

121 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

In re BP Energy Company

Docket No. IN07-35-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 25, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and BP Energy Company and its affiliates, including BP Canada Energy Company, BP Canada Energy Marketing Corporation, and IGI Resources, Inc. (collectively, BP). This Order is in the public interest because it resolves the preliminary, non-public investigation into certain self-reported violations by BP of the Commission's capacity release policies, including violations of the posting and bidding requirements for released capacity, the shipper-must-have-title requirement, and the prohibition on buy-sell transactions. BP has agreed to pay a civil penalty of \$7 million, and to implement a compliance monitoring plan.

Background

2. BP is a major producer and marketer of natural gas in North America. In conjunction with its marketing activities, the company transports natural gas on a majority of the interstate natural gas pipelines subject to the Commission's jurisdiction.

3. BP provides asset (or portfolio) management services in association with its gas marketing functions. These services include supply procurement, the management of requests for proposals for gas purchases and sales, scheduling and balancing services, payment and reconciliation of customer transportation and storage invoices, managing storage and transportation capacity, and storage and transportation asset optimization. BP provides these services to a wide range of customers located throughout the continental United States and Canada. With respect to its asset management services, BP managed approximately 4 Bcf per day of transportation capacity and approximately 35 Bcf of storage capacity in 2005-2006.

4. In August 2006, BP met with Enforcement staff to disclose that it had conducted a self-assessment revealing a number of violations of the Commission's policies and regulations related to capacity release, including violations of the applicable posting and bidding requirements for capacity release, the shipper-must-have-title requirement, and the prohibition on buy-sell transactions. In the course of its self-assessment, BP reviewed documentation for asset management arrangements in effect between November 1, 2005 and June 1, 2006. BP also conducted interviews with company personnel directly involved in the formation and administration of each transaction.

Violations

5. Enforcement investigated BP's transactions during the period January 2005 through December 2006. During this period, BP had violations on 14 interstate pipeline systems, involving the transportation or storage of 49.3 Bcf. The violations, which arose under 23 separate asset management arrangements,¹ include thousands of discrete transactions occurring over the two year period. BP's violations fall within the following three categories:

1. "Flipping" violations

6. Section 284.8 of the Commission's regulations requires releases of firm capacity exceeding 31 days at a price less than the maximum tariff rate to be posted for competitive bidding on the pipeline's Electronic Bulletin Board.² A discounted release for 31 days or less is exempt from the competitive bidding requirement, but must be posted for informational purposes within 48 hours of the release transaction. However, such a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the regulation's posting and bidding requirements.

7. The prior posting requirement for long-term, discounted rate releases promotes natural gas market transparency by providing notice to all interested shippers of the availability of released capacity. The competitive bidding requirement, in turn, ensures that the released capacity will go to the shipper who values it most. Together, the posting and bidding requirements are integral components of the Commission's pipeline open-access program, and promote transparency, market efficiency, and the elimination of undue preference and discrimination in the natural gas transportation market.

¹ An asset management arrangement refers to an individual master (or base) agreement between BP and its customer. It is pursuant to such master agreements that individual transactions occurred. Each master agreement may give rise to thousands of individual transactions depending on the term of the agreement and the level of activity.

² 18 C.F.R. § 284.8 (2007).

8. BP violated the posting and bidding requirements by engaging in a practice known as “flipping,” that is, a series of alternating short-term releases. Flipping involves repeated short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis in order to avoid the competitive bidding requirement for discounted long-term capacity releases. The effect of flipping is to create a long-term, non-competitive discounted rate release. Flipping is an inappropriate strategy that defeats, and therefore violates, the posting and bidding requirements, and the prohibition on roll-overs or extensions set out in 18 C.F.R. § 284.8. We see no legitimate business or operational reason for arranging capacity releases from a single releasing shipper to multiple affiliated entities on an alternating monthly basis.

9. In three asset management arrangements, BP arranged for released capacity from customers to be flipped between two BP affiliates – BP Energy Company and BP Canada Energy Marketing Corporation – on an alternating monthly basis for up to 22 months. In total, BP transported 24.9 Bcf of natural gas through released capacity acquired in flipping transactions.

