

127 FERC ¶ 61,319  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Piedmont Natural Gas Company, Inc.

Docket No. IN09-18-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued June 30, 2009)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Piedmont Natural Gas Company, Inc. (Piedmont). This order is in the public interest because it resolves the investigation of Piedmont regarding the Commission's capacity release policies, specifically circumvention of the posting and bidding requirements for released capacity. Piedmont has agreed to pay a civil penalty of \$1,250,000. In addition, Piedmont has agreed to submit compliance monitoring reports.

**Background**

2. Piedmont is a local distribution company, primarily engaged in the distribution of natural gas to residential, commercial, and industrial utility customers in North Carolina, South Carolina, and Tennessee. Through various joint venture affiliates, Piedmont is also engaged in unregulated retail natural gas marketing, interstate natural gas storage, and intrastate natural gas transportation. Piedmont holds firm transportation capacity on Transcontinental Gas Pipe Line Corporation (Transco), among others.

3. In late 2007, Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into possible "flipping"

activities of natural gas participants in the capacity release market.<sup>1</sup> Enforcement identified Piedmont as apparently releasing discounted rate firm pipeline capacity in flipping transactions.

### **Violations**

4. Section 284.8(h) of the Commission's regulations requires that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's Electronic Bulletin Board. The regulations also provide that 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. Under 18 C.F.R. § 284.8(h)(2), a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the posting and bidding requirements.

5. 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.

6. Enforcement concluded that Piedmont improperly released 20.33 Bcf of discounted rate capacity through flipping transactions between August 2005 and October 2007, and that Piedmont did not comply with the posting and competitive bidding requirements in 18 C.F.R. § 284.8. Enforcement concluded that the flipping transactions violated 18 C.F.R. § 284.8 and denied other market participants an opportunity to bid for discounted, long-term releases of capacity

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<sup>1</sup> Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2008). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Puget Sound Energy, Inc.*, 127 FERC ¶ 61,070 (2009); *In re Anadarko Petroleum Corporation*, 127 FERC ¶ 61,069 (2009); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

that may not have otherwise been available from Transco or other releasing shippers. Piedmont admits making the releases in question but neither admits nor denies Enforcement's conclusion that its releases of discounted rate capacity to affiliated replacement shippers on an alternating monthly basis violated 18 C.F.R. § 284.8.

7. Enforcement concluded that the flipping transactions by Piedmont caused harm to natural gas transportation markets, because they impeded transparency and denied other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from the pipeline or other releasing shippers.

### **Stipulation and Consent Agreement**

8. Enforcement and Piedmont resolved Enforcement's investigation of Piedmont's flipping violations by means of the attached Agreement. The Agreement requires Piedmont to pay a \$1,250,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. Piedmont also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert staff to any additional violations of the capacity release requirements that may occur.

### **Determination of the Appropriate Civil Penalty**

9. Pursuant to section 22(a) of the Natural Gas Act (NGA), the Commission may assess a civil penalty up to \$1 million per day per violation for as long as the violation continues.<sup>2</sup> In approving the Agreement and the \$1,250,000 civil penalty, we considered the factors set forth in section 22(c) of the NGA, 15 U.S.C. § 717t-1(c), and the Revised Policy Statement on Enforcement.<sup>3</sup> 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 nature and scope of Enforcement's conclusions concerning Piedmont's transactions. Piedmont did not

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<sup>2</sup> 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")*).

<sup>3</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 -71 (2008).

self-report the flipping transactions, which occurred over two years. The capacity releases involved substantial volumes. Although Piedmont did not receive unjust profits for the flipping, the flipping violations impeded transparency in the natural gas market.

10. We conclude that the civil penalty and the request that Piedmont provide monitoring reports 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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

In re Piedmont Natural Gas Company, Inc.           )   Docket No. IN09-18-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Piedmont Natural Gas Company, Inc. (Piedmont) enter into this Stipulation and Consent Agreement (Agreement) to resolve an investigation under Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2008), into whether Piedmont violated the Commission’s capacity release program, including the competitive bidding requirements for long-term, discounted rate capacity releases set forth at 18 C.F.R. § 284.8 (2008).

