

125 FERC ¶ 61,359
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 DCP Midstream, LLC

Docket No. IN09-13-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued December 23, 2008)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and DCP Midstream, LLC (DCP Midstream). This order is in the public interest because it resolves the investigation into self-reported violations by DCP Midstream of the Commission's open access transportation program, specifically violations of the shipper-must-have-title requirement. DCP Midstream has agreed to pay a civil penalty of \$360,000. In addition, DCP Midstream has agreed to submit compliance monitoring reports.

Background

2. DCP Midstream is a midstream natural gas company whose core business involves gathering and processing natural gas. At times, in the course of moving gas to processing plants, DCP Midstream utilizes interstate pipelines subject to the shipper-must-have-title requirement. DCP Midstream looked into all of its interstate natural gas pipeline service contracts from January 2005 through December 2007 and identified multiple contracts as potentially being in violation of the shipper-must-have-title requirement. In February 2008, DCP Midstream met with Enforcement staff to report these violations.

Violations

3. Enforcement opened an investigation into the self-reported violations pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008). Enforcement confirmed the shipper-must-have-title violations, which involved the transportation of approximately 61.5 Bcf of natural gas from January 2005 through December 2007. All of the transactions occurred on interstate pipelines upstream of processing plants.

4. 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. Interstate pipeline tariffs include provisions requiring shippers to warrant good title to the gas tendered for transportation on the pipeline. Although the specific language of each interstate pipeline's tariff 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 on any pipeline. See *Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

5. DCP Midstream violated the shipper-must-have-title requirement during the period January 2005 through December 2007 by improperly transporting a total of 61.5 Bcf of gas. DCP Midstream improperly transported 49.8 Bcf of third-party owned gas using DCP Midstream capacity. To comply with the shipper-must-have-title requirement when transporting this gas, DCP Midstream should have obtained title to the gas. The remaining 11.7 Bcf of gas was improperly transported when DCP Midstream or an affiliate of DCP Midstream held the interstate capacity, but the gas transported was owned by a different DCP Midstream affiliate. To comply with the shipper-must-have-title requirement when transporting this gas, DCP Midstream should have matched the shipper of record and owner of the gas. Of the 61.5 Bcf of gas transported in violation of the shipper-must-have-title requirement, 37.8 Bcf was transported under firm contracts and 23.7 Bcf was transported under interruptible contracts. Violations of the shipper-must-have-title requirement interfere with the Commission's oversight of natural gas markets and with the Commission's goal of market transparency.

6. The primary reason these violations occurred is because DCP Midstream failed to provide adequate training for its employees. DCP Midstream voluntarily has implemented improvements in its processes for arranging natural gas transportation and has provided training to employees to assure future compliance with open access transportation requirements.

Stipulation and Consent Agreement

7. Enforcement and DCP Midstream resolved Enforcement's investigation of DCP Midstream's violations by means of the attached Agreement. The Agreement requires DCP Midstream to pay a \$360,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. DCP Midstream 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.

Determination of the Appropriate Civil Penalty

8. 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.¹ In arriving at the appropriate civil penalty amount, 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.² 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 DCP Midstream's violations while recognizing that DCP Midstream took the initiative both to report and to remedy the violations. We also took into account that DCP Midstream discovered the violations through an internal investigation and voluntarily reported and corrected the violations. Further, there were no unjust profits for DCP Midstream to disgorge.

9. DCP Midstream's violations involved 61.5 Bcf of gas over a period of approximately three years. Compared with prior settlements in cases involving shipper-must-have-title violations, the civil penalty amount appropriately addresses the extent of the violations and DCP Midstream's efforts to report and remedy the violations.

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

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹ 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"*).

² *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 - 71 (2008).

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In re DCP Midstream, LLC

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Docket No. IN09-13-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and DCP Midstream, LLC (DCP Midstream) 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 violations of the Commission's open access transportation program, specifically violations of the shipper-must-have-title (SMHT) requirement.

II. STIPULATIONS

Enforcement and DCP Midstream hereby stipulate and agree to the following:

A. Background

1. DCP Midstream is a joint venture of Spectra Energy and ConocoPhillips, and is headquartered in Denver, Colorado. DCP Midstream is a midstream natural gas company whose core business involves the gathering and processing of natural gas. In the course of moving gas to processing plants, DCP Midstream at times transports gas on interstate pipelines subject to the SMHT requirement.