10. BP circumvented the Commission’s rules requiring posting and competitive bidding for discounted, long-term releases of capacity. As a result, other market participants were denied an equal opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from the pipeline or other releasing shippers.

2. Shipper-must-have-title violations

11. A central requirement of the Commission’s capacity release program is that all shippers must have title to the gas at the time the gas is tendered to the pipeline or storage transporter and while it is being transported or held in storage by the transporter. Known as the shipper-must-have-title requirement, the requirement was first established during the implementation of the Commission’s initial pipeline open-access reforms. The requirement is also reflected in interstate pipelines’ FERC gas tariffs, which feature provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline.³

12. BP engaged in thousands of individual transactions involving the transportation of 19.3 Bcf of natural gas in violation of the shipper-must-have-title requirement during 2005-2006. These violations occurred with respect to 18 asset management arrangements. In all such circumstances, BP shipped gas owned by BP on transportation

³ Although the specific language of pipeline tariffs varies, we have made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage. See *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

capacity held by its asset management customers without a valid release of that capacity to BP. These violations occurred on pipeline transportation as well as storage.

13. BP's shipper-must-have-title violations reduced market transparency in the natural gas transportation market because they avoided the Commission's capacity release requirements. Had BP taken released capacity for the gas BP owned and shipped on capacity owned by others, BP's compliance would have informed other market participants of BP's activities on the pipelines. Further, violations of the shipper-must-have-title requirement impact the Commission's oversight of the natural gas market. As we have explained, ensuring non-discriminatory service and maintaining adequate oversight of the natural gas market depends, in large part, on adherence to the shipper-must-have-title requirement.⁴

3. Prohibited buy-sell transactions

14. A prohibited buy-sell transaction is a commercial arrangement where a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (e.g., an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point.⁵

15. By prohibiting buy-sell transactions, the Commission prevents a capacity holder with priority to pipeline capacity from acting as a broker of transportation capacity or assigning transportation capacity to end-use customers. Such practices, if permitted, would be a barrier to open-access transportation on interstate pipelines.

16. Two of BP's asset management arrangements resulted in prohibited buy-sell transactions. The first involved a customer for whom BP provided nominations assistance. BP purchased the customer's gas and shipped it using BP's capacity rights between an onshore pool and downstream points where the customer held interstate pipeline capacity. BP then resold the gas back to its customer at the downstream points. The second arrangement involved a comprehensive asset management arrangement with a gas end-user, under which BP purchased the customer's gas at certain points along the transportation path and sold equal amounts of gas to the customer at downstream delivery points in order to reduce fuel and commodity costs on the pipelines. In sum, BP's buy-sell transactions included the transportation of 5.1 Bcf of natural gas during 2005-2006.

17. Through its buy-sell transactions, BP engaged in a prohibited form of capacity brokering. By utilizing its priority to interstate pipeline transportation, BP acted as a

⁴ See *Rendezvous Gas Services, L.L.C.*, 113 FERC ¶ 61,169, at PP 42-43 (2005).

⁵ See *Williams Energy Marketing & Trading Company*, 92 FERC ¶ 61,219, at 61,715-16 (2000).

broker of capacity for its asset management customers. Such transactions stand as an obstacle to the success of the capacity release program established under the Commission's regulations.

Stipulation and Consent Agreement

18. Enforcement and BP have entered into the attached Agreement to resolve Enforcement's investigation of BP's self-reported violations. The Agreement requires BP to pay a \$7 million civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement.

19. BP has also agreed to a compliance monitoring plan, pursuant to which BP will make two semi-annual reports to Enforcement staff. In the first compliance report, to be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls, BP shall: (1) explain in detail any measures taken by BP since the execution of the Agreement to amend, revise, or restructure the asset management arrangements in violation of the Commission's regulations and requirements; (2) advise staff whether additional violations have occurred; (3) provide a detailed update of all compliance training administered and compliance measures instituted in that period; and (4) include an affidavit executed by an officer of BP that the compliance reports are true and accurate. The second semi-annual report is to be submitted six months after the first. After the receipt of the second semi-annual report, staff may, at staff's sole option, require BP to submit semi-annual reports for one additional year.

