent Agreement at P 7, attached to the Order (Apr. 22, 2022).

¹⁶ Consent Agreement at P 9, attached to the Order (Apr. 22, 2022); *Request for Waiver of Corporate Officer Certification Requirement for FERC Form 6 and 6Q for Fourth Quarter 2013 – First Quarter 2019*, Docket No. AC20-45-000, at 2 (Dec. 26, 2019).

¹⁷ *Williams Company*, 179 FERC ¶ 61,222 at PP 13-15 (2022).

¹⁸ Order at P 13.

¹⁹ Consent Agreement at P 17, attached to the Order (Apr. 22, 2022).

²⁰ *2021 Report on Enforcement*, Docket No. AD07-13-015 at 25 (Nov. 18, 2021).

²¹ Order at P 7.

²² *Policy Statement of Penalty Guidelines*, 130 FERC ¶ 61,220 at P 49 (2010).

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Norman C. Bay

202 303 1155

nbay@willkie.com

Paul J. Pantano, Jr.

202 303 1211

ppantano@willkie.com

Serge Agbre

202 303 1173

sagbre@willkie.com

Michael Hartz

202 303 1161

mhartz@willkie.com

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