

# FERC Proposes \$458 Million in Sanctions in Natural Gas Market Manipulation Cases

August 1, 2007

On July 26, the Federal Energy Regulatory Commission (Commission or FERC) issued two show cause orders that make preliminary findings of market manipulation in natural gas markets and propose civil penalties totaling \$329 million and disgorgement of unjust profits totaling \$129 million. The Commodity Futures Trading Commission conducted separate investigations in cooperation with FERC and filed complaints in federal court based on similar allegations against the same entities.

## Amaranth, LLC

The Amaranth show cause order is the first case where the Commission has proposed to exercise the enhanced anti-market manipulation authority it was granted in the Energy Policy Act of 2005 (EPAct 2005) and implemented in its anti-market manipulation rule, Order No. 670. (See VNF Issue Alert [FERC Issues Final Anti-Manipulation Regulations](#))

The Commission alleges that Amaranth and two of its former traders intentionally manipulated the settlement price of the NYMEX Natural Gas Futures Contract, which is used to determine the price for a substantial number of FERC-jurisdictional physical natural gas transactions. According to the order, the manipulation of the settlement price involved selling an “extraordinary” amount of natural gas futures contracts during the last 30 minutes of trading before the contracts expired, with the purpose and effect of driving down the settlement price. Amaranth also held positions in various financial derivatives that were several times larger, and whose values increased, as a direct result of the fall in the settlement price of the futures contracts. Thus, Amaranth profited from its manipulative behavior.

In the context of the actions allegedly taken by Amaranth, the Commission found manipulative conduct where a market participant traded with the intent to artificially affect the price of a physical or financial energy product, whether the conduct moved the price up or down. The Commission listed the numerous harms that might result from upward or downward price manipulation and stated further that “whenever manipulation results in markets that function other than on the basics of supply and demand, harm to the market participants results.”

Based on finding 219 separate violations and its \$1 million penalty authority for each violation, the Commission determined it could assess penalties against Amaranth of \$219 million. The Commission stated that mitigation factors did not alter the case for a high penalty; Amaranth had not self-reported and its compliance and risk management programs were deemed weak, therefore a penalty of \$200 million “is appropriate.” In addition, the Commission found that profits from the alleged manipulation, \$59 million plus interest, must be disgorged.

The Commission also imposed civil penalties of \$30 million and \$2 million against two individuals who are former Amaranth traders. The Commission noted specifically that the anti-market manipulation rule could be applied to sanction misconduct by senior management who are responsible for supervising traders and who intentionally or recklessly permit manipulative conduct to occur. Although the Commission “gave serious consideration” to seeking civil penalties against Amaranth executives, it decided not to, in part because the executives will ultimately pay a significant price due to the payment of the civil penalty by Amaranth. The Commission cautioned that the result may be different in “future cases involving executive management failures to rein in violations by employees.”

## Energy Transfer Partners, L.P.

In the Energy Transfer Partners (ETP) show cause order, the Commission took action based on Market Behavior Rule 2 (which was in effect prior to the issuance of Order No. 670) and the non-discrimination provisions in the Natural Gas Policy Act of 1978.

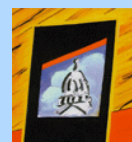
A Professional  
Corporation

1050 Thomas Jefferson  
Street, NW  
Washington, DC  
20007-3877  
(202) 298-1800  
(202) 338-2416

The Millennium Tower  
719 Second Avenue  
Suite 1150  
Seattle, Washington  
98104  
(206) 623-9372  
(206) 623-4986

[www.vnf.com](http://www.vnf.com)

I  
S  
S  
U  
E



A  
L  
E  
R  
T

The Commission's order alleges that ETP artificially lowered the price for prompt month gas at the Houston Ship Channel, which in turn suppressed the Inside FERC Houston Ship Channel index, all to the benefit of its physical and financial positions. According to the order, ETP also manipulated the daily prices at Waha to benefit its short Waha and Permian index swap positions.

The Commission also alleges that Oasis Pipeline, an intrastate natural gas pipeline owned by ETP, unduly preferred affiliated shippers and unduly discriminated against non-affiliated shippers in connection with NGPA Section 311 transportation by: refusing or discouraging requests for interstate service from non-affiliated shippers while providing the service to affiliated shippers; charging non-affiliated interstate shippers rates in excess of the maximum Commission-approved rate; and allowing its affiliates to ship gas under a dual (e.g., intrastate/interstate) contract arrangement, which allowed the affiliate to reserve capacity under a firm intrastate contract, but ship interstate gas in place of intrastate gas by submitting nominations under a related interstate interruptible contract. The order further alleges that Oasis Pipeline violated the Commission's regulations by failing to timely amend its Operating Statement to reflect a capacity lease and commercial operations agreement that changed how it operated the pipeline.

With regard to the proposed penalties, the show cause order stated that the level of ETP's cooperation in the investigation, while satisfactory, did not merit a discount in the civil penalty. Therefore, the Commission proposed the maximum civil penalty of \$82 million for ETP and \$15.5 million for Oasis Pipeline. In addition to civil penalties, the Commission proposes to require ETP and Oasis Pipeline to disgorge unjust profits of \$69.8 million and \$267,000, respectively, plus interest. The Commission proposed no penalties against individuals at ETP or Oasis Pipeline. The show cause order also proposes to revoke ETP's blanket marketing certificate for a period of one year. If ETP's blanket certificate were revoked, it would have to obtain section 7 authorization for each sale for resale of natural gas at negotiated rates in interstate commerce.

### **Next Steps**

In both cases, the companies have 30 days to show that they did not violate the Commission's rules. The Commission explained that upon receipt of the answers, it has "many options" for proceeding, including requesting briefs, setting specific issues for a trial-type hearing, requesting a recommendation or report from an administrative law judge, issuing an order on the merits or using any other process that would justly and efficiently resolve the matter. The outcome of these cases will offer significant guidance to other entities in complying with the anti-market manipulation regulations.

### **For Additional Information**

Van Ness Feldman has experience in all aspects of federal energy regulatory compliance. We advise clients on the implications of these types of FERC enforcement orders, perform regulatory compliance reviews, assist in the development and implementation of compliance programs and procedures, and provide counsel during FERC audits, investigations or enforcement actions. For further information regarding FERC's anti-market manipulation rules or its regulatory enforcement activity, please contact Kay Henry, Pam Anderson, or any other member of the firm's compliance practice.

# # #

Founded in 1977, **Van Ness Feldman** helps clients in a variety of industries achieve their business goals by designing and complying with the nation's energy and environmental laws. Many of the firm's more than 80 attorneys and public policy professionals served as chief legal counsel to key congressional committees and Members of Congress; high-level officials in the Department of Energy, the Federal Energy Regulatory Commission, the Environmental Protection Agency, The White House, and the Department of the Interior; or as high-ranking officers in major trade associations.