Determination of the Appropriate Remedy

20. Pursuant to section 22(a) of the Natural Gas Act (NGA), the Commission may impose a civil penalty up to \$1 million per day per violation for as long as the violation continues.⁶ In approving the Agreement and the \$7 million civil penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and our 2005 Policy Statement on Enforcement.⁷ For the reasons noted below, we conclude that the penalty determination in the instant matter is a fair and equitable resolution of this matter and is in the public interest, as it reflects the seriousness and scope of BP's violations while recognizing the company's efforts to remedy its violations.

⁶ 15 U.S.C. § 717t-1(a) (*added by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 314 (b)(1)(B), 119 Stat. 594, 691 (2005) (authorizing the Commission to impose civil penalties "of not more than \$1,000,000 per day per violation for as long as the violation continues"*).

⁷ *Enforcement of Statutes, Orders, Rules, and Regulations*, 113 FERC ¶ 61,068 (2005) (Policy Statement on Enforcement).

21. BP's violations were serious in terms of volume and scope, as they involved 49.3 Bcf of gas transportation and storage over 14 pipeline systems. BP's violations directly affected the transparency of the secondary market for natural gas transportation and storage. Market transparency was one of the primary goals of the Commission's pipeline open-access reforms, and remains an important priority today, as demonstrated by recent orders and notices.⁸ Moreover, these unlawful transactions impaired the effectiveness of the Commission's pipeline open-access policies.

22. We find that BP's flipping violations were particularly serious in nature. These transactions were a deliberate attempt to circumvent the Commission's rules requiring posting and competitive bidding for discounted, long-term releases of capacity. As discussed above, we are aware of no other reason for alternating monthly releases other than to disguise a long-term discounted rate release as a series of short-term releases to avoid the requirement to post such releases for competitive bidding. In short, flipping is an intentional violation of section 284.8(h) that warrants a substantial civil penalty.

23. The Commission also considered and gave BP significant credit for self-reporting and cooperation. BP uncovered these violations after conducting an internal investigation on its own initiative. Upon the completion of the self-assessment, BP took immediate self-corrective action to terminate or restructure then-effective customer arrangements to bring such transactions into compliance with the Commission's capacity release regulations and requirements. BP then self-reported its findings to Enforcement staff. In addition, BP exhibited exemplary cooperation with staff throughout the course of its investigation. Absent these factors, the penalty would have been significantly higher.

24. We conclude that the civil penalty and the compliance monitoring plan specified in the Agreement are fair and equitable, and in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ See, e.g., *Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act*, Notice of Proposed Rulemaking, 72 Fed Reg. 20,791 (Apr. 26, 2007), FERC Stats. & Regs. ¶ 32,614 (2007).

3. BP met with Enforcement staff on August 24, 2006, to disclose that it had conducted a self-assessment revealing possible violations of the Commission's policies and regulations related to capacity release. BP explained that the company conducted training sessions following the enactment of the Energy Policy Act of 2005. Employee training generated many questions regarding possible compliance issues related to BP's asset management arrangements. These questions, combined with other factors, prompted BP to conduct a self-assessment of asset management compliance within its North American branch offices. The self-assessment was conducted at the direction of BP's Chief Operating Officer and several Senior Vice Presidents.

4. In the course of its self-assessment, BP reviewed contracts, confirmations, and invoices for 121 asset management arrangements in effect between November 1, 2005 and June 1, 2006. BP also conducted interviews with company personnel directly involved in the formation and administration of each transaction. BP's self-assessment, which was substantially complete by the close of July 2006, revealed widespread violations of the applicable posting and bidding requirements for capacity release, the shipper-must-have-title requirement, and the prohibition on buy-sell transactions.

5. Pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2007), Enforcement opened a preliminary, non-public investigation into the reported violations. Enforcement investigated BP's transactions during the period beginning January 2005 and ending December 2006.

