

127 FERC ¶ 61,322  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

In re Wasatch Oil & Gas Corporation  
and Wasatch Energy, LLC

Docket No. IN09-23-000

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 Wasatch Oil & Gas Corporation (Wasatch Oil & Gas) and its affiliate Wasatch Energy, LLC (Wasatch Energy). This order is in the public interest because it resolves the investigation into whether Wasatch Oil & Gas and Wasatch Energy violated provisions of the Commission's open access transportation program regarding the Commission's capacity release policies, specifically circumvention of the posting and bidding requirements for released capacity. Wasatch Oil & Gas and Wasatch Energy have agreed to pay a civil penalty of \$320,000. In addition, Wasatch Oil & Gas and Wasatch Energy have agreed to submit a one-time compliance monitoring report should either Wasatch Oil & Gas or Wasatch Energy become involved in interstate natural gas operations within four years of this order.

**Background**

2. Wasatch Oil & Gas is in the business of natural gas production and has operated as a small independent oil and gas producer. Wasatch Oil & Gas has not held any transportation contracts since 2006 and, as a producer which makes its sales at the wellhead, does not intend to enter into or hold transportation contracts in interstate transport. Wasatch Energy, an affiliate of Wasatch Oil & Gas and a replacement shipper in the capacity release transactions investigated, was formerly engaged in marketing and trading natural gas around the western United States, primarily focusing its efforts on purchasing wellhead gas from independent producers and selling to industrial users behind the various city-gates. Wasatch

Energy is now a dormant company, following the acquisition of certain of its assets by BP Energy Company effective April 1, 2007. The remaining assets of Wasatch Energy have been transferred to its affiliate, Wasatch Oil & Gas.

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 Wasatch Oil & Gas and Wasatch Energy as apparently acquiring discounted rate, short-term 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 rate, 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.

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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).

6. Enforcement staff concluded that Wasatch Oil & Gas and Wasatch Energy, as affiliated replacement shippers, improperly acquired 6.06 Bcf of discounted rate capacity through flipping transactions with two releasing shippers between August 2005 and October 2006, the result of which was that the Wasatch affiliates avoided the requirement to post or obtain such capacity through competitive bidding.<sup>2</sup>

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

### **Stipulation and Consent Agreement**

8. Enforcement staff and Wasatch Oil & Gas and Wasatch Energy resolved Enforcement staff's investigation of the flipping violations by Wasatch Oil & Gas and Wasatch Energy by means of the attached Agreement. The Agreement requires Wasatch Oil & Gas and Wasatch Energy to pay a \$320,000 civil penalty to the United States Treasury, by wire transfer, in two equal installments. The first payment shall be made within ten days of this order accepting and approving the Agreement. The second payment shall be made no later than six months after the date of this order. Wasatch Oil & Gas and Wasatch Energy agree with the facts as stipulated, but neither admit nor deny Enforcement staff's conclusion that the capacity release acquisitions by Wasatch Oil & Gas and Wasatch Energy of discounted rate capacity constitute a violation of Commission rules or regulations.

9. The Agreement also requires Wasatch Oil & Gas and Wasatch Energy, should either Wasatch entity resume interstate gas transmission operations (either as an operator or a shipper) within four years of the effective date of the settlement, to submit a one-time compliance monitoring report covering the first 12 months of such activity.

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

10. 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

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<sup>2</sup> *In re Constellation NewEnergy—Gas Division LLC*, 122 FERC ¶ 61,220 at P 21.

violation continues.<sup>3</sup> In approving the Agreement and the \$320,000 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 staff's conclusions concerning the transactions by Wasatch Oil & Gas and Wasatch Energy. The Wasatch companies did not self-report the flipping transactions, which occurred over a 15-month period. Although Wasatch Oil & Gas and Wasatch Energy did not receive unjust profits for the flipping, the violations impeded transparency in the natural gas market thus causing harm to that market.

11. We conclude that the civil penalty and the requirement that Wasatch Oil & Gas and/or Wasatch Energy provide a one-time monitoring report under the conditions 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.

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<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 PP 54 -71 (2008).

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Wasatch Energy, LLC )

Docket No. IN09-23-000

STIPULATION AND CONSENT AGREEMENT

**I. INTRODUCTION**

The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Wasatch Oil and Gas Corporation (Wasatch Oil & Gas) and its affiliate, Wasatch Energy, LLC (Wasatch Energy), 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 Wasatch Oil & Gas and Wasatch Energy violated provisions of the Commission's open access transportation program regarding the Commission's capacity release policies, specifically circumvention of the posting and bidding requirements for released capacity.

**II. STIPULATED FACTS**

Enforcement and Wasatch Oil & Gas and Wasatch Energy hereby stipulate and agree to the following:

1. Wasatch Oil & Gas is in the business of natural gas production and has operated as a small independent oil and gas producer. Wasatch Oil & Gas has not held any transportation contracts since 2007 and, as a producer which makes its sales at the wellhead, does not intend to enter into or hold transportation contracts in interstate transport. Wasatch Energy, an affiliate of Wasatch Oil & Gas and a replacement shipper in the capacity release transactions investigated, was formerly engaged in marketing and trading natural gas around the western United States, primarily focusing its efforts on purchasing wellhead gas from independent producers and selling to industrial users behind the various city-gates. Wasatch Energy is now a dormant company, following the acquisition of certain of its assets by BP Energy Company (BP Energy) effective April 1, 2007.

