

127 FERC ¶ 61,068  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Louisville Gas and Electric  
Company

Docket No. IN09-15-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued April 22, 2009)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Louisville Gas and Electric Company (LG&E). This order is in the public interest because it resolves the investigation of LG&E regarding the Commission's capacity release policies, specifically circumvention of the posting and bidding requirements for released capacity. LG&E has agreed to pay a civil penalty of \$350,000. In addition, LG&E has agreed to submit compliance monitoring reports.

**Background**

2. LG&E is an electric and natural gas local distribution company (LDC) based in Louisville, Kentucky. It is a wholly owned subsidiary of E.ON U.S. LLC, a diversified energy services company which is a member of the E.ON family of companies. LG&E's service territory covers Louisville and 16 surrounding counties, serving more than 400,000 electric customers and 326,000 natural gas customers in a 700 square mile area. LG&E distributes natural gas in its service territory and provides natural gas to electric generation facilities directly connected to LG&E's gas distribution system. LG&E holds interstate pipeline capacity to support its retail utility service obligations.

3. Enforcement opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into LG&E's releases of capacity following the Constellation NewEnergy-Gas Division investigation and settlement.<sup>1</sup> As described in

---

<sup>1</sup> *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008).

the Agreement, between August 2005 and June 2006, LG&E, as a releasing shipper, entered into capacity release transactions with three sets of affiliated replacement shippers, not affiliated with LG&E, involving 2.8 Bcf of pipeline capacity on the Texas Gas Transmission, LLC (Texas Gas) pipeline.

### **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. Enforcement concluded that LG&E, as a releasing shipper, engaged in "flipping,"<sup>2</sup> on Texas Gas, that is, that LG&E released discounted capacity to three sets of affiliated replacement shippers on an alternating monthly basis between August 2005 and June 2006 without complying 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 that may not have otherwise been available from Texas Gas or other releasing shippers. LG&E admits making the releases in question but neither admits nor denies that its releases of discounted capacity to affiliated replacement shippers on an alternating monthly basis violated 18 C.F.R. § 284.8.

### **Stipulation and Consent Agreement**

6. Enforcement and LG&E resolved Enforcement's investigation of LG&E's violations by means of the attached Agreement. The Agreement requires LG&E to pay a \$350,000 civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. LG&E 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.

---

<sup>2</sup> 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, which avoids the competitive bidding requirement for discounted long-term capacity releases. The effect of flipping can be to create long-term, non-competitive discounted rate releases. *Id.* at P 8.

**Determination of the Appropriate Civil Penalty**

7. 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>3</sup> In approving the Agreement and the \$350,000 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>4</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 LG&E's transactions. We note that the capacity releases occurred over a short period of time and involved relatively modest volumes, that there were no unjust profits for LG&E to disgorge, and that LG&E demonstrated exemplary cooperation throughout the investigation. Thus, compared with settlements in other cases involving flipping, the civil penalty here appropriately addresses the extent of the violations.

8. 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:**

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>3</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>4</sup> *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 - 71 (2008).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

In re Louisville Gas and Electric Company       )       Docket No. IN09-15-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Louisville Gas and Electric Company (LG&E) 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 LG&E 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 LG&E hereby stipulate and agree to the following:

1. LG&E is an electric utility and natural gas distribution company based in Louisville, Kentucky, and is a wholly owned subsidiary of E.ON U.S. LLC, a diversified energy services company which is a member of the E.ON family of companies. LG&E's service territory covers Louisville and 16 surrounding counties, serving more than 400,000 electric customers and 326,000 natural gas customers in a 700 square mile area. LG&E purchases natural gas supplies from multiple sources for distribution to its retail customers, consumes natural gas for company use, and provides natural gas to electric generation facilities directly connected to LG&E's gas distribution system.

2. Following the Constellation NewEnergy – Gas Division (CNE) investigation and settlement<sup>1</sup> the Commission opened an investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2008), into LG&E's role in the CNE related transactions. LG&E's cooperation throughout the investigation was exemplary.

---

<sup>1</sup> *In re Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008).

3. 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 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.

4. Over an eight-month period between August 2005 and June 2006, LG&E, as a releasing shipper, released a total of 2.8 Bcf of transportation capacity on the Texas Gas Transmission, LLC pipeline to three sets of affiliated replacement shippers on an alternating monthly basis. None of the replacement shippers were affiliated with LG&E. All revenues received by LG&E in connection with these releases were credited to LG&E's retail sales customers pursuant to its state purchased gas adjustment mechanism.

5. Enforcement staff concluded that LG&E'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. "Flipping" is a term which describes a series of repeated short-term releases of discounted rate capacity to two or more affiliated replacement shippers on an alternating monthly basis, without complying with the Commission's posting and bidding requirements, that creates a long-term, non-competitive discounted rate release. Enforcement staff concluded that LG&E's releases 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.

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

6. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, LG&E agrees with the facts as stipulated but neither admits nor denies Enforcement staff's determination that LG&E's releases of discounted capacity to affiliated replacement shippers constitutes a violation 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 LG&E without further proceedings, LG&E agrees to undertake the obligations set forth in this Agreement.

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

**A. Civil Penalty**

8. LG&E shall pay a civil penalty of \$350,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

9. The civil penalty shall not be passed through, directly or indirectly, to any present or future LG&E customers or ratepayers.

**B. Compliance Monitoring**

10. LG&E 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 LG&E 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 LG&E that the compliance reports are true and accurate. Upon request by staff, LG&E 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 LG&E to submit semi-annual reports for one additional year.

**IV. TERMS**

11. 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 LG&E and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to LG&E.

12. Commission approval of this Agreement in its entirety and without material modification shall release LG&E and forever bar the Commission from holding LG&E, 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.

13. LG&E consents to the use of Enforcement staff's conclusions set forth in Paragraph 5 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 LG&E 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 LG&E 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.

14. 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 LG&E to additional action under the enforcement and penalty provisions of the NGA.

15. If LG&E 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.

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

17. 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 LG&E has been made to induce the signatories or any other party to enter into the Agreement.

18. 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 LG&E shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and LG&E.

19. In connection with the payment of the civil penalty provided for herein, LG&E 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). LG&E 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.

20. 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.

21. The undersigned representative of LG&E 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.

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

Agreed to and accepted:



Anna V. Cochran  
Acting Director  
Office of Enforcement  
Federal Energy Regulatory Commission

3/17/09  
Date



John R. McCall  
Executive Vice President,  
General Counsel, Corporate Secretary  
and Chief Compliance Officer  
Louisville Gas and Electric Company

3/16/09  
Date