B. Summary of Violations

6. Enforcement confirmed violations by BP on 14 interstate pipeline or storage facilities, involving the transportation or storage of 49.3 Bcf of natural gas in 2005 and 2006. The violations, which arose under 23 separate asset management arrangements, include thousands of discrete transactions occurring over the two year period.

7. BP's violations were primarily the result of inadequate internal review and approval mechanisms for identifying and correcting possible violations of the Commission's capacity release policies, particularly with respect to transactions entered into and managed by BP branch offices. The internal compliance systems in place at BP prior to the self-assessment were deficient given the scope and sophistication of BP's asset management arrangements and the applicable regulatory requirements. These deficiencies included the following: (1) BP did not have a formal, uniform system for reviewing and approving asset management arrangements; (2) compliance procedures and monitoring at BP's branch offices were inconsistent and varied from procedures used at BP's headquarters office; (3) asset management arrangements were not subject to consistent review by BP's legal department; and (4) employee training on the

Commission's requirements and regulations was sporadic prior to the self-assessment.

1. Failure to comply with the posting and bidding regulations

8. The Commission's regulations, at 18 C.F.R. § 284.8 (2007), require releases of firm capacity exceeding 31 days at a price less than the maximum tariff rate to be posted for competitive bidding on the pipeline's Electronic Bulletin Board. The regulation also provides that a discounted release for 31 days or less is exempt from the competitive bidding requirements, but must be posted for informational purposes within 48 hours of the release transaction. However, such a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the regulation's posting and bidding requirements.

9. BP engaged in a practice known as "flipping" in three of its asset management arrangements. Flipping involves a series of repeated short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis in order to avoid the competitive bidding requirement for discounted long-term capacity releases. The effect of flipping is to create a long-term, non-competitive discounted rate release. In BP's case, the released capacity flipped between two BP affiliates – BP Energy Company and BP Canada Energy Marketing Corporation – on an alternating monthly basis for up to 22 months. In sum, BP transported 24.9 Bcf of natural gas through released capacity acquired in flipping transactions.

2. Shipper-must-have-title violations

10. A central requirement of the Commission's capacity release program is that all shippers must have title to the gas at the time the gas is tendered to the pipeline or storage transporter and while it is being transported or held in storage by the transporter. This element is known as the shipper-must-have-title requirement.

11. Interstate pipeline tariffs feature provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline. Although the specific language of pipeline tariffs varies, the Commission has made clear that the shipper of record and the owner of the gas must be one and the same throughout the course of the transportation or the duration of storage. *See Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

12. BP engaged in thousands of individual transactions involving the transportation of 19.3 Bcf of natural gas in violation of the shipper-must-have-title requirement. These violations occurred with respect to 18 asset management arrangements. In all such circumstances, BP shipped gas owned by BP on transportation capacity held by its asset management customers without a valid release of that capacity to BP. These violations occurred on pipeline transportation as well as storage.

3. Prohibited buy-sell transactions

13. Commission policies prohibit buy-sell transactions. A buy-sell transaction is a commercial arrangement where a shipper holding interstate pipeline capacity buys gas at the direction of, on behalf of, or directly from another entity (*e.g.*, an end-user), ships that gas through its interstate pipeline capacity, and then resells an equivalent quantity of gas to the downstream entity at the delivery point. *See Williams Energy Mktg. & Trading Co.*, 92 FERC ¶ 61,219, at 61,715-16 (2000).

14. BP engaged in two asset management arrangements that involved prohibited buy-sell transactions, pursuant to which BP transported and sold 5.1 Bcf of natural gas during 2005-2006. One instance involved a customer for whom BP provided nominations assistance. BP purchased the customer's gas and shipped it using BP's capacity rights between an onshore pool and downstream points where the customer held interstate pipeline capacity. BP then resold the gas back to its customer at the downstream points. A second instance involved a comprehensive asset management arrangement with a gas end-user, under which BP purchased the customer's gas at certain points along the transportation path and sold equal amounts of gas to the customer at downstream delivery points in order to reduce fuel and commodity costs on the pipelines.

C. BP's Self-Corrective Remedial Action

15. Upon the completion of the self-assessment, BP took immediate self-corrective action to terminate or restructure then-effective customer arrangements to bring such transactions into compliance with the Commission's capacity release regulations or requirements.

