

127 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Anadarko Petroleum Corporation

Docket No. IN09-16-000

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 Anadarko Petroleum Corporation (Anadarko). This order is in the public interest because it resolves the investigation of Anadarko regarding the Commission's capacity release policies, specifically circumvention of the posting and bidding requirements for released capacity. Anadarko has agreed to pay a civil penalty of \$1.1 million and to disgorge \$232,423.40, plus interest, such amount representing the unjust profits from the flipping violations. In addition, Anadarko has agreed to submit compliance monitoring reports.

Background

2. Anadarko is an independent oil and gas exploration company involved in a wide variety of activities moving natural gas from the wellhead to the market, including gathering, compression, treating and dehydration, processing, field area supply, market area supply, transportation optimization, and storage management. Subsidiaries of Anadarko include Mountain Gas Resources, Inc. (Mountain Gas) and Western Gas Resources, Inc. (Western Gas)¹ which were acquired by Anadarko in August 2006 as part of the mergers with Western Gas and Kerr McGee Corporation. Anadarko Energy Services Company (AESC), another Anadarko subsidiary, is an affiliate of Anadarko and is engaged in the business of

¹ Mountain Gas is a wholly-owned subsidiary of Western Gas.

trading and marketing natural gas and other petroleum products. Anadarko supplies the personnel for Western Gas, Mountain Gas, and AESC.

3. 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.² Enforcement staff identified subsidiaries of Anadarko as apparently releasing and acquiring 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 interstate natural gas 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 Anadarko's affiliates both improperly released and acquired discounted rate capacity through flipping transactions, the result of which was that Anadarko's affiliates avoided the requirement to post or obtain

² 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 Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008) (*Constellation*); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

such capacity through competitive bidding.³ AESC released discounted rate capacity on Texas Gas Transmission LLC to three sets of replacement shippers that were affiliated with each other (but not affiliated with AESC or other Anadarko entities). These releases occurred over periods ranging from four to eight months. Western Gas and Mountain Gas obtained discounted rate capacity as replacement shippers on Tennessee Gas Pipeline Company from an unaffiliated releasing shipper for a period of five months. Through these transactions Anadarko affiliates either released or acquired 5.24 Bcf of natural gas transportation capacity over a 20-month period between April 2006 and November 2007. Anadarko's affiliates earned unjust profits of \$232,423.40 as a result of the flipping transactions that were the subject of the Enforcement investigation. Anadarko admits that it engaged in the flipping transactions in question, but neither admits nor denies Enforcement staff's conclusion that the discounted rate capacity releases by AESC to affiliated replacement shippers or the acquisitions by Western Gas and Mountain Gas of discounted rate capacity constitute a violation of Commission rules or regulations.

7. Enforcement concluded that the flipping transactions by the Anadarko subsidiaries 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 Anadarko resolved Enforcement's investigation of Anadarko's violations by means of the attached Agreement. The Agreement requires Anadarko to pay a \$1.1 million civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement. Anadarko will disgorge \$232,423.40, plus interest, such amount representing the unjust profits from the flipping violations by AESC, Western Gas, and Mountain Gas, to certain energy assistance programs that receive and distribute funds from the Department of Health and Human Services. This distribution of unjust profits to such energy assistance programs is being made because there is no satisfactory method for accurately identifying individual entities that may have been harmed as a result of the flipping violations by Anadarko. Anadarko also will submit semi-annual monitoring reports to Enforcement for a period of one year with the option of a second year at Enforcement staff's discretion. Each compliance report shall describe any new and existing compliance program measures, including training,

³ *Constellation*, 122 FERC ¶ 61,220 at P 21.

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.⁴ In approving the Agreement and the \$1.1 million 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.⁵ 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 Anadarko's transactions. Anadarko did not self-report the flipping transactions, which occurred over a 20-month period. The violations impeded transparency in the natural gas market thus causing harm to that market, and there were unjust profits for Anadarko to disgorge. Finally, we note that the subsidiaries involved were acquired by Anadarko after some of the transactions had begun.

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

⁴ 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")*).

⁵ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156, at P 54 -71 (2008).

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 Anadarko Petroleum Corporation)

Docket No. IN09-16-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Anadarko Petroleum Corporation (Anadarko), together with and on behalf of its subsidiaries Western Gas Resources, Inc. (Western Gas), Mountain Gas Resources, Inc. (Mountain Gas), and Anadarko Energy Services Company (AESC), 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 Anadarko or its subsidiaries 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 Anadarko hereby stipulate and agree to the following:

1. Anadarko is an independent oil and gas exploration company involved in a wide variety of activities moving gas from the wellhead to the market, including gathering, compression, treating and dehydration, processing, field area supply, market area supply, transportation optimization, and storage management. Subsidiaries of Anadarko include Mountain Gas and Western Gas¹ which were acquired by Anadarko in August 2006 as part of the mergers with Western Gas and Kerr McGee Corporation. AESC, another Anadarko subsidiary, is an affiliate of Anadarko and is engaged in the business of trading and marketing natural gas and other petroleum products. Anadarko supplies the personnel for Western Gas, Mountain Gas, and AESC.

