

GUD No. 9673

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**FORMAL COMPLAINT FILED BY I. T. PROPERTIES  
AGAINST NEW HORIZON INVESTMENTS LTD.**

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**APPEARANCES:**

**FOR COMPLAINANT:**

I.T. Properties (ITP)  
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**FOR RESPONDENT:**

New Horizon Investments, Ltd. (NHI)  
Timothy George  
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## PROPOSAL FOR DECISION

### PROCEDURAL HISTORY:

ITP filed formal complaint against NHI	5/15/06
ITP supplemented its formal complaint against NHI	6/30/06
NHI responded to ITP's original and supplemental complaint	7/5/06

### **PHASE 1: Access and Transportation**

Appearance of James Brazell as Counsel for IT Properties	8/23/06
Direct Testimony of Kao Wendell Chen on behalf of ITP	9/1/06
Direct Prefiled Testimony of Gary A. Long	10/23/06
Supplemental Direct Prefiled Testimony of Gary A. Long on Behalf of NHI	10/26/06
Joint Stipulation by NHI and ITP regarding access and transportation	11/6/06
NHI sends notice of proposed rate increase to interested persons: Allegro and Midas	11/10/06
Gregory Friend withdraws as Counsel for NHI	11/16/06

### **PHASE 2: RATES**

Prehearing Conferences	12/13/06
NHI provides proof of Notice to interested persons, i.e., Allegro and Midas	11/28/06 & 12/1/06
Notice of Hearing Issued By Examiner	11/29/06
Hearing on the Merits	12/20/06
Record Closed by Examiner	12/20/06
PFD Issued	12/21/06
Exceptions to PFD	1/8/07
Replies to PFD	1/18/06
Appearance of Tim George for NHI	12/19/06
Hearing	12/20/06
Proposal for Decision Issued	12/21/06
Statutory Deadline	N/A

## STATEMENT OF THE CASE

New Horizons Investments, Ltd. (NHI) transports natural gas in San Patricio and Jim Wells Counties.<sup>1</sup> NHI has transported gas for itself and has transported for a fee volumes of gas from wells owned by third parties, such as Allegro Investments, Ltd. and I. T. Properties in San Patricio County; and Eddy A. Stacha, Midas Resources, Inc., Tidal Petroleum, Inc., and W.M. Null for Virtex Petroleum, Inc. in Jim Wells County.

I.T. Properties (ITP) owns the B.W. Cox #1 well in San Patricio County. ITP previously shipped gas on NHI's line for a fee.<sup>2</sup> When NHI would no longer allow ITP to ship, ITP shipped its gas to market on the Enbridge line. Service by Enbridge has discontinued. The Enbridge pipeline was sold for salvage.<sup>3</sup> The next closest pipelines, such as El Paso Pipeline, Kinder Morgan Pipeline, and Trunkline, are approximately two to three miles from ITP's well.<sup>4</sup>

NHI is currently the only transporter of natural gas in that immediate area. However, NHI declined to allow ITP to ship natural gas on NHI's line. Therefore, ITP filed an informal complaint against NHI.<sup>5</sup> The parties were unable to resolve the dispute through the Railroad Commission's informal mediation process. NHI continued to disallow ITP to ship its gas on NHI's pipeline.

On May 15, 2006, ITP filed a formal complaint against NHI under TEX. NAT'L RES. CODE, Chapter 111 and 16 TEX. ADMIN. CODE §7.7001.

The parties have achieved a stipulation and transportation agreement resolving all issues in this docket. The parties requested disposition of this docket by Commission order under TEX. GOV'T CODE §2001.056, rather than through dismissal of the docket under 16 TEX. ADMIN. CODE §1.126.<sup>6</sup>

The Examiner conducted a hearing and admitted evidence showing that the basis of the settlement agreement rate of \$0.50 per Mcf comports with TEX. NAT'L RES. CODE § 111.183.<sup>7</sup>

The Examiner recommends the Commission approve the Stipulation and Agreement.

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<sup>1</sup> Direct Testimony of Wendell Chen at 11 (Sept.1, 2006).

<sup>2</sup> Direct Prefiled Testimony of Gary A. Long at Attachment Exh. Long -16, *Gas Gathering and Transportation Agreement between New Horizon Investments, Ltd. (Gatherer) and Mr. Wendell Chen d/b/a/ I.T. Properties (Shipper)* for the six-month period beginning January 10, 2003 (filed Oct. 23, 2006).

<sup>3</sup> Prehearing Conference Transcript at pg. 22-23 (June 20, 2006).

<sup>4</sup> Prehearing Conference Transcript at pg. 23 (June 20, 2006).

<sup>5</sup> Prehearing Conference Transcript at pg. 24-25 (June 20, 2006); and NHI's response to ITP's initial and supplemental complaints at 1 (July 5, 2006).