16. BP submitted a self-report, wherein it disclosed to Enforcement staff the findings of its self-assessment. The report provided a complete and candid assessment of the scope and nature of the company's violations.

17. BP displayed exemplary cooperation throughout the duration of Enforcement staff's investigation.

18. Following the self-assessment, BP took substantial steps toward achieving prospective compliance with the Commission's capacity release policies. BP adopted internal review mechanisms for identifying and correcting possible compliance issues with its asset management arrangements. These procedures apply to all BP branch offices, and bring branch office procedures into line with headquarters procedures. These uniform procedures provide for multiple rounds of management and legal review prior to a contract receiving final approval. In addition to enhanced approval protocols, BP now is conducting ongoing monitoring of existing arrangements to ensure compliance

throughout the term of the contract. BP also implemented a mandatory, company-wide employee training program to ensure that relevant BP personnel are aware of and understand the Commission's regulations and policies applicable to BP's asset management and gas marketing transactions. Further, when applicable, compliance with the Commission's regulations and requirements is now an additional criterion for evaluating individual BP personnel performance.

III. REMEDIES AND SANCTIONS

19. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the capacity release matters self-reported by BP, Enforcement and BP agree that on and after the effective date of this Agreement, BP shall take the following actions:

20. BP shall pay a civil penalty of \$7,000,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined in paragraph 22 below.

21. BP shall make two semi-annual reports to Enforcement staff, the first to be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report is to be submitted six months thereafter. The first compliance report shall: (1) explain in detail any new measures taken by BP after the Effective Date of this agreement to amend, revise, or restructure the 23 asset management arrangements in violation of the Commission's regulations and requirements; (2) advise staff whether additional violations of the applicable posting and bidding requirements, the shipper-must-have-title requirement, or the ban on buy-sell transactions have occurred; (3) provide a detailed update of all compliance training administered and compliance measures instituted in that period, including a description of the training provided to all relevant personnel concerning the Commission's capacity release policies, and a statement of the personnel that have received such training, and when the training took place; and (4) include an affidavit executed by an officer of BP that the compliance reports are true and accurate. Upon request by staff, BP shall provide to staff all backup documentation supporting its reports. The second semi-annual report shall provide the information in items (2) through (4) of this paragraph. After the receipt of the second semi-annual report, staff may, at staff's sole option, require BP to submit semi-annual reports for one additional year.

IV. TERMS

22. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification.

When effective, this Agreement shall resolve the matters specifically addressed herein as to BP and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to BP.

23. Commission approval of this Agreement without material modification shall release BP and forever bar the Commission from holding BP liable for any and all administrative or civil claims arising out of, related to, or connected with the capacity release violations addressed in this Agreement.

24. Failure to make a timely civil penalty payment or to comply with the compliance program agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Natural Gas Act (NGA), and may subject BP to additional action under the enforcement and penalty provisions of the NGA.

25. If BP does not make the civil penalty payment above at the time agreed by the parties, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due, in addition to the penalty specified above.

26. The Agreement binds BP and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on BP, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in Section III of this Agreement.

27. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or BP has been made to induce the signatories or any other party to enter into the Agreement.

28. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor BP shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and BP.

29. In connection with the payment of the civil penalty provided for herein, BP agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). BP waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

30. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

31. The undersigned representative of BP affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

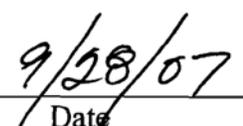
32. The Agreement may be signed in counterparts.

33. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

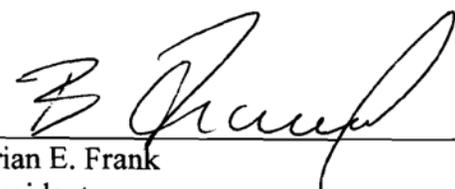
Agreed to and accepted:



Susan J. Court
Director
Office of Enforcement
Federal Energy Regulatory Commission



Date



Brian E. Frank
President
BP Energy Company



Date