

Allegheny County Employees' Retirement System v. Energy Transfer LP

COURT: United States District Court for the Eastern District of Pennsylvania
CASE NUMBER: 2:20-cv-00200-GAM
CLASS PERIOD: 02/25/2017 - 11/11/2019
CASE LEADERS: Hannah Ross, Michael D. Blatchley, Adam H. Wierzbowski
CASE TEAM: Michael Mathai, Timothy G. Fleming

This is a securities class action against Energy Transfer LP (“Energy Transfer” or the “Partnership”) and certain of the Partnership’s senior executives (collectively, “Defendants”) on behalf of investors in Energy Transfer common units between February 25, 2017 and November 11, 2019, inclusive.

Energy Transfer is a Dallas, Texas-based natural gas and energy transportation and storage company. Its projects include the Mariner East pipeline, a multibillion-dollar, 350-mile pipeline that carries highly volatile natural gas liquid from the Marcellus and Utica Shale areas in western Pennsylvania, West Virginia, and Eastern Ohio to destinations in Pennsylvania. On February 13, 2017, Energy Transfer obtained approval from the Pennsylvania Department of Environmental Protection (“PaDEP”) to construct an expansion of the Mariner East pipeline, referred to as Mariner East 2 (“ME2”) and 2X.

Throughout the Class Period, Defendants repeatedly assured investors that Energy Transfer had properly obtained valid permits to begin construction on ME2. In addition, the Partnership repeatedly touted that that ME2 would have an initial capacity of 275,000 barrels of natural gas liquids per day, with an “upside” capacity of up to 450,000 barrels per day. Unknown to the investing public, however, the Partnership improperly obtained the critical construction permits. Further, Energy Transfer decided to bring ME2 into service using a nearly 100-year-old, existing 12-inch pipeline with the Mariner East 2 pipe in one area, in order place Mariner East 2 in service by the end of 2018. The use of this 12-inch pipeline would result in ME2 having an initial capacity far smaller than 275,000 barrels of natural gas per day— and yet Defendants continued to repeatedly tell the market that have an initial capacity of 275,000 barrels of natural gas liquids per day with an “upside” capacity of up to 450,000 barrels per day, and failed to disclose the use of the 12-inch line.

On August 9-10, 2018, the truth began to be revealed when Energy Transfer discussed the use of the 12-inch line on its earnings conference call and analysts, after following up with Energy Transfer executives after the call, issued reports on August 10 that revealed the reduction in initial capacity due to the use of the 12-inch line. Energy Transfer’s unit price declined significantly in response, causing severe investor losses. Then, on October 21, 2018, the *Pittsburgh Post-Gazette* published two news stories that detailed new information concerning, among other things, geological challenges for ME2’s construction and Energy Transfer’s lack of candor with PaDEP concerning construction risks, which were also associated with significant unit price declines. Finally, on November 12, 2019, the *Associated Press* published an article, “FBI Eyes How Pennsylvania Approved Pipeline,” which cited interviews with current and former state employees who reported that Energy Transfer’s Mariner East pipeline project was under investigation by the FBI, and that the investigation “involves the permitting of the pipeline, whether [Pennsylvania Governor Tom] Wolf and his administration forced environmental protection staff to approve construction permits and whether Wolf or his administration received anything in return,” and the *Philadelphia*

Enquirer also reported on the investigation. On this news, the price of Energy Transfer's common units fell sharply, which caused significant losses to the investor Class.

On February 19, 2020, the Judge overseeing the present lawsuit, The Honorable Gerald A. McHugh, appointed the Allegheny County Employees' Retirement System, the Employees' Retirement System of the City of Baton Rouge and the Parish of East Baton Rouge, the Denver Employees Retirement Plan, the IAM National Pension Fund, and the Iowa Public Employees' Retirement Plan, as the Lead Plaintiffs. Judge McHugh also appointed Bernstein Litowitz Berger & Grossmann LLP and Barrack Rodos & Bacine as Co-Lead Counsel.

The Co-Lead Plaintiffs researched and filed their Amended Complaint on June 15, 2020. On April 6, 2021, the Court issued its Opinion and Order denying in large part the Defendants' motion to dismiss, which left the vast majority of the Plaintiffs' claims in place. The Parties then proceeded to discovery.

On September 17, 2021, Plaintiffs filed their opening brief in support of their motion for class certification. Defendants filed their opposition to Plaintiffs' motion for class certification on March 1, 2022, and Plaintiffs filed their reply in further support of class certification on April 22, 2022. In addition, Defendants filed a sur-reply in further opposition to class certification on May 6, 2022 and Plaintiffs filed a sur-sur-reply brief on May 27, 2022. The Court held oral argument on class certification on July 8, 2022.