**II. STIPULATED FACTS**

Enforcement and Piedmont hereby stipulate and agree to the following:

1. Piedmont is a local distribution company, primarily engaged in the distribution of natural gas to residential, commercial and industrial utility customers in North Carolina, South Carolina, and Tennessee. Through various joint venture affiliates, Piedmont is also engaged in unregulated retail natural gas marketing, interstate natural gas storage and intrastate natural gas transportation.

2. In late 2007, Enforcement staff opened an investigation pursuant to Part 1b of the Commission’s regulations, 18 C.F.R. Part 1b (2008), into possible “flipping” activities of natural gas participants in the capacity release market.<sup>1</sup>

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<sup>1</sup> Flipping is a term that describes transactions that avoid the posting and bidding requirements for discounted rate firm capacity at 18 C.F.R. § 284.8 (2008). Flipping is typically a series of short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the posting and bidding requirements, that creates a long-term, noncompetitive discounted rate release. *See, e.g., In re Puget Sound*

(continued)

Enforcement staff identified Piedmont as apparently releasing firm pipeline capacity in flipping transactions.

3. Piedmont engages in capacity release transactions in order to offset upstream supply and capacity costs. Releases of capacity for a month or less are typically initiated either by Piedmont when it has capacity available for daily release or by replacement shippers who have a need for daily capacity and are not typically subject to an Request For Proposal process. These transactions are negotiated verbally by one of Piedmont's gas supply personnel on the basis of capacity assets held by Piedmont and available for release. The prevailing rate for these capacity release transactions is determined by negotiation, with reference to either the rates being paid for released capacity in the same geographic area or the maximum rate the counter-party is willing to pay. These transactions, once agreed to, are posted and executed on the applicable interstate pipeline electronic bulletin board (EBB).

4. Between August 1, 2005 and October 31, 2007, Piedmont released a total of 20.23 Bcf of transportation capacity on Transcontinental Gas Pipe Line Corporation to four sets of affiliated replacement shippers on an alternating monthly basis. The replacement shippers were not affiliated with Piedmont.

5. The Commission's regulations, at 18 C.F.R. § 284.8(h)(1) (2008), require that a shipper releasing firm capacity for a term longer than 31 days and at a price less than the maximum tariff rate must post the capacity for competitive bidding on the pipeline's EBB. The regulations also provide that 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. Under 18 C.F.R. § 284.8(h)(2), a discounted, short-term release may not be rolled-over, extended, or in any way continued without complying with the posting and bidding requirements.

6. Enforcement staff concluded that Piedmont's releases to the affiliated replacement shippers were flipping transactions that violated the Commission's posting and bidding requirements at 18 C.F.R. § 284.8. Enforcement staff also concluded that Piedmont's releases caused harm to natural gas transportation markets because they impeded transparency and denied other

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*Energy, Inc.*, 127 FERC ¶ 61,070 (2009); *In re Anadarko Petroleum Corporation*, 127 FERC ¶ 61,069 (2009); *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

market participants an opportunity to bid for discounted, long-term releases of capacity that may not have otherwise been available from the pipeline or other releasing shippers.

7. During the period that Piedmont was engaged in flipping, it had adopted an internal code of conduct for its gas supply personnel and Piedmont's managing supervisors had engaged in informal counseling/education on the Commission's capacity release requirements and other policies with members of Piedmont's gas supply department. Piedmont also had adopted a general policy of compliance with all external laws, regulations, and internal policies governing Piedmont's activities. Nonetheless, Piedmont did not have adequate controls in place to identify and prevent the flipping transactions. However, since the Enforcement staff investigation commenced, Piedmont has improved its compliance program and implemented additional measures to address, among other things, capacity release compliance issues. It also retrained its gas supply personnel to increase awareness of the Commission's rules and regulations concerning transportation of natural gas and has adopted protocols to vet all transactions involving primary or secondary capacity rights before they are executed.