¹ Mountain Gas is a wholly-owned subsidiary of Western Gas.

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.² Enforcement staff identified subsidiaries of Anadarko as apparently releasing and acquiring firm pipeline capacity in flipping transactions.

3. Anadarko subsidiaries participated in flipping transactions both as a releasing shipper and as a replacement shipper. AESC released discounted rate capacity on Texas Gas Transmission LLC to three sets of replacement shippers that were affiliated with each other (but not affiliated with AESC or other Anadarko entities). These releases occurred over periods ranging from four to eight months. Western Gas and Mountain Gas obtained discounted rate capacity as replacement shippers on Tennessee Gas Pipeline Company from an unaffiliated releasing shipper for a period of five months. In the aggregate, these Anadarko affiliates either released or acquired 5.24 Bcf of natural gas transportation capacity over a 20-month period between April 1, 2006, and November 30, 2007.

4. 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.

5. Enforcement staff concluded that Anadarko's affiliates both improperly released and acquired discounted rate capacity through flipping transactions, the result of which was that Anadarko's affiliates avoided the requirement to post or obtain such capacity through competitive bidding.³

² 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 Constellation NewEnergy – Gas Division, LLC*, 122 FERC ¶ 61,220 (2008) (*Constellation*); *In re BP Energy Company*, 121 FERC ¶ 61,088 (2007).

³ *Constellation*, 122 FERC ¶ 61,220 at P 21.

Enforcement staff also concluded that the flipping transactions 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. Enforcement staff further concluded that Anadarko's affiliates earned unjust profits of \$232,423.40 as a result of the flipping transactions that are the subject of this Agreement.

6. At the time of these transactions, commensurate with its role as an oil and natural gas exploration company and as a producer-marketer not involved in asset management for third parties, Anadarko's regulatory compliance program was more focused on transporting its equity production to market and Anadarko did not have adequate controls in place to identify and prevent flipping. Moreover, the flipping transactions involving Western Gas and Mountain Gas commenced prior to Anadarko's acquisition of the companies as part of the mergers in August 2006 with Western Gas and Kerr McGee Corporation. While Anadarko did have in place compliance training and protocols relating to its gas marketing activities, since the Enforcement staff investigation commenced, Anadarko has taken extensive measures to upgrade its corporate compliance program and protocols and has implemented a number of additional measures specifically to address capacity release compliance issues. Anadarko also retrained employees in FERC compliance with particular emphasis on the capacity release rules, the shipper-must-have-title requirement, and related pipeline tariff requirements concerning the transportation of natural gas.

III. REMEDIES AND SANCTIONS

7. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Anadarko agrees with the facts as stipulated, but neither admits nor denies Enforcement staff's conclusion that the discounted rate capacity releases by AESC to affiliated replacement shippers or the acquisitions by Western Gas and Mountain Gas of discounted rate capacity constitute a violation of Commission rules or regulations. Nonetheless, in view of the costs and risks of litigation, and in the interest of resolving the dispute between Enforcement and Anadarko without further proceedings, Anadarko agrees to undertake the obligations set forth in this Agreement.

A. Civil Penalty

8. Anadarko shall pay a civil penalty of \$1,100,000.00 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below.

B. Disgorgement

9. Anadarko shall disgorge \$232,423.40, plus interest, such amount representing the unjust profits from the flipping violations by AESC, Western Gas, and Mountain Gas, 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, 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 programs is being made because there is no satisfactory method for accurately identifying individual entities that may have been harmed as a result of the flipping violations by Anadarko.

C. Compliance Monitoring

10. Anadarko 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 of the capacity release 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 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 Anadarko that the compliance reports are true and accurate. Upon request by staff, Anadarko 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 Anadarko 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 Anadarko and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to Anadarko.

12. Commission approval of this Agreement in its entirety and without material modification shall release Anadarko and forever bar the Commission from holding Anadarko, 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. Anadarko 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 Anadarko 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 Anadarko 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 Anadarko to additional action under the enforcement and penalty provisions of the NGA.

15. If Anadarko 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 Anadarko and its agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Anadarko, 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 Anadarko 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 Anadarko shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Anadarko.

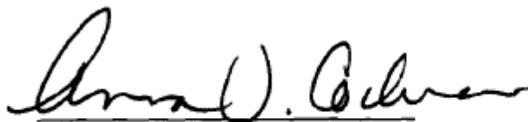
19. In connection with the payment of the civil penalty and disgorgement provided for herein, Anadarko agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 22(a) of the NGA, 15 U.S.C. §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

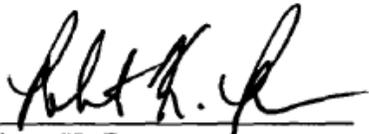
22. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



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

4/14/09
Date



Robert K. Reeves
Senior Vice President,
General Counsel and Chief Administrative Officer
Anadarko Petroleum Corporation

4-8-09
Date