2. Following its review of earlier Commission orders, DCP Midstream held two training sessions on the Commission's SMHT requirement. As a result of the training, DCP Midstream discovered transactions which appeared to be in violation of Commission's requirements. DCP Midstream conducted a comprehensive review of all of its interstate natural gas pipeline service contracts from January 2005 through December 2007. DCP Midstream presented its findings to Enforcement staff, and staff opened an investigation into the reported violations pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008).

B. Summary of Violations

3. A central requirement of the Commission's open access transportation 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. Interstate pipeline tariffs include provisions requiring shippers to warrant

good title to the gas tendered for transportation on the pipeline. Although the specific language of each interstate pipeline's 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 on any pipeline. *See Enron Energy Services, Inc.*, 85 FERC ¶ 61,221, at 61,906 (1998).

4. Staff confirmed that from January 2005 through December 2007, DCP Midstream transported 61.5 Bcf of natural gas on interstate pipelines in violation of the Commission's SMHT requirement. These transactions fell into two categories. First, DCP Midstream shipped and delivered 49.8 Bcf of third party-owned gas using interstate pipeline capacity held by DCP Midstream. The second category of violations involved 11.7 Bcf of gas where DCP Midstream or an affiliate of DCP Midstream held the interstate pipeline capacity, but the gas transported was owned by a different DCP Midstream affiliate. Of the 61.5 Bcf of gas transported in violation of the SMHT requirement, 37.8 Bcf was transported under firm contracts and 23.7 Bcf was transported under interruptible contracts.

5. The majority of DCP Midstream's SMHT violations involved transportation related to DCP Midstream's gathering and processing business, and took place on interstate pipelines upstream of processing plants. The transportation at issue violated the pipelines' tariff provisions and the SMHT requirement. The primary reason these violations occurred is because DCP Midstream failed to provide adequate SMHT training for its employees.

C. Self-Corrective Action

6. DCP Midstream conducted a comprehensive review of DCP Midstream's interstate pipeline transportation transactions. Senior management fully supported DCP Midstream's review and did not attempt to conceal the violations. DCP Midstream self-reported to the Commission, took prompt self-corrective action to terminate or restructure its contractual arrangements, and DCP Midstream voluntarily developed improvements to ensure future compliance with the SMHT requirement when it transports gas on interstate pipelines. DCP Midstream also conducted employee training that addresses compliance with open access transportation requirements generally.

III. REMEDIES AND SANCTIONS

7. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the self-reported violations, DCP Midstream agrees to take the following actions.

A. Civil Penalty

8. DCP Midstream shall pay a civil penalty of \$360,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Compliance Monitoring

9. DCP Midstream 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. With respect to DCP Midstream's use of interstate natural gas transportation, each compliance report shall: (1) advise staff whether additional violations of the open access transportation requirements 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 open access transportation policies, and a statement of the personnel that have received such training and when the training took place; and (3) include an affidavit executed by an officer of DCP Midstream that the compliance reports are true and accurate. Upon request by staff, DCP Midstream shall provide to staff all backup documentation supporting its reports. After the receipt of the second semi-annual report, Enforcement staff may, at its sole discretion, require DCP Midstream to submit semi-annual reports for one additional year.

IV. TERMS

10. 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 DCP Midstream and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to DCP Midstream.

11. Commission approval of this Agreement without material modification shall release DCP Midstream and forever bar the Commission from holding DCP Midstream and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to DCP Midstream, liable for any and all administrative or civil claims arising out of, related to, or connected with the violations addressed in this Agreement.

12. Failure to make a timely civil penalty payment 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 DCP Midstream to additional action under the enforcement and penalty provisions of the NGA.

13. If DCP Midstream 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.

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

15. 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 DCP Midstream has been made to induce the signatories or any other party to enter into the Agreement.

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

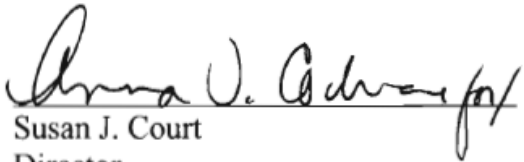
17. In connection with the payment of the civil penalty provided for herein, DCP Midstream agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a).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

18. 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.


19. The undersigned representatives of DCP Midstream affirm that they have read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Enforcement in express reliance on those representations.

20. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original. The Agreement may be signed in counterparts.

Agreed to and accepted:


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

12/10/08
Date


Brent L. Backes
Group Vice President, General Counsel
and Corporate Secretary
DCP Midstream, LLC

12/05/08
Date