<sup>6</sup> Correspondence from ITP to Examiner, Paragraph #8 (Nov. 20, 2006).

<sup>7</sup> § 111.183. BASIS FOR RATE. The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management. Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.

## CONTENTS

	<b>Page</b>
<b>I. PROCEDURAL HISTORY .....</b>	<b>5</b>
<b>II. NOTICE .....</b>	<b>6</b>
<b>III. JURISDICTION .....</b>	<b>7</b>
<b>IV. APPLICABLE LAW AND RULES .....</b>	<b>7</b>
<b>V. BASIS FOR COMMISSION APPROVAL OF NHI'S RATE .....</b>	<b>8</b>
<b>VI. RECOMMENDATION .....</b>	<b>9</b>

## I. PROCEDURAL HISTORY

On May 15, 2006, I.T. Properties (ITP) filed with the Railroad Commission of Texas (Commission) a formal complaint against New Horizons Investments, Ltd. (NHI). On May 30, 2006, Gregory Friend entered an appearance on behalf of NHI. ITP supplemented its complaint on June 30, 2006. NHI responded to ITP's original and supplemental complaint on July 5, 2006. On August 23, 2006, Mr. James Brazell entered an appearance on behalf of ITP.

The parties reached a settlement agreement regarding access and transportation on November 2, 2006, and filed a Joint Stipulation on November 6, 2006.<sup>8</sup> On November 10, 2006, NHI's legal counsel filed a motion to withdraw and officially withdrew on November 16, 2006.

On November 17, 2006, the parties announced to the Examiner during a telephone prehearing conference that a settlement agreement had been reached resolving all remaining issues in the docket. ITP memorialized the basic terms of the agreement in correspondence filed with the Commission the same day.

On November 20, 2006, the parties requested that the Commission dispose of the docket through Commission Order under TEX. GOV'T CODE §2001.056, rather than through dismissal of the docket under 16 TEX. ADMIN. CODE §1.126.

The parties filed their Second Joint Stipulation on December 1, 2006, and modified that Stipulation during the December 20, 2006, Hearing (Stipulation). The parties also filed on December 1, 2006, their Gas Gathering and Transportation Agreement between New Horizon Investments, LTD. (Gatherer) and Mr. Wendell Chen d/b/a/ I.T. Properties (Shipper) (Agreement).

On December 19, 2006, Tim George entered an appearance on behalf of NHI. The Examiner conducted a hearing on December 20, 2006. During the Hearing, the parties revised the terms of their Stipulation. The record closed on December 20, 2006.

The Examiner issued the proposal for decision on December 21, 2006. The Commission received no motions to intervene or requests to participate in the proceeding from persons other than ITP and NHI. No statutory deadline applies to the substantive matters resolved by negotiated settlement through this formal complaint proceeding.

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<sup>8</sup> See, Joint Stipulation by New Horizon Investments, Ltd and I.T. Properties (Nov. 6, 2006) and Prehearing Conference by Telephone (Nov. 15, 2006).

## II. NOTICE

ITP initiated this proceeding through its complaint and participated in the Hearing. On November 10, 2006, NHI mailed notice by certified letter of its proposed rate increase to two additional, potentially affected persons: Allegro Investments, Inc. and Midas Resource, Inc. The notice stated that the deadline for intervention in this proceeding is December 13, 2006. On November 28, 2006, and on December 1, 2006, NHI filed copies of the green, return receipt cards with the Commission as proof of notice.

On November 29, 2006, the Examiner issued a notice of the December 20, 2006, hearing, which was served on all parties. In addition, the Commission notice was sent by fax and by regular mail to Allegro Investments, Inc. (Allegro) and Midas Resource, Inc. (Midas). The Examiner confirmed receipt of the notice by Midas and Allegro.

The notice requirements of TEX. NAT'L RES. CODE ANN. §111.134 and 16 TEX. ADMIN. CODE §1.45 have been fulfilled because:

- NHI provided notice to affected persons through facsimile transmission and through certified mail of an increase of rates and filed with the Commission proof of such notice;
- Commission notice was issued not less than 10 days nor more than 30 days prior to the hearing;
- The Commission will not establish, prescribe, or modify rates until after a Commission hearing;
- Notice was sent to all parties, persons, firms, corporations, partnerships, joint stock associations, and associations owning or controlling and operating the pipeline or pipelines affected; and
- The notice of the December 20, 2006 hearing complied with all notice requirements.

### III. JURISDICTION

The Railroad Commission of Texas (Commission) has jurisdiction to set or approve rate in this docket. TEX. GOV'T CODE §2001.056 allows informal disposition of a contested case by agreed settlement, unless precluded by law.

