

125 FERC ¶ 61,360  
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.

Sempra Energy Trading LLC

Docket No. IN09-14-000

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 Sempra Energy Trading LLC (SET). This order is in the public interest because it resolves the investigation into self-reported violations by SET of the Commission's open access transportation program, specifically violations of the shipper-must-have-title requirement. SET has agreed to pay a civil penalty of \$400,000 and to disgorge \$7,959, plus interest, in unjust profits. In addition, SET has improved its compliance practices and has agreed to submit compliance monitoring reports.

**Background**

2. SET is a full-service energy trading company that provides natural gas marketing and risk management services to wholesale and retail customers. SET became aware that it had misused a customer's interstate natural gas pipeline capacity in the administration of an energy management agreement. SET then looked into all transactions in which SET managed interstate natural gas pipeline capacity for others from September 2004 through October 2007 and discovered that it failed to comply with the Commission's shipper-must-have-title requirement in two other instances. In March 2008, SET 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 occurred on two interstate

pipelines and involved the transportation of approximately 50.6 Bcf of natural gas from September 2004 through October 2007.

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. SET violated the shipper-must-have-title requirement during the period September 2004 through October 2007 by improperly transporting approximately 50.6 Bcf of gas owned by SET on capacity held by customers, including 26.7 Bcf of gas owned by SET that was delivered to third parties using capacity held by SET's customers. Of that 26.7 Bcf, approximately 22.1 Bcf were transported solely for the benefit of the capacity holder and the remaining 4.6 Bcf for SET's benefit. To comply with the shipper-must-have-title requirement when transporting SET-owned gas, SET should have obtained pipeline capacity in its own name, such as by capacity release. 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. SET's violations were the result of the absence of adequate internal mechanisms for identifying and correcting compliance issues present in SET's energy management agreements. SET's failure to provide sufficiently detailed and thorough capacity release training to personnel on a regular basis was also a contributing factor. SET has voluntarily dedicated resources to enhance its compliance practices to ensure future compliance with open access transportation requirements.

### **Stipulation and Consent Agreement**

7. Enforcement and SET resolved Enforcement's investigation of SET's violations by means of the attached Agreement. The Agreement requires SET to pay a \$400,000 civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement. SET will also disgorge unjust profits from its violations of \$7,959, plus interest. SET will distribute the disgorged funds to certain energy assistance programs that receive and distribute funds from the federal Department of Health and Human Services because staff is unable to identify specifically harmed parties. SET 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.<sup>1</sup> 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 Commission's Revised Policy Statement on Enforcement.<sup>2</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 seriousness and scope of SET's violations while recognizing that SET took immediate steps to self-report, restructured all arrangements that were in violation, implemented internal mechanisms to ensure future compliance, and dedicated resources to enhance its compliance program. Further, SET's cooperation throughout the investigation was exemplary.

9. SET's violations involved 50.6 Bcf of gas over a period of approximately forty months, including 26.7 Bcf of gas owned by SET that was delivered to third parties using capacity held by SET's customers. Compared with prior settlements in cases involving shipper-must-have-title requirement violations, the civil penalty amount appropriately addresses the extent of the violations and SET's efforts to report and remedy the violations.

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

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<sup>1</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>2</sup> *Enforcement of Statutes, Regulations and Orders* 123 FERC ¶ 61,156, at P 54 - 71 (2008).

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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Sempra Energy Trading LLC

)

Docket No. IN09-14-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Sempra Energy Trading LLC (SET) 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 SET hereby stipulate and agree to the following:

**A. Background**

1. SET is a full-service energy trading company that provides natural gas marketing and risk-management services to wholesale and retail customers.
2. In January 2008, SET became aware that it had misused a customer's interstate natural gas pipeline capacity in the administration of an energy management agreement. SET then looked into all transactions in which SET managed interstate natural gas pipeline capacity for others from September 2004 through October 2007 and discovered that it failed to comply with the Commission's SMHT requirement in two other instances. SET notified Enforcement staff and submitted a self-report. Enforcement 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. SET often acts as agent for customers that hold pipeline capacity and delivers gas to those customers. At times, SET held title to gas it delivered to the capacity-holding customer. In other instances, however, SET used a customer's capacity to deliver gas to third parties without either obtaining pipeline capacity in its own name, such as by capacity release, or without transferring title of the gas to the shipper whose capacity was used.

5. Staff confirmed SET violated the SMHT requirement during the period September 2004 through October 2007 by improperly transporting approximately 50.6 Bcf of gas, including 26.7 Bcf of gas owned by SET that was delivered to third parties using capacity held by SET's customers. Of that 26.7 Bcf, approximately 22.1 Bcf were transported, sold and delivered for the benefit of the capacity holder, not SET.

6. SET's SMHT violations avoided compliance with the Commission's capacity release requirements, reducing market transparency in the natural gas transportation market and adversely impacting the Commission's oversight of that market. In addition, Enforcement determined that SET unjustly profited by \$7,959 related to the SMHT violations.

7. SET's SMHT violations were not discovered earlier as a result of the absence of adequate internal mechanisms for identifying and correcting compliance issues present in SET's energy management agreements. SET's failure to provide sufficiently detailed and thorough capacity release training to personnel on a regular basis was also a contributing factor.

### **C. Self-Corrective Action**

8. After discovering potential violations of the SMHT requirement, SET, in conjunction with outside counsel, conducted a comprehensive review of SET's interstate pipeline transportation transactions. SET took immediate steps to self-report to the Commission, restructure all arrangements that were in violation of the SMHT requirement, implement internal mechanisms for identifying and correcting compliance issues to ensure future compliance, and design new employee training programs. SET has also dedicated new resources to its compliance program and has retained an outside compliance consultant to review and create more robust training and trade compliance screening and monitoring programs. SET's cooperation with Enforcement was exemplary.

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

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

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

10. SET shall pay a civil penalty of \$400,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

#### **B. Disgorgement**

11. SET shall disgorge \$7,959.00, plus interest, such amount representing unjust profits from SET's SMHT violations, to energy assistance programs administered by States, territories, or Indian tribes and tribal organizations that have received grants from the federal Secretary of Health and Human Services, within the region in which SET marketed the gas at issue, such energy assistance programs to be agreed upon and such disgorgement to be made within 30 days from the Effective Date of this Agreement. This distribution of unjust profits to such energy assistance program is appropriate because distribution of unjust profits to the customer whose capacity was used by SET may result in a windfall to the customer.

#### **C. Compliance Monitoring**

12. SET 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 SET'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 SET that the compliance reports are true and accurate. Upon request by staff, SET 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 SET to submit semi-annual reports for one additional year.

#### **IV. TERMS**

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

14. Commission approval of this Agreement without material modification shall release SET and forever bar the Commission from holding SET and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to SET, 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.

15. Failure to make a timely civil penalty payment or disgorgement 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 SET to additional action under the enforcement and penalty provisions of the NGA.

16. If SET 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.

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

18. 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 SET has been made to induce the signatories or any other party to enter into the Agreement.

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

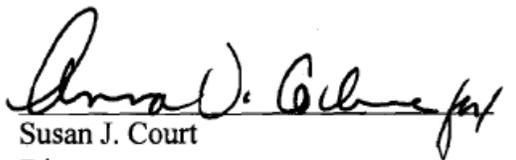
20. In connection with the payment of the civil penalty provided for herein, SET agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. § 717t-1(a). SET waives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

21. 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.

22. The undersigned representatives of SET 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.

23. 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

  
Michael A. Goldstein  
Senior Managing Director and General Counsel  
Sempra Energy Trading LLC

12/10/08  
Date