8. Enforcement staff determined that Piedmont did not earn unjust profits as a result of the transactions that are the subject of this Agreement.

### **III. REMEDIES AND SANCTIONS**

9. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Piedmont agrees with the facts as stipulated but neither admits nor denies Enforcement staff's conclusion that the capacity releases by Piedmont of discounted rate capacity to the affiliated replacement shippers constituted violations of 18 C.F.R. § 284.8. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and Piedmont without further proceedings, Piedmont agrees to undertake the obligations set forth in this Agreement.

10. This Agreement does not constitute an admission of wrongdoing or liability by Piedmont to any third party and neither the stipulated facts nor the existence of this Agreement constitute an admission by Piedmont that its conduct unfairly or inappropriately impacted any third party.

#### **A. Civil Penalty**

11. Piedmont shall pay a civil penalty of \$1,250,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

12. The civil penalty shall not be passed through, directly or indirectly, to any present or future Piedmont customers or ratepayers.

### **B. Compliance Monitoring**

13. Piedmont shall make semi-annual reports to Enforcement staff for one year following the Effective Date of this Agreement. The first semi-annual report shall 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 shall be submitted six months thereafter. Each compliance report shall: (1) advise staff whether violations by Piedmont of the requirements of 18 C.F.R. § 284.8 have occurred; (2) provide a detailed update of all compliance training administered and compliance measures instituted in the applicable period, including a description of the training provided to all relevant personnel concerning the Commission's capacity release policies, and a list of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of Piedmont that the compliance reports are true and accurate. Upon request by staff, Piedmont shall provide to staff documentation to support its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require Piedmont to submit semi-annual reports for one additional year.

## **IV. TERMS**

14. 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 Piedmont and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Piedmont.

15. Commission approval of this Agreement in its entirety and without material modification shall release Piedmont and forever bar the Commission from holding Piedmont, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

16. Piedmont consents to the use of Enforcement staff's conclusions set forth in Paragraph 6 of this Agreement for the purpose of assessing the factors in any further matter, including the factor of determining the company's history of violations, that are set forth in the Revised Policy Statement on Enforcement, *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008), or that may be set forth in any successor policy statement or order. Such use may be in any other proceeding before the Commission or to which the Commission is a

party; provided, however, that Piedmont does not consent to the use of specific acts set forth in this Agreement as the sole basis for any other proceeding brought by the Commission, nor does Piedmont consent to the use of this Agreement by any other party in any other proceeding. This Agreement shall have no precedential effect except as set forth in the first sentence of this paragraph.

17. Failure to make a timely civil penalty payment or to comply with the compliance reporting requirements 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 Piedmont to additional action under the enforcement and penalty provisions of the NGA.

18. If Piedmont 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. § 154.501(d) (2008) from the date that payment is due, in addition to the penalty specified above.

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

20. 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 Piedmont has been made to induce the signatories or any other party to enter into the Agreement.

21. 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 Piedmont shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Piedmont.

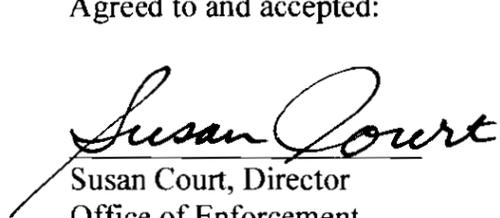
22. In connection with the payment of the civil penalty provided for herein, Piedmont agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). Piedmont 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.

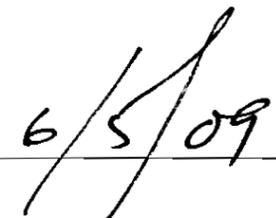
23. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

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

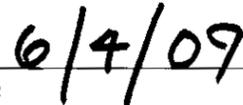
25. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

  
Susan Court, Director  
Office of Enforcement  
Federal Energy Regulatory Commission

  
Date

  
Jane Lewis-Raymond, Vice President  
and General Counsel  
Piedmont Natural Gas Company, Inc.

  
Date