The Commission has jurisdiction over ITP and NHI, the formal complaint in this proceeding, NHI's transportation activities, and the rates charged by NHI because TEX. NAT'L RES. CODE § 81.051 gives the Commission broad jurisdictional authority over all persons owning or operating pipelines in Texas and persons owning or operating gas wells in Texas and because both ITP and NHI are P-5 operators permitted by the Commission.

ITP brought its formal complaint under the TEXAS NAT'L RES. CODE, Chapter 111 and 16 TEX. ADMIN. CODE §7.7001 (2002).<sup>9</sup> TEXAS NAT'L RES. CODE §111.221 provides Commission jurisdiction to hear and determine the Complaint in this proceeding, after giving proper notice.

The parties agree that the subject matter of this proceeding is within the Commission's jurisdiction under TEXAS NAT'L RES. CODE §§81.081(a), 81.083, and 111.181 - 111.190.<sup>10</sup> TEXAS NAT'L RES. CODE §§81.081(a), 111.082, 111.083, 111.085, 111.090, and 111.096 make these provisions applicable to common purchasers of gas.

### IV. APPLICABLE LAW AND RULES

NHI is subject to the jurisdiction and ratemaking authority of the Commission. NHI is a common purchaser under TEX. NAT. RES. CODE ANN. §111.081(a)(2) because it exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas. The Commission's Rule at 16 TEX. ADMIN. CODE §7.7001 requires that NHI must apply its tariffs and contracts for the provision of transportation services in a similar manner to similarly situated shippers, without giving preference to any one or more shippers or to itself. The rule provides that if an entity transports only its own gas through its own system, as designated by its

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<sup>9</sup> ITP's initial letter of formal complaint from Jake Akins to Steve Pitner (May 15, 2006); ITP's Supplemental Formal Complaint (June 29, 2006); and ITP's Brief on Jurisdiction (Nov. 21, 2006).

<sup>10</sup> See ITP's Brief on Jurisdictional Issues (Nov. 20, 2006) and NHI's Brief on Jurisdictional Issues (Dec. 1, 2006).

T-4 permit on file with the Commission, then the system is exempt from the Commission's rule. NHI transports for others for a fee<sup>11</sup> and is subject to 16 TEX. ADMIN. CODE §7.7001.

## **V. BASIS FOR COMMISSION APPROVAL OF NHI'S RATE**

TEX. NAT. RES. CODE ANN. §111.183 (Vernon 1993 and Supp. 2006) provides that the basis of the rates approved by the Commission to be charged by NHI to shippers on the NHI pipeline is an amount that will provide a fair return on the aggregate value of NHI's property used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

The parties stipulated that a rate of \$0.50 per Mcf will provide a fair return on the aggregate value of NHI's property used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management. Independent of the parties' affirmation, the great weight of record evidence supports the Stipulation, Agreement, and same conclusion that a rate of \$0.50 per Mcf will provide a fair return on the aggregate value of NHI's property used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

Record evidence, including the Direct Prefiled Testimony of Wendell Chen and attachments (Sept. 1, 2006); Direct Prefiled Testimony of Gary A. Long (Oct. 23, 2006); attachments to the Direct Prefiled Testimony of Gary A. Long at Exhs. 9-20 (Oct. 23, 2006); and Information compiled from NHI's Response to Examiner's First Requests for Information, RFI Response 2-8 (Jul. 24, 2006) support the fifty-cent rate as being within the range of rates that comply with the statutory requirements. Argument by the parties and the record evidence support approval of the Stipulation and Agreement.

The Stipulation and Agreement provide the terms of service and the rate to be charged by NHI for providing transportation. NHI and ITP agreed to a rate of fifty-cents per Mcf for transportation of ITP's gas from the Cox # 1 to the Copano redelivery point. The rate will be effective until March 1, 2008. Thereafter, and annually by March 1 each year, the parties may renegotiate an adjusted rate to reflect current operating expenses. The parties contemplated that, if they are unable to determine an adjusted rate by agreement, they may seek to determine an adjusted rate by mediation or through the Railroad Commission. If either party seeks mediation or a Commission decision regarding the setting of a revised

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<sup>11</sup> T-4 Application for Permit to Operate a Pipeline in Texas (Nov. 3, 2000); T-4 Application for Permit to Operate a Pipeline in Texas (Jul. 15, 2002);

rate, the fifty-cent per Mcf rate, or the most recently determined rate pending when the request is made, will remain in effect until disposition of any renegotiation, mediation, or determination.

## VI. RECOMMENDATION

The Examiner recommends that the Commission approve the Negotiated Settlement. A draft Order is attached for Commission consideration.

Issued this 21<sup>st</sup> day of December, 2006

Respectfully submitted,

Michelle Lingo  
Hearings Examiner  
General Counsel Division