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, Tim 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 and 2X.

Throughout the Class Period, Defendants repeatedly assured investors that Energy Transfer had lawfully obtained valid permits to begin construction on Mariner East 2 and otherwise operated within the bounds of the Partnership's code of conduct. In addition, the Partnership repeatedly touted that that the new part of the pipeline would have an initial capacity, upon completion, 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 made use of coercion and other illicit means of forcing PaDEP to approve the critical construction permits. Furthermore, and also unbeknownst to investors, Energy Transfer improperly hired Pennsylvania State Constables to intimidate residents along the pipelines' route during construction. Finally, Energy Transfer learned that the projected initial capacity of Mariner East 2 was unattainable, and that it may never be achieved, yet failed to inform investors.

On August 9, 2018, the truth began to be revealed, when Energy Transfer disclosed that, due to construction difficulties, the Partnership had been forced to combine a nearly 100-year-old existing pipeline with the Mariner East 2 pipe, in order place Mariner East 2 in service by the end of 2018. This new pipeline, aptly referred to as the "Frankenpipe" by multiple media outlets, would have an initial capacity of only 100,000 barrels of natural gas per day, and might never achieve a capacity of over 275,000 barrels per day. Then, 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." On this news, the price of Energy Transfer's common units fell sharply, which caused significant losses to the investor Class. Furthermore, in December 2019, the Chester County District Attorney announced criminal charges against an Energy Transfer employee responsible for running security operations along the Mariner East project.

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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 PC 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.

In addition, the Parties initially scheduled an in-person mediation for July 19, 2022. Defendants subsequently cancelled the in-person mediation.

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 with respect to four of six corrective disclosure dates, 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 Rule 23(f) of the federal rules. Under Rule 23(f), such appeals are discretionary and must concern important and unsettled issues of law related to class actions. On September 30, 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, the Third Circuit denied Defendants' petition to appeal.

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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.

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.

The Parties are continuing to engage in discovery, including serving additional Notices of Deposition.

Case Documents

- 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

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