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> Enforcement staff identified Wasatch Oil & Gas and Wasatch Energy as apparently acquiring firm pipeline capacity in flipping transactions.

3. Between August 1, 2005 and October 31, 2006, Wasatch Oil & Gas and Wasatch Energy, as affiliated replacement shippers, acquired a total of 6.06 Bcf of transportation capacity on Northwest Pipeline Corporation from Puget Sound Energy, Inc. (PSE), and PSE’s affiliate WNG CAP I, and from Portland General Electric Company.

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 Wasatch Oil & Gas’ and Wasatch Energy’s acquisitions of short-term, discounted rate capacity were flipping transactions that improperly avoided the requirement that discounted rate capacity be obtained through competitive bidding. Enforcement staff also concluded that the flipping by Wasatch Oil & Gas and Wasatch Energy caused harm to the natural gas transportation markets, because it impeded transparency and denied other market participants an opportunity to bid for discounted, long-term releases of capacity that may not have been otherwise available from the pipeline or other releasing shippers. Additionally, Enforcement staff determined that Wasatch Oil & Gas and Wasatch Energy did not earn unjust profits as a result of the transactions that are the subject of this agreement.

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

6. At the time of these transactions, Wasatch Oil & Gas and Wasatch Energy did not have either a FERC compliance program or controls in place to identify and prevent flipping transactions.

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

8. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation Wasatch Oil & Gas and Wasatch Energy agree with the facts as stipulated, but neither admit nor deny Enforcement staff's conclusion that the capacity release acquisitions by Wasatch Oil & Gas and Wasatch Energy of discounted rate capacity constitutes 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 Wasatch Oil & Gas and Wasatch Energy without further proceedings, Wasatch Oil & Gas and Wasatch Energy agree to undertake the obligations set forth in this Agreement.

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

9. Wasatch Oil & Gas and Wasatch Energy shall pay a civil penalty of \$320,000 to the United States Treasury, by wire transfer, in two equal monthly installments. The first payment shall be made within ten days after the Effective Date of this Agreement, as defined below. The second payment shall be made no later than six months after the Effective Date of this Agreement.

10. The civil penalty shall not be passed through to any present or future direct or indirect Wasatch Oil & Gas or Wasatch Energy customers or ratepayers.

#### **B. Compliance Monitoring**

11. Although compliance monitoring is not warranted at this time, Wasatch Oil & Gas and Wasatch Energy will be required to promptly inform Enforcement staff if either Wasatch Oil & Gas or Wasatch Energy become involved in interstate gas transmission operations in the future (either as an operator or a shipper). Additionally, if Wasatch Oil & Gas or Wasatch Energy resume such transactions within four years of the Effective Date of this Agreement, they will be required to submit a one-time compliance monitoring report, consistent with the procedures set forth in *Constellation NewEnergy*, covering the first 12 months of such activity. The report, which will be required to be submitted one month after the end of the first 12 months of activity, shall: (i) advise staff whether additional violations by Wasatch Oil & Gas or Wasatch Energy of open-access transportation requirements of have occurred; (ii) provide a detailed update of all natural gas-related compliance training administered and natural gas-related 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 list of the personnel that have received such training and when the training took place; and, (iii) include an affidavit executed by an officer of Wasatch Oil & Gas or Wasatch Energy that the compliance reports are true and accurate.

#### **IV. TERMS**

12. 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 Wasatch Oil & Gas and Wasatch Energy and any affiliated entity, their agents, officers, directors and employees, both past and present, and any successor in interest to Wasatch Oil & Gas or Wasatch Energy.

13. Commission approval of this Agreement in its entirety and without material modification shall release Wasatch Oil & Gas and Wasatch Energy and forever bar the Commission from holding Wasatch Oil & Gas and Wasatch Energy, their 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.

14. Wasatch Oil & Gas and Wasatch Energy consent 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 companies' 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 Wasatch Oil & Gas and Wasatch Energy do 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 Wasatch Oil & Gas or Wasatch Energy 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.

15. 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 Wasatch Oil & Gas and Wasatch Energy to additional action under the enforcement and penalty provisions of the NGA.

16. If Wasatch Oil & Gas and Wasatch Energy do 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 Wasatch Oil & Gas and Wasatch Energy and their agents, successors, and assigns. The Agreement does not create any additional or independent obligations on Wasatch Oil & Gas and Wasatch Energy, or any affiliated entity, their 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 Wasatch Oil & Gas or Wasatch Energy 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 Wasatch Oil & Gas or Wasatch Energy shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and Wasatch Oil & Gas and Wasatch Energy.

20. In connection with the payment of the civil penalty provided for herein, Wasatch Oil & Gas and Wasatch Energy agree 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). Wasatch Oil & Gas and Wasatch Energy waive 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 representative of Wasatch Oil & Gas and Wasatch Energy 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.

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

Agreed to and accepted:

  
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Susan Court  
Director  
Office of Enforcement  
Federal Energy Regulatory Commission

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Date 6/19/09

  
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Brian Watts  
Chief Financial Officer  
Wasatch Oil & Gas Corporation  
Wasatch Energy, LLC

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Date June 18, 2009