UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Williams Natural Gas Company) Docket No. RP95-3-000

NOTIFICATION OF INVESTIGATION AND PROCEDURAL COMMENTS

On October 5, 1994, Williams Natural Gas Company filed Revised Gas Tariff sheets requesting that they go into effect on November 5, 1994. Simultaneously, Williams filed a Stipulation and Agreement that would settle any disputes concerning the lawfulness of the proposed tariff changes. The Stipulation and Agreement was filed pursuant to FERC Rule of Procedure, 602 (18 C.F.R.), which requires filing of such settlements with the Commission in certain circumstances. The provisions of the Stipulation and Agreement would allow Williams to direct bill up to $75 million in unrecovered purchased gas costs to some of its customers.

The Department of Justice has no position on Williams' request for FERC approval of the $75 million cost passthrough aspect of the Stipulation and Agreement. The Stipulation and Agreement further states, however, that two contracts entered into by Western Resources, Inc., are "essential elements of the Stipulation and Agreement" that would settle this docket. The two contracts are a gas purchase agreement between Western Resources and Amoco, and a long term transportation contract between Western Resources and Williams. Although Williams does not claim that either contract directly affects the gas tariff at issue here, the proposed order submitted by Williams includes a

broad finding that the Stipulation and Agreement is "fair and reasonable and in the public interest." Thus, while the long-term transportation contract with Western is not before the Commission in this proceeding,[1] Williams appears to be seeking not only approval of the passthrough, but also an implicit finding that the long-term transportation contract is in the public interest within the meaning of the Natural Gas Act.

The Antitrust Division of the Department of Justice is currently investigating conduct by Williams and Western Resources relating to the provision of natural gas transportation services to Western that may constitute violations of federal antitrust law. In particular, the Department is investigating conduct by Williams and WRI that may have had the purpose or effect of unlawfully excluding competition in the transportation of natural gas. The long-term transportation contract between Western Resources and Williams is within the scope of the investigation. Although the Department cannot predict the outcome of its investigation, if the investigation reveals that either Williams or Western has violated the antitrust laws, appropriate relief might include a federal court order that modifies or enjoins the long-term transportation contract between Williams and Western.

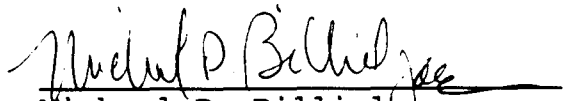
It is well-settled that neither the Commission's approval under the Natural Gas Act of the Stipulation and Agreement in

---

[1]The transportation contract has not yet been filed with the Commission, although it also must be reviewed by the Commission under the Natural Gas Act to determine whether it is in the public interest before it can be placed into effect.

this proceeding, nor its approval of the long-term transportation contract in a subsequent proceeding, would confer antitrust immunity on the transportation contract between Williams and Western or prevent a federal district court from imposing appropriately-tailored relief under the antitrust laws that would cure exclusionary or other anticompetitive effects of that contract. See Hartigan v. Panhandle Eastern Pipeline Corp., 730 F. Supp. 826, 936 (C.D. Ill. 1990), citing, California v. FPC, 369 U.S. 482, 486 (1962). The Commission may, however, wish to stay or defer any proceedings with respect to the long-term transportation contract pending the completion of the Department's antitrust investigation. By so doing, the Commission would have the opportunity to weigh the results of the Department's antitrust investigation in assessing whether the contract is in the public interest within the meaning of the Natural Gas Act. In any event, the Department requests that the Commission avoid any suggestion that it is reviewing the legality of the long-term transportation contract under the Natural Gas Act in this proceeding relating to the settlement of disputes concerning the proposed gas tariff.

Respectfully submitted,



Michael D. Billiel
Attorney
Transportation, Energy, and
Agriculture Section

Anne K. Bingaman
Assistant Attorney General
Antitrust Division

Robert E. Litan
Deputy Assistant Attorney
General
Antitrust Division

Jade Alice Eaton
Attorney
Transportation, Energy, and
Agriculture Section

Roger W. Fones
Chief
Transportation, Energy, and
Agriculture Section
Antitrust Division

Antitrust Division
U.S. Department of Justice
555 4th Street, N.W.
Room 9104
Washington, D. C. 20001
(202)307-6666

Dated: October 20, 1994