

## Ruby Pipeline Seeks OK For \$135M Kinder Morgan Settlement

By **Brian Steele**

Law360 (December 19, 2022, 8:31 PM EST) -- Ruby Pipeline LLC has asked a Delaware bankruptcy court to approve a \$135 million settlement with its equity sponsors over claims that the company paid them quarterly dividends while it was insolvent, a move that would clear the way for Tallgrass MLP Operations to complete its purchase of the debtor.

Kinder Morgan Inc. and Pembina Pipeline Corp. jointly own Ruby, and according to the motion filed on Friday, the companies agreed to settle claims that they received \$191 million from the LLC through so-called preferential and fraudulent transfers during the four-year period before Ruby sought Chapter 11 protection in April.

"The settlement appropriately balances the litigation positions of the debtor and sponsors and reflects the risk that proceeding with a lawsuit would impose on both parties," the **motion** says. "The factual nature of the issues most likely would make summary judgment an inappropriate resolution mechanism, making a trial all but certain. Any trial would be lengthy and hard-fought."

Ruby, which operates a 683-mile natural gas pipeline from Oregon to Wyoming, filed for Chapter 11 protection hours before \$475 million in senior unsecured notes were scheduled to mature and enter repayment with \$19 million in interest. KMI and Pembina hold subordinated notes that are scheduled to mature in 2026.

Tallgrass agreed to buy Ruby on Dec. 13, and the motion says the price was \$282.5 million. The prospect of settling the sponsor claims eased the bidding process, Ruby says.

"This gave bidders comfort going into the auction that their bids could, when combined with the settlement number and cash on hand, clear the threshold needed to achieve a confirmable sale plan and therefore close on the sale," the motion says.

The sale, settlement and cash on hand would be enough for Ruby to pay off its unsecured creditors, except for KMI and Pembina, and pay interest to the holders of the notes that triggered the bankruptcy, according to the motion.

Ruby can also "pay all administrative expenses, including the indenture trustee's fees, and then have an \$18.5 million excess that will flow back to the sponsors as the junior-most class," the motion says.

Under the proposed settlement, KMI would pay \$33 million, while Pembina would pay \$102 million, and each party is responsible for its own attorney fees.

According to the motion, Ruby paid quarterly distributions to its sponsors through the first quarter of 2021, but this year, a financial analysis by FTI Consulting Inc. found that the company had been insolvent since the last quarter of 2019.

Ruby's special committee of independent managers determined that it could avoid and recover \$191 million in payments, the motion says. But the committee said a successful lawsuit would require them to prove when the company became insolvent, a "subjective" issue that would become a "battle of experts," according to Ruby.

"FTI's analysis shows that Ruby was balance-sheet insolvent as of Q4 2019, and cash flow insolvent/inadequately capitalized as of Q1 2020," the motion says. "These conclusions put up to \$191 million of distributions at issue under the balance sheet test, and \$133 million of distributions at issue under the cash-flow test."

The motion says KMI and Pembina dispute several of the measures used in FTI's analysis.

Ruby says the committee unanimously approved the \$135 million settlement after six weeks of negotiations with the sponsors. The agreement is "reasonable," the motion says, and satisfies the standards of the Delaware LLC Act while avoiding a trial and appeals that could jeopardize the recovery.

"Throughout this process, we have sought to act in the best interest of Kinder Morgan's shareholders. We believe this outcome meets that test," Vicky Oddi, a representative for Kinder Morgan, said in a statement.

Attorneys for Ruby Pipeline, KMI and Pembina did not immediately respond to requests for comment.

Ruby Pipeline is represented by Kevin Gross, Daniel J. DeFranceschi, John H. Knight, Cory D. Kandestin, Brendan J. Schlauch, David T. Queroli and J. Zachary Noble of Richards Layton & Finger PA and Ray C. Schrock, Sunny Singh and Jared R. Friedmann of Weil Gotshal & Manges LLP.

Kinder Morgan is represented by Joseph J. Farnan Jr. and Michael J. Farnan of Farnan LLP and Thomas Lauria, Michael Shepherd, Laura Femino and Samuel Kava of White & Case LLP.

Pembina is represented by Michael R. Nestor, Kara Hammond Coyle, Allison S. Mielke and Joshua B. Brooks of Young Conaway Stargatt & Taylor LLP, and Adam J. Goldberg, William O. Reckler, Blake T. Denton and Shawn P. Hansen of Latham & Watkins LLP.

The creditor committee is represented by Robert J. Stark, Michael Winograd, D. Cameron Moxley and Andrew M. Carty of Brown Rudnick LLP and Jennifer R. Hoover, Kevin M. Capuzzi and John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP.

The Office of the U.S. Trustee is represented in-house by Timothy J. Fox Jr.

The case is In re: Ruby Pipeline LLC, case number 1:22-bk-10278, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Rich Mills.