Defendants were scheduled to substantially complete document production in response to Plaintiffs' First Set of Requests for Production of Documents by May 13, 2022, and the parties continued to engage in discovery.

On August 5, 2022, the Pennsylvania Office of the Attorney General reported that Defendants pled no contest to environmental crimes in connection with the pipelines at issue in this case: Energy Transfer was "convicted of criminal charges related to their conduct during the construction of two major pipelines in Pennsylvania. Mariner East 2 Pipeline . . . and Revolution Pipeline." PA OAG Press Release, [Case Update: Energy Transfer Convicted Of Criminal Charges Related To Construction Of Mariner East 2 Pipeline, Revolution Pipeline In Pennsylvania](#) (August 5, 2022). The Attorney General's Environmental Crime Section also published a Criminal Conviction Fact Sheet, which highlights the significance of Energy Transfer's plea:

Today, Energy Transfer, the company that Sunoco merged its pipeline business into in 2017, has announced it will not attempt to defend its behavior or dispute OAG's evidence at trial. Energy Transfer has pleaded no contest, meaning the company will be convicted of the charges and will be presumed guilty of those charges beyond a reasonable doubt. This marks a landmark agreement that addresses unlawful impacts on water quality as a result of pipeline construction, which is at the heart of our criminal case.

On August 23, 2022, the Court granted Plaintiffs' Motion for Class Certification, certifying a Class Period from February 25, 2017 to November 11, 2019.

On September 6, 2022, Defendants submitted a Petition for Permission to Appeal the Class Certification Order, under Federal Rule of Civil Procedure 23(f). Under Rule 23(f), such appeals are discretionary and must concern important and unsettled issues of law related to class actions. On September 30, 2022, Plaintiffs submitted an opposition to Defendants' Rule 23(f) petition for leave to appeal the district court's class certification order and on October 24, 2022, the Third Circuit denied Defendants' petition to appeal.

On November 30, 2022, the Court granted in part and denied in part Plaintiffs' Motion to Compel Defendants' Production of Documents and Communications Concerning Related Investigations and Litigations, ordering Defendants to produce four categories of certain previously produced materials by December 30, 2022.

In December 2022, Defendants retained new counsel in this matter: Gibson Dunn & Crutcher LLP. Accordingly, Defendants are no longer represented by Vinson & Elkins LLP in this action.

On December 7, 2022, the Court approved the Parties' stipulation regarding fact and expert depositions and discovery deadlines, extending, among others, the deadline to complete non-expert depositions to May 31, 2023; the deadline to serve opening expert reports and the disclosures required under Rule 26 to June 30, 2023; and the deadline to take expert depositions to October 13, 2023.

On April 20, 2023, Plaintiffs filed a motion to compel Defendants' production of responsive documents from two additional custodians, as well as text message communications. On May 19, the Court granted Plaintiffs' Motion to Compel and extended the deadline to complete fact discovery to July 14, 2023. In response, on June 16, Defendants filed a motion to compel Lead Plaintiffs' production of text message communications. Then, on July 7, 2023, Defendants moved to quash Plaintiffs' subpoenas for certain non-party depositions. On July 18, Plaintiffs opposed Defendants' Motion to Quash. On July 19, 2023, the Court denied Defendants' Motion to Compel Lead Plaintiffs' Production of Text Message Communications and granted Defendants' Motion to Quash.

On September 15, 2023, Lead Plaintiffs served their opening expert reports, which included reports from Chad Coffman (concerning loss causation and damages), Edward Ziegler (concerning pipeline construction issues), and Mark Gallagher (concerning water quality and safety issues). Defendants served rebuttal expert reports on November 10, 2023, and the expert deposition period concluded on December 22, 2023.

On January 19, 2024, Plaintiffs moved for partial summary judgment on falsity and scienter for certain of Defendants' alleged misrepresentations, while Defendants moved for summary judgment on falsity, scienter, and loss causation for all of the alleged misrepresentations. Briefing on both motions was completed on March 29, 2024.

Please review the **Notice of Pendency of Class Action** to learn about your rights in the class action. If you wish to request exclusion from the Class, you must submit a request for exclusion in accordance with the instructions in the Notice postmarked by **July 16, 2024**.

Case Documents

- May 17, 2024 - Notice of Pendency of Class Action
- April 26, 2024 - Order Approving Dissemination of Class Notice
- August 23, 2022 - Order on Plaintiffs' Motion for Class Certification
- August 23, 2022 - Memorandum Opinion on Plaintiffs' Motion for Class Certification
- April 6, 2021 - Memorandum Opinion on Motion to Dismiss
- June 15, 2020 - Operative Class Action Complaint for Violation of the Federal Securities Laws
- January 13, 2020 - Energy Transfer LP - Press Release

- January 10, 2020 - Energy Transfer LP - Press Release
- January 10, 2020 - Energy Transfer LP - Initial Complaint